50 Civil appeals from magistrates' courts

(1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and GN R2642 of 27 November 1987 and amended by GN R185 of 2 February 1990.]

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within twenty days after the date of the lapse of such appeal.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4)*(a)* The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his full residential and postal addresses and the address of his attorney if he is represented.

(b) In the absence of such an application by the appellant, the respondent may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.

(c) Upon receipt of such an application from appellant or respondent, the appeal shall be deemed to have been duly prosecuted.

[Subrule (4) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R185 of 2 February 1990.]

(5)*(a)* Upon receipt of such application, the registrar shall forthwith assign a date of hearing, which date shall be at least 40 days after the receipt of the said application, unless all parties consent in writing to an earlier date: Provided that the registrar shall not assign a date of hearing until the provisions of subrule (7)*(a)*, *(b)*, and *(c)* have been duly complied with.

(b) The registrar shall give the parties and the clerk of the court from which the appeal emanated, at lease 20 days' written notice of the date of set down.

[Subrule (5) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987, by GN R185 of 2 February 1990 and by GN R87 of 12 February 2010.]

(6) A notice of set down of a pending appeal shall *ipso facto* operate as a set down of any cross-appeal and *vice versa*.

(7)(a) The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal referred to in subrule (4) lodge with the registrar two copies of the record: Provided that where such an appeal is to be heard by more than two judges, the applicant shall, upon the request of the registrar, lodge a further copy of the record for each additional judge.

[Paragraph *(a)* substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R185 of 2 February 1990.]

(b) Such copies shall be clearly typed on foolscap paper in double spacing, and the pages thereof shall be consecutively numbered and as from second January 1968, such copies shall be so typed on A4 standard paper referred to in rule 62(2) or on foolscap paper and after expiration of a period of twelve months from the aforesaid date on such A4 standard paper only. In addition every tenth line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar shall be certified as correct by the attorney or party lodging the same or the person who prepared the record.

[Paragraph *(c)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(d) The party lodging the copies of the record shall not less than fifteen days prior to the date of the hearing of the appeal also furnish each of the other parties with two copies thereof, certified as aforesaid.

[Paragraph *(d)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

[Subrule (7) substituted by GN R2004 of 15 December 1967 and by GN R2021 of 5 November 1971.]

(8)*(a)* Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of the aforegoing subrule. A list thereof shall be included in the record.

(b)(i) With the written consent of the parties any exhibit or other portion of the record which has no bearing on the point in issue on appeal may be omitted from the record.

(ii) If a portion has been so omitted from the record, the written consent signed by or on behalf of the parties and noting the omission shall be filed, together with the incomplete record, with the Registrar.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) the court hearing the appeal may at any time request the complete orginal record and take cognisance of everything appearing therein.

[Paragraph *(b)* substituted by GN R608 of 31 March 1989.]

(c) When an appeal is to be decided exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, as referred to in rule 33 of the Rules, in which event copies may be submitted to the court of such portions only of the record which in the opinion of the parties may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may request that the entire original record of the case be placed before the court.

[Paragraph *(c)* added by GN R608 of 31 March 1989.]

(9) Not less than fifteen days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than ten days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall be lodged with the registrar in each case.

---

(10) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

[Subrules (9) and (10) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

Commentary

General. Section 84 of the Magistrates' Courts Act 32 of 1944 provides that an appeal from a magistrate's court to the High Court shall be brought within the period and in the manner prescribed by the rules. Such appeal is, in fact, governed by two sets of rules: rule 51 of the magistrates' courts rules regulates the noting of an appeal, while this rule regulates the prosecution of such appeal. [1] Although the noting of an appeal lays the foundation of the proceedings in the High Court, it is an act done in the magistrate's court. [2] The prosecution of an appeal under this rule is a proceeding in the High Court. [3]

An appeal must, therefore, be *noted* within the period and in the manner prescribed by magistrates' courts rule 51, and *prosecuted* within the period and in the manner prescribed by this rule. Rule 6 of the Transvaal Rules of the High Court (i e the rules of both seats of the Gauteng Division of the High Court) prescribes its own periods and procedure for prosecuting an appeal in those divisions. [4]

Rule 51 of the magistrates' courts rules, and this rule, deal with the procedural aspect of an appeal. The substantive law is dealt with in the following statutory provisions:

(a) s 82 of the Magistrates' Courts Act 32 of 1944 — by consent a decision of a magistrate's court may be final (i e no appeal shall lie against such a decision);

(b) s 83 of the Magistrates' Courts Act 32 of 1944 — appeal from magistrate's court (i e which judgments are appealable);

(c) s 84 of the Magistrates' Courts Act 32 of 1944 — time, manner and conditions of appeal;

(d) s 85 of the Magistrates' Courts Act 32 of 1944 — no peremption of appeal by satisfaction of judgment;

(e) s 86 of the Magistrates' Courts Act 32 of 1944 — abandonment of judgment appealed against;

(f) s 87 of the Magistrates' Courts Act 32 of 1944 — procedure of court of appeal (i e powers of the High Court on hearing of appeals);

(g) s 19 of the Superior Courts Act 10 of 2013 — powers of High Court on hearing of appeals. [5]

In s 1 of the Magistrates' Courts Act 32 of 1944 the 'court of appeal' is defined as 'the High Court to which an appeal lies from the magistrate's court'. In terms of s 21(1)*(a)* of the Superior Courts Act 10 of 2013 a division of the High Court has the power to hear and determine appeals from all magistrates' courts within its area of jurisdiction.

In terms of s 14(3) of the Superior Courts Act 10 of 2013 the High Court shall, for the hearing of any civil appeal (against a judgment or order of a magistrate's court), be constituted before two judges. [6]

The notes that follow should, accordingly, be read together with the notes to rule 51 of the magistrates' courts rules in Jones & Buckle *Civil Practice* vol II, the notes to ss 82 to 87 of the Magistrates' Courts Act 32 of 1944 in Jones & Buckle *Civil Practice* vol I and the notes to s 19 of the Superior Courts Act 10 of 2013 in Volume 1 third edition, Part D.

Subrule (1): 'An appeal to the court.' See the notes s v 'General' above.

'The decision of a magistrate.' Not every decision of a magistrate in a civil matter is appealable. Section 83 of the Magistrates' Courts Act 32 of 1944 lists the judgments, rules, orders and decisions which are appealable. [7]

'Shall be prosecuted.' By prosecution of an appeal is meant applying in writing to the registrar, on notice to all other parties, for a date of hearing in terms of subrule (4). [8]

'Within 60 days.' In the Gauteng Division and the Gauteng Local Division of the High Court special rules prescribing different periods have been promulgated in terms of s 43(2)*(b)* of the (now repealed) Supreme Court Act 59 of 1959. [9] The time limits prescribed by this subrule and subrule 4 are as follows (the time limits in the Gauteng Division and the Gauteng Local Division are given in brackets):

(a) The appeal must be prosecuted within sixty days (fourteen weeks) after the noting of the appeal.

(b) If the appellant has not within forty days (twelve weeks) after noting the appeal applied to the registrar for a date of hearing, the respondent may do so within the remaining two weeks.

(c) The due prosecution of an appeal *ipso facto* operates as a prosecution of a cross-appeal in terms of subrule (2).

(d) If no application for a date of hearing is made by either the appellant or the respondent within the sixty days (fourteen weeks), the appeal lapses in terms of subrule (3).

(e) A duly noted cross-appeal does not lapse for a further twenty days, during which period the respondent may apply for a date of hearing of the cross-appeal. If he does not make such application, the cross-appeal then lapses in terms of subrule (3).

(f) If an appeal has lapsed, the prosecution of the cross-appeal does not revive the appeal.

Section 84 of the Magistrates' Courts Act 32 of 1944, *inter alia*, provides that every party appealing must do so 'within the period . . . prescribed by the rules; but the court of appeal may in any case extend such period'. The court of appeal will condone non-compliance with time periods, and extend time periods, on good cause shown. [10] See further, in this regard, the notes to rule 49(6)*(b)* s v 'Upon good cause shown' above.

'After the noting.' An appeal must be noted within the period and in the manner prescribed by magistrates' courts rule 51. [11] In terms of rule 51(4) of the magistrates' courts rules an appeal must be noted by the delivery of a notice of appeal [12] and, unless the court of appeal otherwise orders, by giving security for the respondent's costs of appeal to the amount of R1,000.00. [13]

See further, in this regard, the notes to rule 49(6)*(b)* s v 'Upon good cause shown' above.

'Unless so prosecuted it shall be deemed to have lapsed.' Rule 51(9) of the magistrates' courts rules provides that a party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary. [14] This subrule merely reconfirms that unless the appeal is prosecuted within the time prescribed, it shall be deemed to have lapsed.

Under s 13(1)*(a)* of the (now repealed) Supreme Court Act 59 of 1959 it has been held that a single judge has jurisdiction to entertain an application for a declaration that an appeal has lapsed. [15] It is submitted that the position under s 14(1)*(a)* of the Superior Courts Act 10 of 2013 is the same.

Subrule (2): 'The prosecution of any cross-appeal.' A cross-appeal is an appeal which is for convenience heard at the same time as the main appeal. [16] A cross-appeal cannot be conditional upon the success of an appeal. [17] The limitations on the right to appeal apply equally to the right to cross-appeal. [18]

'Which has been duly noted.' In terms of magistrates' courts rule 51(6) a cross-appeal must be noted by the delivery of a notice of cross-appeal within ten days after the delivery of the notice of appeal. The notice of cross-appeal must comply with the provisions of rule 51(7) of the magistrates' courts rules.

Subrule (3): 'The cross-appeal shall also lapse, unless application . . . is made.' Whereas rule 51(9) of the magistrates' courts rules provides that a party noting a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and,

in default of such prosecution, the cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary, this subrule provides that the cross-appeal shall lapse when the appeal lapses, unless application for a date of hearing for the cross-appeal is made to the registrar within twenty days after the date of the lapse of the appeal. It is submitted that the two subrules are not necessarily contradictory and that if an application as contemplated in this subrule for a date of hearing of the cross-appeal is not made timeously, the remedy for the court of appeal to make an order that the cross-appeal has not lapsed as contemplated in rule 51(9) of the magistrates' courts rules is still available to the cross-appellant.

Subrule (4): 'General.' An appeal must be prosecuted within the time periods laid down by subrule (1) and paragraphs *(a)* and *(b)* of this subrule. See further the notes to subrule (1) s v 'Within 60 days' above.

In terms of paragraph *(c)* of this subrule an appeal is deemed to have been duly prosecuted upon receipt by the registrar of the application for the assignment of a date for the hearing of the appeal from the appellant or respondent, as the case may be.

Subrule (5)*(a)*: 'The registrar shall forthwith assign a date . . . which date shall be . . . unless all parties consent . . . to an earlier date.' The registrar must, without delay, assign a date of hearing upon receipt of the application for the assignment of such date. The date must be at least forty days after the receipt of such application. The subrule, however, entitles the parties to consent in writing to an earlier date which date, it is submitted, must beforehand be arranged with the registrar and, if necessary, the judge president or deputy judge president of the court of appeal.

Proviso: 'The registrar shall not assign a date . . . the provisions of subrule (7)*(a)*, *(b)* and *(c)* have been duly complied with.' In terms of this proviso the registrar is not entitled to assign a date of hearing of the appeal unless a proper record has been duly lodged as provided for in subrule (7)*(a)*, *(b)* and *(c)*. In terms of subrule (7)*(a)* the necessary copies of the record must be lodged with the registrar simultaneously with the lodging of the application for a date for the hearing of the appeal under subrule (4).

Subrule (5)*(b)*: 'The registrar shall . . . give . . . notice.' In terms of this subrule the registrar must notify the parties as well as the registrar or clerk of the magistrate's court from which the appeal emanates of the date of hearing and the set down of the appeal. In terms of subrule (6) such a notice of set down *ipso facto* operates as a set down of any cross-appeal and vice-versa.

Subrule (6): '*Ipso facto* operate as a set down of any cross-appeal.' See the notes to subrule (5)*(b)* s v 'The registrar shall . . . give . . . notice' above.

Subrule (7): General. Failure to file timeously a complete record on appeal may result in the appeal being struck off the roll [19] or may, in appropriate cases, be condoned. [20]

It is for the court, and not the registrar, to decide whether the copies of the record on appeal comply with the rules. [21] If in a civil appeal a record is not in order, the court may, according to the circumstances, either strike the appeal off the roll with costs, or postpone the appeal for the record to be put in order, making a suitable order as to costs, or hear the

appeal and disallow portion of the costs of the party responsible for the omission. [22] In *Jeebhai v Minister of Home Affairs* [23] the Supreme Court of Appeal, in striking an appeal from the roll and ordering the appellant's attorney to pay the wasted costs of the day, including all costs relating to the record, *de bonis propriis*, remarked:

> 'Not having made any attempt whatsoever to satisfy himself that the documents in the appeal record were relevant and that they had been inserted in a coherent order, Mr Omar had the temerity to certify that the entire record had to be read and that a core bundle was not appropriate due to the concise nature of the record! In doing so he treated the rules of practice of this court as well as the court itself with contempt, caused confusion and undermined the proper functioning of the appeal process. In my view this conduct should not be tolerated. . . . Practitioners who exhibit this kind of attitude should not, and will not, be tolerated by this court. . . . It is true that this court has on occasion despite lamentable records gone ahead and entertained matters, "balancing the degree of non-compliance against other relevant factors such as prospects of success and the importance of the issue raised" (*Premier, Free State v Firechem Free State (Pty) Ltd* 2000 (4) SA 413 (SCA) ([2000] 3 All SA 247) para 41). But there comes a time when one needs to say "enough is enough"; and when stern action, such as striking the matter from the roll, must be taken.'

If such record is not in order, there has been non-compliance with this subrule and an application for condonation must be launched. [24] In such an application an attorney would at least have to indicate what steps he had taken in an attempt to cure the omissions. [25] In *Venter v Bophuthatswana Transport Holdings (Edms) Bpk* [26] it was ordered that the appellant's attorneys would not be entitled to recover any fees for the perusal of the record. The court also warned that the time may well arrive that counsel, together with the instructing attorney, may be ordered to forfeit part of their fees. An order *de bonis propriis* against counsel may be made where the record of appeal was in a deplorable state due to counsel largely acting without the required assistance of an attorney. [27]

It is the duty of an attorney charged with prosecuting an appeal on behalf of a client to see that a proper record of appeal is placed before the court and in order to discharge this duty such attorney must peruse the record and satisfy himself that it is complete and in compliance with the rules. [28]

If a record is defective and reconstruction is impossible the court may persist in hearing the appeal as a party has a statutory right to appeal. The court must, however, be convinced on the record that the conclusion reached by the magistrate was wrong. In case of doubt, the magistrates' conclusion must be upheld. [29]

If a record cannot timeously be filed as required by this subrule, condonation for the late filing of the record should be applied for. [30]

Subrule (8)*(a)*: 'Documents of a formal nature.' Failure to comply with the provisions of this subrule may lead to the appeal being struck off the roll. [31]

Subrule (8)*(b)(i)*: 'With the written consent of the parties.' It has been held that it can justifiably be expected of an appellant's attorney, where he realizes that documents used in a trial are not necessary for the adjudication of an appeal, to take steps to obtain the consent of the respondent's attorney in terms of this subrule to omit such documents from the record on appeal. [32] The failure to do so can in an appropriate case lead to the costs of the preparation of such documents being disallowed as costs of appeal, and there is no reason why the appellant should be burdened by his attorney with the costs of the preparation of the documents. [33]

Under paragraph (3) of this subrule the court hearing the appeal has the power to, at any time, request the complete original record and take cognizance of everything appearing therein.

Subrule (8)*(c)*: 'A special case, as referred to in rule 33.' Rule 33(1) makes it clear that the resolution of a stated case proceeds on the basis of a written statement of *agreed facts*. [34] See further rule 33(1) to (3) and the notes thereto above.

Subrule (9): 'Not less than fifteen days before the appeal is heard.' In *Harmony Caterers (Pty) Ltd v Ford* [35] rule 6(4) of the Transvaal Rules of the High Court (i e the rules of the Gauteng Division and the Gauteng Local Division of the High Court) has been declared *ultra vires* s 43(2)*(b)*(iii) of the (now repealed) Supreme Court Act 59 of 1959 by Cloete J and Horn J. Accordingly, the time periods for the delivery of heads of argument as stipulated in this subrule prevail and must also be applied in both seats of the Gauteng Division of the High Court. [36]

'Shall deliver . . . a concise and succinct statement.' See the notes to rule 49(15) s v 'Shall deliver a concise and succinct

statement' above.

'Of the main points (without elaboration), which he intends to argue on appeal.' Heads of argument are important for the proper administration of justice. In *S v Ntuli*, [37] referred to with approval in *Feni v Gxothiwe*, [38] Marcus AJ stated: [39]

> 'Heads of argument serve a critical purpose. They ought to articulate the best argument available to the appellant. They ought to engage fairly with the evidence and to advance submissions in relation thereto. They ought to deal with the case law. Where this is not done and the work is left to the Judges, justice cannot be seen to be done. Accordingly, it is essential that those who have the privilege of appearing in the Superior Courts do their duty scrupulously in this regard.'

The purpose of heads of argument is to identify the dispute and to set out the argument to be delivered so as to assist the court and the opponent in the preparation of the case and during argument in court. The court will always try to assist legal representatives by granting time for further argument where necessary. Where the dispute is identified, however, the practice which allows the applicant's legal representative first to listen to the argument of the respondent's legal representative before he replies thereto by means of (further) heads of argument is objectionable. [40]

Superfluous matter, such as lengthy quotations from the evidence, from the judgment of the court *a quo* and from authorities on which reliance is placed, should be eliminated or at least kept within reasonable bounds. [41] Excessive prolixity may be penalized by way of an appropriate order as to costs. [42]

On the drafting of heads of argument, see Harms 'Heads of argument in courts of appeal' 2009 (December) *Advocate* 20–22.

See also the notes to rule 10(1)*(a)* of the Rules of the Supreme Court of Appeal s v 'Main heads of argument' in Volume 1 third edition, Part C1.

Subrule (10): 'A contemplated appeal be dealt with as an urgent matter.' This subrule, inserted in 1987, seems to be an attempt to meet the need for some provision for urgent appeals adverted to in *Ritch v Orthopaedic Buildings (Pty) Ltd*. [43]

1 For a case where both sets of rules were not complied with, see *Midrand Rental Company (Pty) Ltd v Koboekae* (unreported, GJ case no 17226/2021 dated 24 May 2022).

2 *Howe v Church* 1914 TPD 611 at 617; *D&D H Fraser Ltd v Waller* 1916 AD 494 at 498; and see *South African Druggists Ltd v Beecham Group plc* 1987 (4) SA 876 (T). The costs incurred in connection with the steps taken in terms of magistrates' courts rule 51 are, however, costs in the appeal and are taxed by the taxing master of the High Court (*Van der Walt v Geyser* 1978 (2) SA 1 (T)).

3 See *Kgolokwane v Smit* 1987 (2) SA 421 (O) at 433F–G; *South African Druggists Ltd v Beecham Group plc* 1987 (4) SA 876 (T).

4 See Volume 3, Part H1.

5 The existence side by side of this section with s 87 of the Magistrates' Courts Act 32 of 1944 constitutes unnecessary overlapping and is undesirable.

6 In terms of the proviso to s 14(3) of the Superior Courts Act 10 of 2013 the judge president or deputy judge president or, in the absence of both of them, the senior available judge, may in the event of the judges hearing such appeal not being in agreement, at any time before a judgment is handed down in such appeal, direct that a third judge be added to hear the appeal.

7 See, in this regard, Jones & Buckle *Civil Practice* vol I.

8 *Hall v Van Tonder* 1980 (1) SA 908 (C) at 910.

9 See Volume 3, Part H1.

10 In *Sungay v Schliemann NO* (unreported, WCC case no A58/2023 dated 9 June 2023) the full bench held that a lapsed appeal from the magistrate's court could be condoned and reinstated (*per* Lekhuleni J):
'[17] In my view, from now on, Rule 50 of the Uniform Rules must be interpreted in tandem with rule 49(6)(b) which regulates appeals from the High Court. The two rules complement each other. Indeed, rule 50 of the Uniform Rules does not expressly make provision for the reinstatement of an appeal from the magistrate's court that has lapsed. In my view, notwithstanding the absence thereof, rule 50 must be interpreted to have impliedly included an application for the reinstatement of lapsed appeals on good cause shown. The effect thereof would place appeals in terms of rule 50 on the same footing as rule 49(6)(b) of the Uniform Rules.
[18] Consequently, an appeal or a cross-appeal from the Magistrate's Court that has lapsed may be reinstated in terms of rule 27(1) of the Uniform Rules once the court is satisfied that good cause has been shown for non-compliance with the rules.'

11 See, in this regard, Jones & Buckle *Civil Practice* vol II.

12 The court hearing the appeal has the power to condone the late noting of the appeal and to reinstate the appeal (*Muller N.O. v Taljaard* (unreported, LP case no HCA07/2022 dated 17 August 2022 — a decision of the full bench) at paragraphs [3]–[6]).

13 In terms of the proviso to rule 51(4), no security is to be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.

14 For condonation by the court of appeal, see the notes to rule 49(6)*(b)* s v 'Upon good cause shown' above.

15 *Nawa v Marakala* 2008 (5) SA 275 (BHC) at 278A. The court also held (at 278A–B) that it is a salutary practice for a single judge, sitting in term time, to refer a matter concerning a procedural aspect of an appeal within the judge's jurisdiction to a court consisting of an appropriate number of judges where it necessitates a consideration of the prospects of success of an appeal. Where the prospects of success of an appeal need not be traversed, it is permissible for a single judge to dispose of the matter.

16 *Goodrich v Botha* 1954 (2) SA 540 (A) at 544; and see *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 607.

17 *Blou v Lampert & Chipkin NNO* 1970 (2) SA 185 (T) at 198D.

18 *Nepken v Michaelson* 1908 TS 954; *Soobiah v Phipson* (1917) 38 NLR 103; *Bloch v Cohen* 1933 TPD 100; *Goodrich v Botha* 1954 (2) SA 540 (A); *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 607; *Bank Windhoek Bpk v Rajie* 1994 (1) SA 115 (A) at 151C–G.

19 See *Van der Riet v Rheeder* 1965 (3) SA 712 (O); *Dinath v Breedt* 1966 (3) SA 712 (T); *Boland Konstruksie Maatskappy (Edms) Bpk v Petlen Properties (Edms) Bpk* 1974 (4) SA 291 (C); *Kanderssen (Pty) Ltd v Bowman NO* 1979 (4) SA 296 (T).

20 *Kanderssen (Pty) Ltd v Bowman NO* 1980 (3) SA 1142 (T).

21 *Fedco Cape (Pty) Ltd v Meyer* 1988 (4) SA 207 (E).

22 See *Kahn v Radyn* 1949 (4) SA 552 (C); *Stanley v MacDonald & Company* 1953 (1) SA 102 (C); *Nicol's Motor Works v Breytenbach* 1953 (4) SA 1 (T); *Bekker v Dawkins Steenmakery* 1959 (1) SA 32 (T); *Van der Riet v Rheeder* 1965 (3) SA 712 (O); *Dinath v Breedt* 1966 (3) SA 712 (T); *Burger v De Vos* 1967 (3) SA 63 (O); *Pienaar v Cronje* 1973 (2) SA 671 (T); *Van der Merwe v Kgalokwane* 1977 (3) SA 106 (O); *Moji v Swartz* 1978 (1) SA 227 (O); *Kanderssen (Pty) Ltd v Bowman NO* 1979 (4) SA 296 (T); *Pienaar v G North & Son (Pty) Ltd* 1979 (4) SA 522 (O); *Dos Santos v Unibank Ltd* 2000 (1) SA 801 (W); *Collins v Minister of Police* (unreported, GP case no A290/2021 dated 3 February 2023).

23 2009 (4) SA 662 (SCA) at 666D–667F; but see the minority judgment at 667H–669D.

24 *Kahn v Radyn* 1949 (4) SA 552 (C); *Bekker v Dawkins Steenmakery* 1959 (1) SA 32 (T); *Dos Santos v Unibank Ltd* 2000 (1) SA 801 (W) at 802D; *Collins v Minister of Police* (unreported, GP case no A290/2021 dated 3 February 2023) at paragraph [3].

25 *Senator Versekeringsmaatskappy Bpk v Lawrence* 1982 (3) SA 136 (A) at 144G–H; *Dos Santos v Unibank Ltd* 2000 (1) SA 801 (W) at 802E.

26 1997 (3) SA 374 (SCA) at 390G–391B.

27 *Hopf v The Spar Group (Build It Division)* [2007] 4 All SA 1249 (D) at 1258*f*–1259*f*.

28 *Senator Versekeringsmaatskappy Bpk v Lawrence* 1982 (3) SA 136 (A) at 144H; *Rennie NO v Gordon* 1988 (1) SA 1 (A) at 20D. See also *Chief Registrar of Deeds v Hamilton-Brown* 1969 (2) SA 543 (A); *Federated Employers Fire & General Insurance Co Ltd v McKenzie* 1969 (3) SA 360 (A).

29 *JMYK Investments CC v 600 SA Holdings (Pty) Ltd* 2003 (3) SA 470 (W) at 472.

30 See, for example, *Kanderssen (Pty) Ltd v Bowman NO* 1980 (3) SA 1142 (T) at 1145A–1146A; *P E Bosman Transport Works Committee v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 794 (A) at 797H–798H; *Unitrans Fuel and Chemical (Pty) Ltd v Dove-Co Carriers CC* 2010 (5)

SA 340 (GSJ) at 343A–345B; *Collins v Minister of Police* (unreported, GP case no A290/2021 dated 3 February 2023) at paragraph [3].

31 *Van der Merwe v Kgolokwane* 1977 (3) SA 106 (O).

32 *Badenhorst v Alum Konstruksie* 1986 (2) SA 225 (T) at 229B.

33 *Badenhorst v Alum Konstruksie* 1986 (2) SA 225 (T) at 229B–C. See *Uneedem Hardware Co (Pty) Ltd v Concordia Contractors (Pty) Ltd* 1953 (3) SA 737 (O).

34 *Bane v D'Ambrosi* 2010 (2) SA 539 (SCA) at 543E–F.

35 2002 (5) SA 536 (W).

36 The time periods stipulated in paragraph 7.2 of the *Practice Manual* of the Gauteng Division of the High Court correspond with those in this subrule (see Volume 3, Part H2).

37 2003 (4) SA 258 (W).

38 2014 (1) SA 594 (ECG) at 596C–D, referred to with approval in *Feni v Gxothiwe* 2014 (1) SA 594 (ECG) at 596C–D and *Geza v Standard Trust Limited* (unreported, ECGq case no 3534/2021 dated 14 March 2023) at paragraph [31].

39 At 265B–D.

40 *Kriel v Terblanche NO* 2002 (6) SA 132 (NC) at 149C–G.

41 *Van der Westhuizen NO v United Democratic Front* 1989 (2) SA 242 (A) at 252B–D.

42 See, for example, the order in *Van der Westhuizen NO v United Democratic Front* 1989 (2) SA 242 (A) at 252H. Rule 67A(2)*(c)* provides that in considering all relevant factors when awarding costs, the court may have regard to unnecessary or prolix drafting.

43 1979 (4) SA 19 (T) at 26F.