

Magistrates Court (Civil) (Amendment) Rules, 2012 (No. 57)

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

1. These rules may be cited as the Magistrates Court (Civil) (Amendment) Rules, 2012 (No. 57).

2. The Second Schedule to the Magistrates Court (Civil) Rules, 1980, published in Statutory Instrument 290 of 1980, is amended by the repeal of Table B and the substitution of—

“TABLE B

(Order 32, Rule 4(1))

TARIFF FOR MESSENGERS OF COURT

	US\$
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 issued out process.	12,00
2. Service of warning of impending execution or eviction in terms of Order 26, rule 4A	12,00
3.—	
(1) Execution, including necessary service of any copy of a warrant, interdict or garnishee order	40,00
(2) Attempted execution.	12,00
(3) The fee for an execution or attempted execution shall, in all cases, include registration and return and notice to the issuing party, and shall—	
(a) be payable by the execution creditor on the lodging of the process with the messenger; and	
(b) not be recoverable by him from the messenger if the process is withdrawn or stopped or proves abortive.	
(4)—	

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- (a) where the process is one of arrest or ejection 50,00
- (b) for an attempted arrest or ejection 20,00

A further fee—

- (i) of US\$15 shall be paid after execution for each person beyond one named in the process and in fact arrested; or
 - (ii) of US\$20 shall be paid after execution for each person beyond one named or referred to in process of ejection and in fact ejected from separate premises.
- (5) Where the process is one of arrest, ejection or execution and it is necessary for the messenger or his deputy to wait in any place or abode in order to execute the process, a waiting fee shall be paid, for each hour or part thereof, of 12,00

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 one 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. Inventory, per copy 20,00
- 5. Security bond 20,00

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 of the goods for the period for which possession is charged.

(2) 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 the storage;
- (c) if storage is provided by the messenger, for each day 10,00

- (3) Where the messenger is in possession under more than one warrant of execution—
- (a) he may charge for only one possession, which shall, as soon as possible, be apportioned *pro rata* to the several warrants;
 - (b) each execution creditor shall be jointly and severally liable for the possession to an amount not exceeding that which would have been due under his execution if it had stood alone.

7. Drawing advertisement for sale 12.00

8.—

- (1) Where, upon the service of a warrant of arrest, warrant of execution or garnishee order, the amount due is paid in full or in part on presentation thereof, five *per centum* on the amount so paid.
- (2) Where money or property, whether movable or immovable, is attached in execution, five *per centum* on the value of the money or property or three *per centum* on the amount (or balance thereof) owing under the writ at the time of attachment, whichever is the lesser. When the fee is to be calculated on the value of the money or property attached, the value shall be assessed by the messenger at the time of making the attachment:

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

9. Where a warrant of execution against movables is completed by sale—
 - (a) if an auctioneer is employed, ten *per centum* of the amount of the judgment debt and costs;
 - (b) if the messenger acted as auctioneer, five *per centum* of the amount realised, not exceeding the amount of the judgment debt and costs.
10. When immovable property has been attached in execution and is not sold, either because the warrant has been withdrawn or the estate of the execution debtor has been sequestrated, the expenses in connection with the attempted sale and the sum of US\$25 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, five *per centum* of the amount realised;
 - (b) to the auctioneer, ten *per centum* of the first one hundred thousand US dollars of the amount realised, and five *per centum* on the balance of that amount;

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- (c) to the messenger, a fee of 20,00
12. In addition to the fees allowed by items 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 3,00
14. In respect of journeys undertaken by a messenger, other than the Messenger of the 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, and a motor cycle vehicle is used, the messenger shall be paid at a rate equivalent to the prevailing Automobile Association of Zimbabwe rates for every kilometre or portion of a kilometre travelled in going from and returning to the court-house while using his own transport; where a motor-cycle is used, the rate per kilometre after the first kilometre shall be US\$1.
- (c) when two or more summonses for defendant or witnesses, whether at the instance of the same plaintiff or different plaintiffs, have been served or, in the opinion of the magistrate, ought to have been served by one and the same journey, the charge for travelling expenses for performing the round of services shall be fairly and equitably apportioned among 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. Where a journey necessitates a messenger obtaining overnight accommodation at an hotel, a motel, a boarding-house or other such place, he or she shall be paid the costs reasonably and necessarily incurred by him/her in obtaining such accommodation.
16. 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.
17. In addition to the fees prescribed, a 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.

18. The messenger's fees and expenses in relation to the execution of 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."

3. The Magistrates Court (Civil) (Amendment) Rules, 2009 (No. 56), published in Statutory Instrument 58 of 2011, are repealed.

