



OFFICE OF THE DEPUTY JUDGE PRESIDENT
NORTH GAUTENG HIGH COURT

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PRACTICE NOTE

This is not a practice directive. Most of what is to follow is contained in practice directives or will appear in the Practice Manual which will be available in the very near future. The purpose of this Practice Note is, in the main, to inform legal representatives how the North Gauteng High Court is going to deal with applications for default judgments (See the recent judgment of the Constitutional Court in the case of *Elsie Gundwana vs Steko Development CC and others*, case CCT44/10 delivered on 11 April 2011 as yet unreported.) and applications for the issuing of warrants of execution (See the amendment to Rule 46 of the Uniform Rules of Court as per Government Gazette No. 33689 dated 19 November 2010 with effect from 24 December 2010).

This note will also deal with a few practical problems experienced in recent past with the enrolment of unopposed motion applications. Lastly this note will contain a few general remarks in respect of some practical issues.

1. **Default Judgments**

With immediate effect, i.e. from Monday, 18 April 2011 courts will be constituted to deal with applications for Default Judgements where bonds over residential properties are involved. See paragraph 65(b) of the Constitutional Court Judgment, *supra* where the following is stated:-

“It is declared that it is unconstitutional for a Registrar of a High Court to declare immovable properties specially executable when ordering default Judgment under Rule 31(5) of the Uniform Rules of Court to the extent that this permits the sale in execution of the home of a person” all other applications for default judgments will still be dealt with by the Registrar.

The number of courts will depend on the number of applications enrolled per day. A maximum of 150 applications per day will be enrolled. Judges will be required to deal with up to 50 applications per day each.

The following arrangements will apply to applications for default judgments.

- 1.1 Legal representatives must enter all the particulars required on a register which will be opened by the Registrar.
- 1.2 Legal representatives will be permitted to enter the particulars for a date of hearing of his/her choice provided that that date is no sooner than 3 (three) days after the date on which the particulars were so entered.
- 1.3 When entering the particulars on the register the matter must be ripe for hearing, i.e. the file must be properly indexed and paginated with all relevant documents contained therein.
- 1.4 The notice of application for Default Judgment must inter alia contain a reference to the date of service of the summons as well as the date on which the dies induciae expired.
- 1.5 A draft order in duplicate must be filed with the application for Default Judgment.

The court constituted for this purpose will deal with applications for default judgments only for the time being.

Directives concerning applications for default judgments will be contained in an appendix to the new Practice Manual as practical dictates may require changes to the foregoing.

2. Applications for the issuing of warrants of executions in terms of Rule 46(1)(a)(ii)

Rule 46(1)(a)(ii) requires from a court to "consider all the relevant circumstances" before authorising the issuing of a warrant of execution. Such "relevant circumstances" are not defined.

Many questions concerning the interpretation of Rule 46 and the practical implementation thereof exist.

At my request the Honourable Judge President authorised me to constitute a full court to deal with the interpretational and practical questions of the amended Rule 46 in order to give direction to practitioners.

A full court will be constituted as soon as possible. In order to enable the full court to deal with all problems concerning the amended Rule 46 a number of files already put before me will be placed before the full court. The legal representatives involved in those matters will be entitled to address the full

court. Directives concerning the filing the heads of argument will be issued in the very near future.

The advocates' profession will be invited to appoint a member or members to assist the court.

A date of hearing will be determined and announced as soon as possible.

3. Enrolment of unopposed motion court applications.

Because practical problems were experienced by legal practitioners and the registrar with the enrolment of unopposed motion applications the practice directive dated 10 December 2010 is to appear in an amended form in the forthcoming practice manual. A copy of the amended directive is annexed hereto as Annexure "A". In order to assist legal representatives with the enrolment of such matters the registrar will enrol matters in accordance with the amended version with immediate effect.

The most important effect of the amendment to the practice directive of 10 December 2010 is that applications may now be enrolled at a date chosen by the legal representatives while the file can be delivered to the supervisor at a secure office at a later stage.

4. General

It is observed that attorneys in many instances are not in court if a matter is dealt with. Attorneys or a representative of the attorney who can give instructions to counsel must attend court proceedings at all times.

Motion applications, opposed and unopposed, cannot and must not be postponed to a date unless the required particulars have been entered on the register for that particular date. The non-compliance herewith has caused serious problems for the registrar and the court in the past weeks. Attorneys are requested to strictly comply with the above to facilitate the smooth running of the motion court rolls. The entry of the particulars of the register is a function of the attorney and not that of counsel.


W J van der Merwe
Deputy Judge President
North Gauteng High Court

ANNEXURE "A"

1. For purposes of this directive "unopposed motions" shall include ex parte, unopposed, summary judgment and rule 43 applications as well as unopposed divorces.
2. For practical reasons the enrolment of unopposed motions will require two steps: **provisional enrolment** and **final enrolment**.

Provisional enrolment

3. For purposes of provisional enrolment, the registrar will prepare and at all times have available a blank register for each court day. The blank register will be in accordance with annexure "A" attached hereto. The register will be kept available at a location designated by the registrar.
4. A person seeking to enrol a matter shall do so by entering on the register for the appropriate day, in the next available space on the register and under the appropriate heading (application, rule 43 or divorce) the case number, the parties' names, the nature of the application, the name of the applicants' attorneys, the name of the person enrolling the matter and his or her contact details.
5. No more than 180 applications (which include summary judgment applications), 9 Rule 43 applications and 60 divorces may be enrolled on any court day provided that during recess the respective numbers shall be 120, 6 and 40.
6. When the court grants a rule nisi or postpones a matter, it shall be the responsibility of the applicant or his attorney to provisionally enter the matter on the register for the appropriate day.
7. No entry may be removed from the provisional register.

8. When the register for a particular day is full, the registrar shall remove and keep the register in a safe place until the day after the date to which the register applies.

Final Enrolment

9. Only matters that have been provisionally enrolled for a particular date may be finally enrolled for that date.
10. Unopposed motions may only be finally enrolled when the papers are ready, paginated and indexed where applicable, and the matter is ripe for hearing.
11. Unopposed motions may not be finally enrolled later than noon on the court day but two preceding the day on which the matter is to be heard.
12. For the purpose of final enrolment, the registrar shall make available a secure location ("the location") under supervision of a person designated by the registrar ("the supervisor"). The supervisor shall at the location oversee the final enrolment process.
13. In the location, the registrar shall make available suitable space where the files for each motion court day can be stored
14. A matter is finally enrolled by handing over the court file, ready for hearing, to the supervisor in the manner prescribed in this directive.
15. The person finally enrolling a matter shall enter on the cover of the court file the relevant date and the number from the register where it had been enrolled provisionally.

16. When the court file is handed to the supervisor, both the supervisor and the person finally enrolling the matter must sign next to the register date and number on the cover of the court file, as proof of final enrolment.
17. The court file of a matter finally enrolled shall be left with the supervisor in the secure location
18. The supervisor shall keep the respective files for each motion court day separately. The files shall be kept in the order that they have been received for final enrolment
19. A party who has finally enrolled a matter may not after final enrolment, without the leave of the court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement, a notice granting leave to defend to a defendant in a summary judgment application, a practice note and an official document or report.
20. It shall be the responsibility of the registrar to prepare a motion court roll from the files of matters that have been finally enrolled and have been kept, ready for hearing, in the secure location. No matter that has not been enrolled provisionally for that day, may be on the motion court roll for a particular day. No matter that has not been finally enrolled as set out herein may appear on the motion court roll for a particular day.
21. The unopposed motions finally enrolled for each day shall be distributed evenly between the three motion courts and in recess, the two motions courts.
22. No more than 60 applications, 3 rule 43 applications and 20 divorces may be enrolled before any one court.

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23. Any matter on the roll in excess of the numbers mentioned in paragraph 21 above, will be postponed *sine die*.

24. The court postponing matters under paragraph 22 above may, in its discretion and after hearing the official concerned, order the supervisor or the registrar who has prepared the roll to pay the costs of the postponement.
