

1. RULES WHICH HAVE REMAINED VIRTUALLY UNCHANGED.

<u>Magistrates' Court Rule number</u>	<u>Subject</u>	<u>Uniform Rule number</u>	<u>Differences between Uniform Rule and Magistrates' Court Rule</u>
3 (previous rule 3 and 4)	Duties and office hours of registrars and clerks of the Court in civil matters	3	<ol style="list-style-type: none"> Office hours differ, the High Court being open from 09:00 to 13:00 and 14:00 to 16:00, whilst the Magistrates' Court shall be open from 08:00 to 13:00 and 14:00 to 16:00. Issuing of processes and filing of documents, other than a notice of intention to defend, must be done before 15:00 in both High and Lower Courts.
7	Amendment of summons		No corresponding Rule in the Uniform Rules.
8	Sheriff of the Court		No corresponding Rule in the Uniform Rules.
14A	Provisional Sentence	8	No difference exists between the Uniform Rule and the Magistrates' Court Rule.
24	Medical examinations, inspection of things, expert testimony and tendering in evidence any plan, diagram, model or	36	<p>The time periods in the Uniform Rule and the Magistrates' Court Rule differs materially.</p> <ol style="list-style-type: none"> Magistrates' Court Rule 24(3)(a) provides for a period of 10 days within which a party, who has been requested to submit himself for a medical examination, may object thereto, whereas Uniform Rule 36(3) only provides for a 5 day period. Magistrates' Court Rule 24(4) provide that medical reports, hospital records, X-rays and other documentary information must be made available within 15 days of a request in that regard, whereas Uniform Rule 24(4) states that in the High Court, this

	photograph		<p>as to be done in 10 days.</p> <ol style="list-style-type: none"> Magistrates' Court Rule 24(10)(a) provides that a party must give notice of an intention to tender in evidence any plan, diagram, model or photograph not less than 10 days before the hearing, whereas Uniform Rule 36(10)(a) provides for 15 days. Magistrates' Court Rule 24(10)(b) provide that a notice in terms of rule 24(10)(a), must state that every party receiving notice of an intention to tender in evidence any plan, diagram, model or photograph should within 5 days of receipt of such notice, state whether he objects to such plan, diagram, model, or photograph, whereas, Uniform Rule 36(10)(a) provides for 10 days within which to object.
25 read with rule 22(4)	Pre trial procedure for formulating issues	37	<ol style="list-style-type: none"> The process for pre trials in High Courts differ substantially from the process in Lower Courts and both processes remain as they were, except that Magistrates' Courts Rule 22(4) now provide that the registrar or the clerk of the court shall draw the file and take it to a magistrate on receipt of an application for a trial date to enable the magistrate to consider whether a pre trial in the particular case is necessary. Uniform Rule 37 provides for automatic discovery by a party receiving a notice of set down, if he has not yet made discovery and for a Plaintiff to arrange for a pre trial. Pre trials are compulsory and usually do not take place in front of a judge, save for instances under Uniform Rule 37(8). In the Magistrates' Court no provision is made for automatic discovery and Plaintiff is under no obligation to arrange for a pre trial. Pre trials held in Magistrates' Court are convened similarly to the procedure envisaged in Uniform Rule 37(8) insofar as the court may <i>suo motu</i> or at the request of a party order that a pre trial be held before a magistrate.
26	Subpoenas, interrogatories and commissions <i>de bene esse</i>	38	No difference exists between the Uniform Rule and the Magistrates' Court Rule.

29	Trial	39	Uniform Rule 33(4) uses the term "application" by a party desiring a separate adjudication of a question of law or fact, whilst Magistrates' Court Rule 29(4) uses the term "request". Uniform Rule 6 deals with applications, but there is no definition or rule that deals with the term "request" in the Magistrates' Courts Rules.
30	Record of proceedings in civil matters	39(16) to (21)	No difference exists between the Uniform Rule and the Magistrates' Court Rule.
31	Adjournment and postponement	41(3)	Albeit that the wording of the two sets of Rules differ materially, in practice the same procedure is followed in the High Court and Lower Courts.
34	Fees of the sheriff and the registrar or clerk of the Court	67 and 68	The fees prescribed differ, as is to be expected
35	Review of taxation	48	The process differs significantly. Magistrates' Court Rule 35 has two review processes, one by the magistrate of the taxing master's ruling and one by the judge of the magistrate's ruling if deemed necessary; whereas the Uniform Rules has no second review process for a judge may not be taken on review.
36 to 43A, 45 to 48 and Section 63 of the Magistrates Court Act 32 of 1944	Execution, enforcement of foreign civil judgments, enquiry into financial position of	45, 46 and 66	1. The process of procuring warrants of execution against movable and immovable goods as well as obtaining garnishee orders in High and Lower Courts, are basically the same, albeit that the wording of the applicable rules differ. There is no provision for administration orders and enquiries into the financial position of a judgment debtor in the Uniform Rules.

<p>judgment debtor, emoluments attachment order, garnishee order and administration order</p>		<p>2. Section 63 of the Magistrates' Court Act 32 of 1944 and Uniform Rule 66 both deal with superannuation. There is no rule to this effect in Lower Courts.</p>
<p>49 Rescission and variation of judgments</p>	<p>31(2)(b), 42 and the common law</p>	<p>The processes in the High and Lower court differ substantially, but there are several instances where the different rules are fairly alike.</p> <ol style="list-style-type: none"> 1. Uniform Rule 31(2)(b) caters for the same situation as Magistrates' Court Rule 49(1) to (4), namely those where applications for rescission of a default judgment is brought by a defendant against whom a judgment was granted. 2. Uniform Rule 31(5)(d) provides that any party dissatisfied with a judgment by default granted by the registrar, may within 20 days after acquiring knowledge of the judgment, set the matter down for reconsideration by the court. This party includes the plaintiff, but it is doubtful whether it includes a defendant against whom judgment has been granted and who should apply for rescission as opposed to reconsideration. The term does not include non-litigants who have an interest in the action, for they are not a party to the action. In lower courts, the situation is very different. Here, any affected person, not necessarily a party may bring such application, but it does not include the plaintiff. Plaintiff has to follow appeal procedure as there is no internal review available to him such as with a review of taxation. (See <i>First Consolidated Leasing Corp Ltd v McMullin</i> 1975(3) SA 606 (T) at 608H to 609A). In summary, Magistrates' Court Rule 49(6) does not provide a remedy for a plaintiff not satisfied with the judgment to vary such, which remedy is available to a plaintiff in the High Court; and in the High Court, only a party (the plaintiff) may apply to rescind or vary a judgment granted by default in terms of Uniform Rule 31(5)(d) whilst any person (except the plaintiff) affected by the judgment (Section 36 of the Magistrates' Court Act 32 of 1944), may so apply in the Magistrates' Court. 3. Uniform Rule 42(1)(a) authorizes any "person", notwithstanding the fact that the Rule refers to "party", with a direct and substantial interest in the subject-matter of a

		<p>judgment which was erroneously sought or granted, to apply for a rescission or a variation thereof if it was granted in the absence of any party or person affected thereby. Whether the person absent and the one bringing the application, has to be the same person, is uncertain, but I respectfully submit that it stands to reason. Section 36(1) of the Magistrates' Court Act 32 of 1944 determines that any person affected by a judgment may apply for its variation or rescission as long as it was either granted in the absence of the person against whom that judgment was granted, or was void <i>ab origine</i> or obtained by fraud or mistake common to the parties.</p>
		<p>4. Uniform Rule 42(1)(b) bears a lot of similarity to section 36(1)(c) of the Magistrates' Court Act 32 of 1944 and Magistrates' Court Rule 49(9).</p>
		<p>5. Uniform Rule 42(1)(c) and the common law (as far as judgments obtained by fraud) to a large extent caters for situations which section 36(1)(b) of the Magistrates' Court Act 32 of 1944 and Magistrates' Court Rules 49(7) and (8) provide for. The word "mistake" in rule 49(8) should be read as "mistake common to the parties" as per section 36(1)(b) of the Act. The main difference is that in High Court, this application must be brought in a reasonable time whereas the application has to be delivered within a year of the applicant first becoming aware of the voidness, fraud or mistake in the Magistrates' Court.</p>
		<p>6. Rule 49(1) and (7) of the Magistrates' Courts Rules also provide that a judgment may be rescinded if there is a good reason to do so. Subrule (1) provides for default judgments and subrule (7) for other judgments. The good reason, which has been stated in the widest possible sense, may include, I submit, <i>justus error</i> as provided for by applications for rescission under the common law in the High Court or judgments erroneously sought or granted as provided for by Uniform Rule 42(1)(a). In terms of Magistrates' Court Rule 49(1) an application has to be brought within 20 days after obtaining knowledge of such judgment whereas there is no such limitation in Magistrates' Courts Rule 49(7) or the High Court prescribed by either Uniform Rule 42 or the common law, resulting in applications in terms of these rules to be brought within a reasonable time.</p>
		<p>7. Section 36(2) of the Magistrates' Court Act 32 of 1944 and Magistrates' Court Rule 49(5) provides for rescission of judgments by the written consent of the plaintiff. No similar provision is to be found in the Uniform Rules or the common law, therefore one cannot rescind a judgment by consent in High Court.</p>

50, 51 and 67	Appeals and transfer of actions to Magistrates' Courts and appeals in civil cases	49 to 52	Evidently the process differs substantially, criminal appeals because different Sections of the Criminal Procedure Act apply and civil appeals because one has to obtain leave to appeal in the High Court whereas one has an automatic right of appeal from a lower Court in civil matters. In addition, appeals from the Magistrates' Courts are heard by the High Court.
51(11)	Abandonment	41(2)	Any party in whose favour a judgment or decision has been granted may abandon such at any time in High Court under Uniform Rule 41(2). Section 86 of the Magistrates' Court Act 32 of 1944 provides for a similar process in a Magistrates' Court. Magistrates' Court Rule 51(11) however, qualifies this right to judgments appealed against. Therefore, a party desiring to abandon a judgment which has not been appealed against must do so in terms of Section 86. Abandonment in the High Court and Magistrates' Courts shall be done by delivery of a notice of such abandonment.
52	Representation of parties	7, 16 and 15(3)	<ol style="list-style-type: none"> 1. Uniform Rule 7(1) and (5) and Magistrates' Court Rule 52(2) are fairly similar. 2. The wording of Uniform Rule 16 and Magistrates' Courts Rule 52 differ substantially, but the same effect is given to both. Uniform Rule 16(4)(d) places an obligation on an attorney who withdraws, to inform his former client that unless all other parties are notified of a new address, it shall not be necessary for the other parties to serve any documents on the former client. There is no such provision in the Magistrates' Court, which results in other parties being under an obligation to give notice to such a party whose attorney withdrew, very often first having to appoint a tracer to ascertain his whereabouts. 3. Uniform Rule 15(3) and Magistrates' Court Rule 52(3) provides for the same scenario, namely where a party dies or become incompetent to continue. In the Magistrates' Court, the action is automatically stayed until the appointment of an executor, trustee or competent person, whilst the Uniform Rules does not provide for such suspension.

53	<i>Pro deo</i> applicants	40	The subject of Uniform Rule 40 is <i>in forma pauperis</i> . The process prescribed for the Magistrates' Court and the High Court, differs substantially, but the aim of both rules are essentially the same.
54	Actions by and against partners, a person carrying on business in a name or style other than his or her own name, an unincorporated company, syndicate or association	14	The Uniform Rule and the Magistrates' Court Rule both have the same aim, but the words used differ considerably.
55A	Amendment of pleadings	28	Both sets of rules are identical, save that Uniform Rule 28(8) provide for steps contemplated in Rule 30 (irregular proceedings), whilst Magistrates' Court Rule 55A(8) does not provide for steps contemplated in Rule 60A.
57	Attachment of property to found or confirm jurisdiction		These applications in the High Court are brought under Uniform Rule 6 and separate provision is not made for such applications.
59	Assessors		No corresponding Rule in the Uniform Rules.

60	Non-compliance with rules, including time limits and errors	21(4), 27, 30A, 35(7)	<ol style="list-style-type: none"> 1. Magistrates' Court Rules 16(4) and 23(8) now reads the same as Uniform Rules 21(4) and 35(7) respectively, providing a special sanction for non-compliance with a request for further particulars or discovery. 2. Uniform Rule 30A and Magistrates' Court Rules 60(2) and 60(3) are similar. They provide for instances where there has been non-compliance with a rule or a request made in pursuance of such provision, other than further particulars or discovery. They differ however insofar as a party has to give 10 days' notice in the High Court of his intention to launch such application, whilst no such prior notice is required by Magistrates' Courts Rules 60(2) or 60(3). 3. Uniform Rule 27(1) and (2) and Magistrates' Courts Rule 60(5), has the same aim. 4. Uniform Rule 27(3) had no equivalent in the Magistrates' Court in the past, but Magistrates' Court Rule 1(3) grants the authority to a Magistrates' Court to dispense with any provision of the rules during a pre trial conference. In the High Court non-compliance with the rules may be condoned at any time. Magistrates' Courts Rule 55(5) and 60A also authorizes a Magistrates' Court to condone non-compliance with the rules. 5. Magistrates' Court Rule 60(6) has no equivalent in the Uniform Rules. In practice, because the Court may condone any non-compliance at any stage, a party does not have to obtain prior consent for short service anymore.
61	Records, entries or documents as evidence in civil matters		No corresponding Rule in the Uniform Rules.
64 (also see 9(8))	Procedure for securing the attendance of witnesses in criminal cases	54(5) to (9), 55(1) and (6) and 56	<ol style="list-style-type: none"> 1. The content of the Uniform Rules and The Magistrates' Courts Rule differs, but basically it is the same process. Only the registrar or clerk of the Court may issue the subpoena in the Magistrates' Court whereas this may be also be done by the chief clerk of the Attorney-General (Director of Public Prosecutions) or, in instances of a private prosecution, by the party or his attorney.

			<p>2. The Uniform Rules provide for a fine for the non-appearance of witnesses in Rule 54(9) and 55(6), which one does not find in the Magistrates' Courts Rules. Sections 188, 170(2), 276 and 297 of the Criminal Procedure Act 51 of 1977 provide for such instances.</p>
65	Criminal record book		No corresponding Rule in the Uniform Rules.
66	Records of criminal cases		No corresponding Rule in the Uniform Rules.
67	Criminal appeals	52	The process prescribed by the rules differs due to the fact that different sections of the Criminal Procedure Act 51 of 1977 apply.

2. RULES WHICH HAVE SEEN SMALL BUT SIG ICANT CHANGES.

<u>Magistrates' Court Rule number</u>	<u>Subject</u>	<u>Uniform Rule number</u>	<u>Differences between Uniform Rule and Magistrates' Court Rule</u>	<u>Differences between previous Rule and new Rule.</u>
1(3)	Purpose and application of rules	27(3)	Uniform Rule 27(3) had no equivalent in the Magistrates' Court in the past, but Magistrates' Court Rule 1(3) grants the authority to a magistrates' court to dispense with any provision of the rules during a pre trial conference. In the High Court such non-compliance may be condoned at any time.	Previously, a Magistrate's Court could only condone non-compliance with time limits provided for by the rules in terms of Rule 60(5) and not non-compliance with rules themselves.
4	Applications in terms of section 57 and 58 of the Act		No provision in the Uniform Rules exists whereby a person may, before institution of an action, consent to judgment, or effectively settle the matter before service of a summons and, failing performance as agreed, authorizing one party to summarily apply for judgment. Section 59 of the Magistrates' Courts Act 32 of 1944 provide that the written request (a letter of demand) shall constitute the first document to be filed in an action, if no summons is issued. Nothing however prevents prospective litigants in the High Court to enter into any settlement prior to an action being instituted, but such settlement shall not be made a judgment without further process.	The previous Rule 4A is now rule 4(2) and the previous rule 4B is now rule 4(1)(a). Provisions regarding the National Credit Act, 2005 has been included and Rule 4(3) dictates that the consent shall be signed by the debtor and two witnesses whose names and telephone numbers shall be recorded.
9	Service of process, notices and other documents	4 and 6	1. Magistrates' Courts Rule 9(2) and Uniform Rule 4(1)(b) and (c) are roughly the same and determine that service may not be effected on a Sunday, the Magistrates' Courts Rule also barring service on a public holiday.	1. Uniform Rules 4(3) to 4(15), save for 4(9), has been incorporated in the Magistrates' Courts Rules as rule 9(14) to (25). These additions deal with service of process of the Court (issued in South Africa) in foreign countries and service of foreign process in South

		<ol style="list-style-type: none"> 2. Magistrates' Courts Rule 9(3) and Uniform Rule 4(1), relating to where and on whom service has to be effected, are almost identical. 3. Magistrates' Courts Rule 9(4) and Uniform Rule 4(1) (d) both deals with the duty of the sheriff or other person serving the process or document to explain the nature and contents thereof to the person upon whom service is being effected. 4. Magistrates' Courts Rule 9(10), previously 9(12), and Uniform Rule 4(2) both deals with substituted service. 5. The remainder of the rules in the Magistrates' Courts Rules, 9(5) to 9(9) and 9(11) to 9(13), does not appear in Rule 4 of the Uniform Rules. 6. Magistrates' Courts Rule 9(11) and (12) relating to time periods for service of applications, are repeated by Magistrates Court Rule 55(1)(e), 55(5) and (6) and Rule 60(6). Note that one may apply in terms of rule 9(12) for short service prior to service being effected. Magistrates' Courts Rule 55(5) also empowers a court to grant short service, which rule is an almost exact replica of Uniform Rule 6(12). Uniform Rule 6(5)(b) and 6(13) relate to time periods applicable in High Court. 7. A process similar to Magistrates' Court Rules 9(5), 9(8) and 9(9) are used in the High Court, albeit that no express provision provide therefore. 	<p>Africa.</p> <ol style="list-style-type: none"> 2. Magistrates' Courts Rule 9(10), previously 9(12), and Uniform Rule 4(2) both deals with substituted service. Magistrates' Courts Rule 10 has to be read in conjunction with Rule 9(10), for it prescribes the process of obtaining leave for substituted service in more detail.
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11	Judgment by consent	31(1)	<ol style="list-style-type: none"> 1. Magistrates' Courts Rule 11(1) provide that the consent to judgment signed before notice of intention to defend, must be lodged with the registrar or the clerk of the court, as opposed to Uniform Rule 31 which states that the consent should be furnished to the Plaintiff who may then apply for judgment. 2. Magistrates' Courts Rule 11(4) provide that consent to judgment may be given after notice of intention to defend has been delivered, but then consent to judgment has to be delivered and such consent may also be signed by defendant's attorney. 3. Uniform Rule 31(1)(a) provides that the confession in whole or in part may be done at any time and rule 31(1)(b) states that the confession must be signed by the defendant and his signature must be witnessed by an attorney acting for him or be verified by affidavit. 	<p>Rule 11(1) has been amended to exclude actions in terms of the Divorce Act or the nullity of a marriage.</p>
12	Judgment by default	31(2) to (5)	<ol style="list-style-type: none"> 1. In the High Court, the action has to be set down for default judgment and the Court may, after hearing evidence, grant judgment. If the cause of action is a debt or liquidated amount, written application similar to that in the magistrates' court may be made to the registrar. There is no provision in the Uniform Rules similar to Magistrates' Court Rule 12(6), providing that, together with the request for default judgment, a plaintiff has to file the original liquid document or the original agreement or, should such originals not be available, an affidavit setting out the reasons why. 	<ol style="list-style-type: none"> 1. Rule 12(5) amended to provide for actions based on the National Credit Act instead of the Hire- Purchase Act. 2. Rule 12(6) has been amended and provides that in addition to actions based on liquid documents, the original of written agreements also has to be filed together with a request for default judgment in instances where an action is based on a written agreement, or an affidavit setting out reasons why the original cannot be filed.

	<p>2. Notice of an application for default judgment has to be given in the High Court, unless defendant failed to deliver a notice of intention to defend. No such notice is required in the Magistrates' Court.</p> <p>3. In the High Court, a defendant may apply for a default judgment against a plaintiff who has been barred from delivering a declaration in terms of Uniform Rule 31(3). This process is authorized by Magistrates' Courts Rule 15(5), dealing with declarations.</p> <p>4. Uniform Rule 31(5)(d) provides that any party dissatisfied with a judgment by default granted by the registrar, may within 20 days after acquiring knowledge of the judgment, set the matter down for reconsideration by the court. This party includes the plaintiff, but it is doubtful whether it includes a defendant against whom judgment has been granted and who should apply for rescission as opposed to reconsideration. The term does not include non-litigants who have an interest in the action, for they are not a party to the action. In lower Courts, the situation is very different. Here, any affected person, not necessarily a party may bring such application, but it does not include the plaintiff. Plaintiff has to follow appeal procedure as there is no internal review available to him such as with a review of taxation. (See <i>First Consolidated Leasing Corp Ltd v McMullin</i> 1975(3) SA 606 (T) at 608H to 609A). In summary, Magistrates' Court Rules 49(6) and 49(7) does not provide a remedy for a plaintiff not satisfied with the judgment to vary such, which remedy is available to a plaintiff in the High Court; and in the High Court, only a party (the plaintiff) may</p>	<p>3. Rule 12(6A) has been inserted which provides that default judgments in actions based on legislation must include evidence proving compliance with such legislation.</p>

			<p>apply to rescind or vary a judgment granted in default in terms of Uniform Rule 31(5)(d) whilst any person (except the plaintiff) affected by the judgment (Section 36 of the Magistrates' Court Act 32 of 1944), may so apply in the magistrates' court.</p> <p>5. Uniform Rule 31(5) authorizes the registrar of the High Court to grant default judgments where the claims are for a debt or liquidated demand. In Magistrates' Court, default judgments, even for debts or liquidated demands must be considered by magistrates as opposed to registrars or clerks, when such claim is founded on any cause of action arising out of or based on an agreement governed by the National Credit Act.</p>	
13	Notice of intention to defend	19	<ol style="list-style-type: none"> 1. The distance within which the address provided has to be from the office of the registrar according to the Uniform Rule 19(3), is 8 kilometers, whilst rule 13(3)(a) provide for the physical address to be within 15 kilometers of the Courthouse. 2. No provision in the Uniform Rules authorizes service by facsimile or electronic mail, but it is foreseeable that should the parties agree between themselves to such service, that a Court would in all probability condone such service in terms of Uniform Rule 27(3). 	<ol style="list-style-type: none"> 1. Rule 13(1). Days between 16 December and 15 January, both inclusive shall not be counted. 2. Rule 13(3)(a). The physical address provided has to be within 15 kilometers of the Courthouse. 3. Rule 13(3)(b), (c) and (d) authorizes service by facsimile or electronic mail under certain conditions.
14	Summary Judgment	32	<p>No difference exists between the Uniform Rule and the Magistrates' Court Rule.</p>	<ol style="list-style-type: none"> 1. Plaintiff has 15 days from date of delivery of notice of intention to defend to deliver application for summary judgment.

			<ol style="list-style-type: none"> 2. All applications have to be supported by an affidavit, also those where the action is based on a liquid document. 3. Defendant's answering affidavit has to be delivered before noon on the day but one preceding the day on which the application is to be heard. 4. The option a defendant had of paying into Court, previously rule 14(3)(a), has been deleted.
27	Withdrawal, dismissal and settlement	41	<ol style="list-style-type: none"> 1. Rule 27(5) of the Magistrates' Courts Rules and Uniform Rule 41(3) provide for basically the same situation, namely that the attorney for the plaintiff or the applicant has to inform the registrar or the clerk of the Court and all other parties of any settlement, agreement to postpone or to withdraw. The Uniform Rules does not provide for notice to other parties, presumably because they would bear knowledge of such an agreement and further notice seems to be superfluous. 2. Uniform Rule 41(3) states that this situation must be conveyed to the registrar immediately, whilst the Magistrates' Courts Rule has no such provision. The reason for the urgency has to be that the sooner the registrar has knowledge that a case will not be proceeding, the better the prospects of arranging that a different trial or application may proceed on that particular day, hence it would be appropriate, despite the absence of the word "immediately", to inform the registrar at the earliest possible opportunity.

32 (see also rule 27(3))	Non-appearance of a party- withdrawal and dismissal	31(1) and (2) and 41	No difference exists between the Uniform Rules and the Magistrates' Court Rule.	Rule 32(2) has been amended and provides additionally that "after consideration of such evidence, either oral or by affidavit, as the court deems necessary", it may grant judgment where a defendant or respondent does not appear at the time appointed for the trial of an action or the hearing of an application.
33	Costs		No corresponding Rule in the Uniform Rules, yet, the principles applied are similar.	<ol style="list-style-type: none"> 1. Rule 33(5)(c) provide for costs in regional civil matters, but currently there is no differentiation between the costs allowed in district or regional Courts. 2. Rule 33(8)(d) provide for a cost order on any scale higher than that on which the costs would otherwise be taxable, where such costs were reasonably incurred, but no specific provision exists in the rules for such costs.
56	Arrests <i>tanquam suspectus de fuga</i> , interdicts, attachment to secure claims and mandamenten van spolie	6 and 9	<ol style="list-style-type: none"> 1. Albeit that the wording differs significantly, the process regarding arrests <i>tanquam suspectus de fuga</i> is very much alike. 2. Applications for interdicts and mandamenten van spolie are either brought by application in terms of Rule 6 or by way of action in the High Court, depending on whether a factual dispute exists. 3. Applications for attachment to secure claims are brought in terms of Uniform Rule 6 in the High Court. 	<ol style="list-style-type: none"> 1. Section 30(1), as far as it relates to arrests <i>tanquam suspectus de fuga</i> and section 30(3) of the Magistrates Court Act 32 of 1944 has been declared to be inconsistent with the Constitution and invalid on 24 August 2010 by the Constitutional Court. (See Case CCT 05/10 [2010] ZACC 13, <i>Malachi v Cape Dance Academy International (Pty) Ltd and others.</i>) Magistrates' Court Rules 56(4) to 56(7) should, since the empowering provision has been declared unconstitutional, also be invalid.

				<p>2. The Constitutional Court did not declare the common law which authorizes arrests <i>tantum suspectus de fuga</i> to be invalid, as Hope JP did in the Court <i>a quo</i>. Nonetheless, reservations regarding the validity of Uniform Rule 9 is starting to seep through, should one have regard to <i>Bid Industrial (Pty) Ltd v Strang and Another</i> 2008(3) SA 355 (SCA) and <i>Amrich 159 Property Holding CC v Van Wesembeeck</i> 2010 (1) SA 117 (GSJ).</p>
68	Oath of office of interpreter	59, 60 and 61	<ol style="list-style-type: none"> 1. Uniform Rule 60 provides for the translation of documents, whereas the Magistrates' Courts Rules contains no such provision. 2. Uniform Rule 61(2) provide that a Court may inquire into the competence and integrity of a person to be appointed as an interpreter in a certain matter, either if the Court deems this necessary or at the request of one of the parties, whereas the Magistrates' Courts Rules contains no such provision. 3. Uniform Rule 61(3) determines that the costs in relation to an interpreter shall be costs in the cause, whereas the Magistrates' Courts Rules contains no such provision. 	<p>All reference to casual interpreter has been deleted.</p>

3. RULES WHICH HAS BEEN MATERIALLY AN DED, REPLACED OR INSERTED.

<u>Magistrates' Court Rule number</u>	<u>Subject</u>	<u>Uniform Rule number</u>	<u>Differences between Uniform Rule and Magistrates' Court Rule</u>	<u>Differences between previous Rule and new Rule.</u>
5	Summons	17	<ol style="list-style-type: none"> 1. Magistrates' Courts Rule 5(3)(a) provides for an address within 15 kilometers of the courthouse whilst Uniform Rule 17(3) provides for an address within 8 kilometers of the office of the registrar. 2. Magistrates' Courts Rule 5(3)(b) to (d) provides for service by facsimile or electronic mail under certain conditions. No provision in the Uniform Rules authorizes service by facsimile or electronic mail, but it is foreseeable that should the parties agree between themselves to such service, that a court would in all probability condone such service in terms of Uniform Rule 27(3). 3. Magistrates' Courts Rule 5(9), providing for a plaintiff who sues as a cessionary does not appear in the Uniform Rules, but such a disclosure is envisaged by Uniform Rule 18(4). 4. No equivalent to Rule 5(10) of the Magistrates' Courts Rules, regarding the reference to section 26 of the Constitution according a right to access to adequate housing to everyone, is to be found in the Uniform Rules. However, Practice Direction issued by the Supreme Court of Appeal on 15 December 2005 causes such reference to be obligatory. 	<ol style="list-style-type: none"> 1. Rule 5(6)(a) states that it is compulsory for a plaintiff who relies on the jurisdiction conferred upon the court in terms of Section 28(1)(d) of the Magistrates' Courts Act 32 of 1944, to aver that the whole cause of action arose within the district or region, and to set out the particulars in support of such averment. In the past, it was only necessary for the plaintiff to make the averment that the whole cause of action arose within the Courts district in terms of Rule 6(5)(f). 2. Rule 5(7) has been introduced and provide that a simple summons in respect of a claim regulated by legislation, may contain a bare allegation of compliance with the legislation, but a declaration (and a combined summons) must allege full particulars of such compliance. 3. Rule 5(8) used to be rule 56(4) in the previous rules. 4. Rule 5(10) provide that in actions where an order is sought to declare immovable property which is the

			<p>Magistrates' Court Rule 5(7), providing that party relying on an agreement governed by legislation, shall state the nature and extent of his compliance with the provisions of such legislation, does not have its equivalent in the Uniform Rules, but such averments are required in terms of Uniform Rule 18(4), which determines that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading. New rules of practice in respect of actions instituted under the National Credit Act 34 of 2005 came into force in the Kwazulu-Natal High Courts and the Western Cape High Court, providing that in any action based on the National Credit Act, the summons must allege compliance with section 129 of that Act.</p> <p>6. Uniform Rule 17(2)(b) provides that in every case where the claim is for a debt or liquidated demand, a simple summons "shall" be used. Despite the nature of the word, indicating that a simple summons has to be used, in practice it is trite law that a plaintiff has a choice whether to use a simple or a combined summons. This position is correctly set out in Magistrates' Court Rule 5(2)(b) by the insertion of the word "may", as opposed to "shall".</p>	<p>home of a defendant, executable (and also probably in actions where an eviction of a lessee is sought), defendant's attention must be drawn to section 26 of the Constitution which accords everyone the right to access to adequate housing.</p> <p>5. Rule 5(11) provides that failure to comply with any of the provisions of rule 5, may be addressed in terms of Rule 60A (irregular proceedings), whereas in the past a defendant had to except thereto.</p>
6	Pleadings	18	<p>1. Uniform Rule 18(8), providing for times, dates and places or persons relevant or involved in divorce proceedings, has no equivalent in the Magistrates' Courts Rules.</p> <p>2. Magistrates' Court Rule 6(11) is to a large extent a repeat of rule 5(7), providing that a party</p>	<p>The previous rule 6 related to endorsement of a summons and has many similarities with the current rule, which has been duplicated to a large extent from the Uniform Rules.</p>

relying on an agreement governed by legislative ... shall state the nature and extent of his compliance with the provisions of such legislation. No such provision is to be found in the Uniform Rules, but such averments are required generally speaking in terms of rule 18(4), which determines that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading. New rules of practice in respect of actions instituted under the National Credit Act 34 of 2005 came into force in the Kwazulu-Natal High Courts and the Western Cape High Court, providing that in any action based on the National Credit Act, the summons must allege compliance with section 129 of that Act.

3. Magistrates' Courts Rule 6(11) is a repeat of rule 5(9), providing for sessions. Albeit that the Uniform Rules does not have a similar requirement, such a disclosure is envisaged by Uniform Rule 18(4).

4. Pleadings in Magistrates' Courts must be signed by the party or his attorney, whilst pleadings in the High Court must be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act 62 of 1995, has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party.

10	Edictal citation and substituted service	5 and 4(2)	Applications for edictal citation and substituted service in the magistrates' court, may be made to a presiding officer (a magistrate in chambers), whilst such applications have to be made to Court in the High Court.	The previous rule 10, which provided for a summons to lapse after 12 months, has been deleted and replaced by this rule.
15	Declaration	20, 26 and 31(3) and (4)	Magistrates' Courts Rule 15(4) and (5) provide for the placing under bar of a plaintiff failing to deliver a declaration and a subsequent default judgment by the defendant. The only difference is that in High Court (under rule 31(4)), defendant must give at least 5 days' notice to plaintiff of his application for default judgment, whereas in Magistrates' Court, this period is at least 10 days (rule 15(5)).	The previous rule 15, which provided the defendant to apply for those documents or accounts upon which plaintiff's action is based, has been deleted. Magistrates' Court Rule 23(15), the equivalent of Uniform Rule 35(14), provides for discovery for purposes of pleading.
16	Further particulars	21	Because further particulars are pleadings, further particulars in Magistrates' Courts must be signed by the party or his attorney, whilst pleadings in the High Court must be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act 62 of 1995, has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party.	<ol style="list-style-type: none"> 1. The previous rule 16 which entitled a party to request further particulars for purposes of pleading has been deleted. Pleadings must contain sufficient detail to enable the opposite party to reply thereto. (See rule 6(4) and (5)). If a pleading does not contain sufficient particularity, the other party may except or give notice of irregular proceedings in terms of rule 60A. 2. The new rule is an almost exact replica of the Uniform Rule.
17	Plea	22	Rules 19(7)(a) to (c) relates to tenders being pleaded. The Uniform Rules does not contain such a provision, but such an unconditional tender may be made at any time in terms of Rule 34.	<ol style="list-style-type: none"> 1. The only portion relating to pleas which have been retained from the previous rule 19, is rules 19(7)(a) to (c), which relates to tenders being

pleaded. They have been included in the Magistrates' Court Rules as Rule 17(5)(a) to (c).

2. The previous rule 17 relating to exceptions and applications to strike out against a summons and rule 19(14)(a) and (b), 9(15), 19(17), 19(18) and 19(19), relating to exceptions and applications to strike out against a plea, is now dealt with by rule 19.

3. The previous rule 19(14)(c), relating to a plea that did not comply with the requirements of rule 19, as it was, now has to be addressed in terms of rule 17(6) and rule 60A.

4. The previous rule 19(12), which provided for a separate determination of a defence which could be adjudicated without going into the main case, has also been omitted. To some extent Rule 29(4), which is still in operation, and which provide for separate adjudication of questions of law or fact if convenient, may serve the same purpose, except that in terms of the previous rule 19(12), a party could set down such hearing at any time after such defence was raised, whilst in terms of rule 29(4) the party so wishing would have to wait until after the pleadings have closed. Rule 29(4), uses the term "request". No such word is to be found in the definitions in Rule 2.

				5. A defendant also has 20 days in the Magistrates' Court, similar to the period provided for by the Uniform Rules, within which to deliver his plea, as opposed to the previous 10 days.
18	Offer to settle	34	No difference exists between the Uniform Rule and the Magistrates' Court Rule.	This rule has been drastically amended and is in essence a copy of the Uniform Rules.
18A	Interim payments	34A	No difference exists between the Uniform Rule and the Magistrates' Court Rule.	This rule has been introduced and is in essence a copy of the Uniform Rule.
19	Exceptions and applications to strike out	23	No difference exists between the Uniform Rule and the Magistrates' Court Rule.	This rule has been drastically amended and is in essence a copy of the Uniform Rules.
20	Claims in reconvention	24	The previous Magistrates' Court Rules 20(4), (5) and (6) has been retained as new Magistrates' Court Rule 20(5), (6) and (7). This relates to an application to stay an action where a claim in reconvention exceeds the jurisdiction of the Magistrates' Court, which one does not find in the Uniform Rules.	This rule has been drastically amended and is in essence a copy of the Uniform Rules, with the exception being that an action may be stayed in the Magistrates' Court where the claim in reconvention exceeds the jurisdiction of the Magistrates' Court.
21	Replication and plea in reconvention	25	No difference exists between the Uniform Rule and the Magistrates' Court Rule.	<ol style="list-style-type: none"> 1. All periods relating to replication and plea in reconvention have been amended to comply with those applicable in the High Court. 2. The new rule additionally introduces the concept of further pleadings following a plaintiff's replication in the Magistrates' Court.

21A	Close of pleadings	29	No difference exists between the Uniform Rule and the Magistrates' Court Rule.	This rule has been drastically amended and is in essence a copy of the Uniform Rules.
22	Set-down of trial	Practice Direction 4 of 1992 and Practice Direction 29 May 1996 of the North and South Gauteng High Courts. Transvaal Rule 7 Uniform Rule 44 and 31(2) and (4)	<ol style="list-style-type: none"> 1. No provision similar to Magistrates' Court Rule 22(1) to (3) relating to the set down of a trial exists in the Uniform Rules, but the Transvaal Rules dictate that the plaintiff has to set down the case on the roll by entering the required particulars in the register kept by the registrar within six weeks after the close of pleadings, failing which the defendant may do so. Such plaintiff or defendant or his attorney shall forthwith give the other party written notice that this has been done. 2. The registrar shall set down as many cases as he considers can be tried on that day, in the order in which the entries are made in the register. 3. Thereafter, the registrar shall notify each party of the date so allocated. 4. In the North and South Gauteng High Courts, Practice Direction 4 of 1992 and Practice Direction: 29 May 1996 provide for set-down of trials, the former providing a form to be used and the latter dictating that when a party receives notification of a trial date from the registrar, he shall forthwith and in any event not later than seven days after receipt of such notice, give notice in writing to every other party that the case has been enrolled for hearing. 	<ol style="list-style-type: none"> 1. Rules 22(1) to (3) have been retained. 2. Rules 22(4) to (6) have been added. 3. Rule 22(4) deals with the duty of the clerk of the Court regarding pre-trial conferences and Rule 22(5) deals with default judgments in divorce actions. 4. Uniform Rule 44 and Magistrates' Court Rule 22(6) is the same and provide that should an undefended divorce matter be postponed, the same action may proceed before another court notwithstanding the fact that evidence had been led before such postponement.

		<p>5. Magistrates' Court Rule 22(1) does not prescribe a particular form to be used nor does it disclose how the Plaintiff should go about to obtain a day or days approved by the registrar or clerk of the court. The current practice should be followed, I submit.</p> <p>6. In Magistrates' Court, the plaintiff must set-down the matter within 15 days, which equates to three weeks since the days refer to court days, see rule 2(2), after the pleadings have closed. This as opposed to the six weeks provided for by Transvaal Rule 7.</p> <p>7. Rule 22(4) deals with the duty of the registrar or clerk of the court regarding pre-trial conferences in the Magistrates' Court.</p> <p>8. Magistrates' Court Rule 22(5) and Uniform Rule 31(2) and (4) differs in two respects, namely:</p> <p>(i) a notice of set down for default judgment has to be served in High Court, unless no intention to defend was delivered, whereas in Magistrates' Court, no notice of set down need be served on the defendant, irrespective of the nature of his default; and</p> <p>(ii) Uniform Rule 31 provides for all default judgments, whereas Magistrates' Court Rule 22(5) only provide for judgments by default in divorce actions, all other default judgments being dealt with in terms of rule 12.</p>	
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			<p>9. Uniform Rule 44 and Magistrates' Court Rule 22(6) is the same and provide that should an undefended divorce matter be postponed, the same action may proceed before another court notwithstanding the fact that evidence had been led before such postponement.</p>	
23	Discovery of documents	35	<ol style="list-style-type: none"> 1. Uniform Rule 35 makes mention of documents and tape recordings, whilst Magistrates' Court Rule 23 mentions documents and tape, electronic, digital or other forms of recordings. 2. The definition of tape recordings is contained in Uniform Rule 35(15) and Magistrates' Court Rule 23(16), and according to Erasmus, Page B1-262B, "wide enough to encompass all the different kinds of material on which visual images sound or other information can be stored." 3. The discovery envisaged by these two rules requires a request from the opposite party. 4. Uniform Rule 37(1) provides for automatic discovery once he receives notice of a trial date. No such automatic discovery exists in Magistrates' Courts. 	<p>This rule has been drastically amended and is in essence a copy of the Uniform Rules.</p>
28	Intervention, joinder and consolidation of actions	10, 11 and 12	<ol style="list-style-type: none"> 1. Uniform Rule 12 and Magistrates' Court Rule 28(1) has the same operation. 2. Uniform Rule 10(2) and Magistrates' Court Rule 28(3) has the same operation. 	<ol style="list-style-type: none"> 1. Rule 28(1) and (2) has been retained and reads exactly the same as their predecessors. Rule 28(2) makes provision for parties joining persons, effectively third party procedure, which are dealt with separately under rule 28A.

			<ol style="list-style-type: none"> 3. Uniform Rule 10(5) and Magistrates' Court Rule 28(4) has the same operation. 4. Uniform Rule 11 and Magistrates' Court Rule 28(5) has the same operation. 	<ol style="list-style-type: none"> 2. Uniform Rules 10 and 11 has essentially been included in Magistrates' Court Rule 28.
28A	Third party procedure	13	<p>The only difference between the two sets of rules are rule 28A(10) of the Magistrates' Court Rule, which simply confirms the common law principle of the right of redress and provide a simple method of exercising such right by execution as opposed to instituting a separate action.</p>	<p>This rule has been introduced and is in essence a copy of the Uniform Rule.</p>
44	Interpleader claims	58	<ol style="list-style-type: none"> 1. In terms of Uniform Rule 58, the applicant (that is the person in possession of the goods or the money) delivers an interpleader notice whereupon the claimants file the particulars of their respective claims. In Magistrates' Court, applicant or the sheriff (if the claimant lodged his affidavit and his claim has not been admitted by the execution creditor), depending on the situation, sues out the summons. 2. Uniform Rule 58(7) provides that any action instituted against a defendant, shall be stayed by the delivery of an interpleader notice, pending the decision of such interpleader, unless the court otherwise directs. There is no such provision in the Magistrates' Court Rules. 3. The process in magistrates' court differs, depending on whether the possessor is the sheriff who attached goods in execution or whether the possessor is any other person. In the High Court, only one procedure is authorized 	<ol style="list-style-type: none"> 1. The previous rule 44(1) has been retained unaltered and previous rules 44(3) to (6) are the new rules 44(4) to (7). 2. Rule (2) and (3) provides for a different process where property has been attached by the sheriff in execution of any process and a person other than the execution debtor makes a claim thereto. 3. The claimant must in terms of the amended rules file an affidavit in triplicate with the sheriff, who then provides one copy each to the execution creditor and the execution debtor. 4. Within 10 days of receipt of such affidavit, the execution creditor shall advise the sheriff in writing whether

			<p>and in instances where conflicting claims are made with respect to property attached in execution by the sheriff, the sheriff shall have the rights of an applicant and the execution creditor the rights of a claimant (Uniform Rule 58(1)).</p>	<p>he admits or rejects the claim.</p> <p>5. If the claim is admitted, the sheriff may withdraw from possession of the property claimed, but should the claim be rejected, the sheriff shall issue a summons within 10 days calling upon the claimant and the execution creditor to appear on a date specified in the summons to have the claim adjudicated.</p> <p>6. Under the previous rule 44(2), if a claim was made, claimant did not initially file an affidavit, the sheriff first issued a summons and then the claimant had to, in terms of rule 44(2)(c), file his affidavit not less than 10 days before the hearing.</p>
55	Applications	6	<p>1. Magistrates' Courts Rules 55(1) is essentially the same as Uniform Rules 6(1), (2) and (5), with three important exceptions, namely:</p> <p>(i) Uniform Rule 6(5)(d)(ii) provide that Respondent's answering affidavit must be filed within 15 days of notifying the applicant of his intention to oppose the application, whereas Magistrates' Court Rule 55(1)(g)(ii) provide for the answering affidavit to be filed in 10 days of such notice.</p> <p>(ii) In Magistrates' Court, the address appointed by both</p>	<p>1. The period within which a respondent may anticipate a return day of an order granted <i>ex parte</i>, has been increased to 24 hours as opposed to the previous rule 55(7), which provided for 12 hours notice.</p> <p>2. Magistrates' Court Rule 55(8) provide for minutes of orders to be drawn up by the party entitled thereto and approved and signed by the registrar or the clerk of the Court and that this order then be served by the particular party. Previously, under Rule 55(4), such minutes of orders, unless otherwise directed, was not drawn up and service of such an order to or on</p>

	<p>applicants and respondents have to be within 15 kilometers of the courthouse, as opposed to the 8 kilometer distance from the registrar's office which we find in the Uniform Rules.</p> <p>(iii) Uniform Rule 6(5)(c) provide that in the event of a respondent not notifying an applicant of his intention to oppose the application, such applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the application is to be heard. Magistrates' Court Rule 55(1)(f) provides for notice of set down 5 (Court) days before the day of the hearing.</p> <p>2. Magistrates' Court Rule 55(2) and Uniform Rule 6(7) and 6(8) are essentially the same. The period within which a respondent may anticipate a return day of an order granted <i>ex parte</i>, has been increased to 24 hours as opposed to the previous rule 55(7) and 56(6) which provided for 12 hours notice.</p> <p>3. Magistrates' Court Rule 55(4) and Uniform Rule 6(11) are effectively the same, dealing with interlocutory applications.</p> <p>4. Magistrates' Court Rule 55(5) and Uniform Rule 6(12) are essentially the same, both dealing with urgent applications.</p>	<p>any person who had notice of the application was not necessary.</p> <p>3. In future, all applications have to be supported by affidavit in terms of rule 55(1), as opposed to the previous rule 55(2), which stated that "an application need not be supported by an affidavit".</p>

			<p>5. Magistrates' Court Rule 55(6) and Uniform Rule 6(13) are essentially the same and deals with applications against the State.</p> <p>6. Magistrates' Court Rule 55(7) and Uniform Rule 6(6) are essentially the same.</p> <p>7. Magistrates' Court Rule 55(8) provide for minutes of orders to be drawn up by the party entitled thereto and approved and signed by the registrar or the clerk of the Court and that this order than be served by the particular party. Previously, under Rule 55(4), such minutes of orders, unless otherwise directed, was not drawn up and service of such an order to or on any person who had notice of the application was not necessary. Albeit that Uniform Rule 6 does not provide for such a situation, it is trite in High Court that orders obtained are served on one's opponent, notwithstanding the fact that he or she had notice of such application.</p> <p>8. Magistrates' Court Rule 55(9) and Uniform Rule 6(15) both provide for applications to strike out and are effectively the same.</p>	
58	<p>Maintenance <i>pendente lite</i>, contribution towards costs, interim custody and access to children</p>	43	<p>The Uniform Rule and the Magistrates' Court Rule read almost exactly the same save for two instances, namely:</p> <ol style="list-style-type: none"> 1. Uniform Rule 43(2) provides for a sworn statement in the form of a declaration, whereas Magistrates' Court Rule 58(2)(a) only mentions a sworn statement. 2. Costs allowed differ between those in the High Court and Regional Civil Court. 	<p>This rule has been introduced and is in essence a copy of the Uniform Rule.</p>

60A	Irregular proceedings	30	No difference exists between the Uniform Rule and the Magistrates' Court Rule	Previously, a party could except on the basis that either a summons or a plea did not comply with the requirements of the rules in terms of rule 17(2)(c) or rule 19(14)(c) respectively. This process is not provided for in terms of the new rule 19 and one may only except on the basis that a pleading is either both vague and embarrassing or lacks averments which are necessary to sustain a cause of action or defense. In future, the remedy that this rule provides, which is exactly the same as Uniform Rule 30, has to be invoked, but it is not limited to particulars or pleas, since it applies to all pleadings in terms of Magistrates' Court Rule 6(13).
62	Security for costs	47	No difference exists between the Uniform Rule and the Magistrates' Court Rule	This rule has been amended to such an extent that it reads exactly the same as Uniform Rule 47.
63	Filing, preparation and inspection of documents	62	Both sets of rules provide for the same duties and are essentially the same, save insofar as Uniform Rule 62(4) provides that pagination and indexing has to be done 5 days prior to the trial, whilst Magistrates' Court Rule 63(3) provides that this has to be done 10 days before the hearing.	Pagination and indexing has to be done in Magistrates' Court in future in terms of this new rule.

4. UNIFORM RULES WHICH DOES NOT EXIST MAGISTRATES' COURT RULES.

<u>Uniform Rule</u>	<u>Subject</u>
33	Special cases and adjudication upon points of law
53	Reviews
57	<i>De lunatico inquirendo</i> , appointment of curators in respect of persons under disability and release from curatorship
63	Authentication of documents executed outside the Republic for use within the Republic
64	Destruction of documents
65	Commissioners of the Court
69	Tariff of maximum fees for advocates on party and party basis in certain civil matters
70	Taxation and tariff of fees of attorneys