

Magistrates Court (Civil) (Amendment) Rules, 2021 (No. 3)

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 73 of the Magistrates Court Act [Chapter 7:10], made the following rules: —

1. These regulations may be cited as the Magistrates’ Courts (Civil) (Amendment) Rules, 2021 (No. 3).

2. The Second Schedule of the Magistrates Courts (Civil) Rules, 2019, published in Statutory Instrument 11 of 2019, is amended by the repeal of Table B and substitution of the following—

“TABLE B

(Order 32, rule 4 (1))

TARIFFS FOR MESSENGERS OF COURT

ZWL\$

- 1. Service, or attempted service, of summons, subpoena, notice, order or other document, whether by registered post or otherwise, including notification in accordance with Order 2, Rule 3, to a party who has sued out process 1 500,00
- 2. Service of warning of impending execution or eviction or eviction in terms of Order 26 Rule 5 1 500,00
- 3. —
 - (1) Execution, or attempted execution, including necessary service of any copy of any warrant, interdict or garnishee order 1 500,00
 - (2) Attempted execution 1 000,00
 - (3) This fee shall, in all cases, include registration and return and notice to the party issuing and shall—
 - (a) be payable by the execution creditor or the lodging of the process with the messenger;
 - (b) not be recoverable by him from the messenger if the process is withdrawn or stopped or proved abortive.
 - (4) —
 - (a) where the process is one of arrest or ejection 3 500,00
for an attempted arrest or ejection 1 500,00

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- (b) a further fee shall be paid after execution for—
 - (i) each person beyond one named in the process 1 500,00
 - (ii) each person beyond one named or referred to in process of ejection and, in fact, ejection from separate premises 1 500,00
- (c) an escort fee of 500,00
shall be paid in respect of each person escorted and detained:

Provided that, where the person is arrested by the Messenger of Court Harare, within a zone referred to in paragraph 14, an escort fee of ZWL\$600 (six hundred dollars) be paid.

- (5) Where the process is one of arrest, ejection or execution and it is necessary for the messenger or his deputy to wait at any place or abode in order to execute the process, a waiting fee of 680, 00
for each hour or part shall be paid:

Provided that—

- (i) no charge shall be made if the period during which the messenger or his deputy is required to wait is less than half an hour;
- (ii) a waiting fee shall not be paid without the production by the messenger of a certificate explaining the circumstances and the need to wait for the purpose of executing the process.

4. —

- (1) Inventory, per hundred words or portion thereof, per copy 2 500,00
- (2) Where the time reasonably and necessarily spent by the messenger in making an inventory exceeds half an hour, a fee of 680,00
per half-hour or part thereof in excess of half an hour shall be paid

5. Security bond 2 000,00

6. —

- (1) For the purposes of this paragraph—

“possession” means actual physical possession by a person employed and paid by the Messenger—

- (a) whose sole work for the time being is to remain on the premises where the goods have been attached; and
 - (b) who, in fact, remains in possession for the period for which possession is charged.
- (2) Possession of goods, per day or part thereof reckoned from the hour at which the attachment actually took place to the hour at which possession was given up or the goods removed 1 000,00
- (3) If livestock is attached, the necessary expenses of herding and preserving the stock by the keeper.
- (4) If goods are removed and stored—
- (a) the amount actually and necessarily disbursed in removing the goods;
 - (b) if storage is provided by a person other than the messenger, the amount actually and necessarily paid for such;
 - (c) if storage is provided by the messenger, the amount which would reasonably be allowed be in the ordinary course of business if the goods were stored by a third party.
- (5) Where the messenger is in possession under more than one warrant of execution—
- (a) he or she may charge for only one possession, which shall, as soon as possible, be apportioned pro rata to the warrants;
 - (b) each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding that which would have been due under his or her execution if it had stood alone.

7. Drawing advertisements for sale 1 500,00

8. —

- (1) Where, upon the execution of a warrant of arrest, warrant of execution or garnishee order, the amount due is paid in full or in part on presentation thereof 5% of the amount paid.

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- (2) Where money or property, whether movable or immovable is attached in execution, on the value of property or on the amount (or balance thereof) owing under the writ at the time of attachment whichever is the lesser 5%

When the fee is calculated on the value of the money or property attached, the value shall be as assessed by the messenger at the time of making the attachment:

Provided that, if such property should be sold in execution for an amount less than the assessed value, the fee shall be reduced to five *per centum* on the gross proceeds realised by such sale.

- (3) Where a process requires the messenger of court to effect cession on an immovable property 5%
of the value

9. Where the warrant of execution against movables is completed by sale—

- (a) if an auctioneer is employed, ten *per centum* of the amount realised, not exceeding the amount of the judgment debts and costs;
- (b) if the messenger acted as auctioneer, ten *per centum* of the amount realised, not exceeding the amount of the judgment debts and costs.

10. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or the estate of the execution debtor having been sequestrated, the expenses in connection with the attempted sale and the sum of 5 000,00

shall be payable to the messenger or to the person authorised to act as auctioneer, as the case may be.

11. When an execution against immovable property is completed by sale the following auctioneer’s fees shall be allowed on the proceeds of the sale—

- (a) if the messenger acted as auctioneer, ten *per centum* of the amount realised;
- (b) to the auctioneer, 5 *per centum* to the first ZWL\$1 000 000 (hundred million dollars) of the amount realised, and 2.5 *per centum* on the balance thereof;

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- (c) to the messenger, a fee of 2 000,00
12. In addition to the fees allowed by item 8 to 11, there shall be allowed the sum actually and reasonably paid by the messenger or auctioneer employed for printing, advertising and giving publicity to any sale or intended sale in execution.
13. For any necessary letter written 200,00
14. In respect of journeys undertaken by a messenger, other than the Messenger of Court, Harare—
- (a) no travelling allowance shall be payable for any journey undertaken within a radius of one kilometre from the court- house;
- (b) where a journey is required beyond a radius of one kilometre from the court-house, the messenger shall be paid for every kilometre or portion of a kilometre travelled in going from and returning to the court-house while using his or her own transport—
- (i) where a motor-cycle is used 30,00
- (ii) where a motor-cycle is not used —
- A. on a bituminous road, including a strip road, . . 100,00
- B. on other roads, 100,00
- (c) when two or more summonses for defendant or witnesses, whether at the instance of the same plaintiff or different plaintiff, have been served or, in the opinion of the magistrate, ought to have been served by one and same journey, the charge for travelling expenses for performing the round of services shall be fairly and equitably apportioned amongst the several cases, regard being had to the distance at which the persons summoned respectively reside from the court-house, but the fee for service shall be payable for every service performed as if there had been none other.
15. —
- (1) In this paragraph—
- “court-house” means the Provincial Magistrates Court, Rotten Row, Harare “specified kilometre rate” in relation a zone listed in the first column of the following table, means the member specified opposite thereto in the second column—

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Zone	specified kilometre rate
A	0
B	1
C	2
D	4
E	6
F	8
G	10
H	12
Z	24
CHIT	6;

“zone” means any one of the zones listed in the first column of the following table determined according to the distance from the courthouse specified opposite thereto in the second column in the case of zones A – Z, or, in the case of zone CHIT, according to the description specified opposite thereto in the second column of the table-Zone distance from court-house/description of area:

- A up to and including 1 kilometre
- B more than 1 kilometre but not exceeding 3 kilometres
- C more than 3 kilometres but not exceeding 6 kilometres
- D more than 6 kilometres but not exceeding 9 kilometres
- E more than 9 kilometres but not exceeding 12 kilometres
- F more than 12 kilometres but not exceeding 15 kilometres
- G more than 15 kilometres but not exceeding 18 kilometres
- H more than 18 kilometres but not exceeding 21 kilometres
- Z more than 21 kilometres

The area of Chitungwiza Town Council as described in Proclamation 35 of 1981, published in Statutory Instrument 910 of 1981.

- (2) Subject to subparagraph (3), for any journey undertaken within a zone using his or her own transport, the Messenger of Court, Harare, shall be paid a zonal charge calculated as follows—
 - (a) where a motor-cycle is used ZWL\$30 (thirty dollars) multiplied by the specified kilometre rate for the zone concerned;

- (b) where a motor-vehicle other than a motor-cycle is used, ZWL\$60 (sixty dollars) multiplied by the specified kilometre rate for the zone concerned.
 - (3) Where the Messenger of the Court, Harare, performs or attempts to perform a service in a zone at the request of a party who specifies, in writing, substantially in Form CIV 41A, that the service is to be performed immediately, he or she shall be paid for every kilometre or portion of a kilometre travelled in going from and returning to the court-house at the rates set out in subparagraph (b) of paragraph 13.
- 16. Where a journey necessitates a messenger obtaining overnight accommodation place, he or she shall be paid the costs reasonably and necessarily incurred by him or her in obtaining such accommodation.
- 17. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds in so far as they are in excess of the amount of the warrant.
- 18. In addition to the fees prescribed, the messenger shall be entitled to charge the amount of postage, including registration and acknowledgement of receipt fees, paid by him or her and the costs of necessary telephone trunk-calls incurred by him or her.
- 19. The messenger's fees and expenses of executing any process shall be added to the amount to be recovered under such process, if any, and shall be chargeable against the person against whom judgment was obtained.

