

## 62 Filing, preparation and inspection of documents <sup>1</sup>

RS 22, 2023, D1 Rule 62-1

(1) Where a matter has to be heard by more than one judge, a copy of all pleadings, important notices, annexures, affidavits and the like shall be filed for the use of each additional judge.

(2) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blueblack ink on one side only of paper of good quality and of A 4 standard size. A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

[Subrule (2) substituted by GN R2021 of 5 November 1971.]

(3) Stated cases, affidavits, grounds of appeal and similar documents shall be divided into concise paragraphs which shall be consecutively numbered.

[Subrule (3) substituted by GN R2133 of 3 June 2022.]

(4) An applicant or plaintiff shall not later than five days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

[Subrule (4) substituted by GN R2004 of 15 December 1967 and amended by GN R2410 of 30 September 1991.]

(5) Every affidavit filed with the registrar by or on behalf of a respondent shall, if such respondent is represented, on the first page thereof bear the name and address of the attorney filing it.

[Subrule (5) substituted by GN R2133 of 3 June 2022.]

(6) The registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at the registrar's office, examine and make copies of all documents in such cause.

[Subrule (7) substituted by GN R2133 of 3 June 2022.]

### Commentary

**Subrule (1): 'A copy . . . shall be filed for the use of each additional judge.'** In matters being heard before more than one judge the onus is on the party who sets the matter down for hearing to see that the necessary copies of documents are filed.

**Subrule (2): 'All documents filed . . . shall be.'** In terms of subrule (6) the registrar may reject any document which does not comply with the requirements of this rule.

**Subrule (3): 'Into concise paragraphs.'** In affidavits the facts must also be set out simply, clearly and in chronological sequence without argumentative matter. <sup>2</sup> See also rules 18(3) and 33(2)(a) above.

**Subrule (4): 'An applicant or plaintiff shall.'** It is the duty of an applicant or plaintiff to collate, number and index not only the documents filed by himself but also those filed by the opposing party or parties.

RS 22, 2023, D1 Rule 62-2

The rule is not merely for the convenience of the parties but more particularly for the court and the courts insist on compliance therewith. <sup>3</sup>

The local practice of the various divisions of the High Court relating to pagination and indexes differ. See, in this regard, [Volume 3](#), Parts F–N.

**Subrule (7): 'Any person having a personal interest.'** In *Cape Town City v South African National Roads Authority* <sup>4</sup> the Supreme Court of Appeal, in rejecting the restrictive interpretation of this subrule by the court *a quo*, <sup>5</sup> held: <sup>6</sup>

'[39] Turning to the subrule: the High Court interpreted the subrule restrictively, to permit only persons with a direct legal interest access to a court file. Anyone else who seeks access must apply to court. This interpretation applies to all court documents and in all cases (not just documents produced by way of discovery or in terms of rule 53). It effectively seals court records which, at least before a hearing, would no longer be treated as public records. It does so without regard to whether their contents are in fact confidential or should be secret, or whether it in fact serves a public interest that it be available. The High Court's approach to the subrule was informed by its view that the subrule is "an important administrative basis to support the implied undertaking rule". The restriction of public access was so that "the effect of the implied undertaking rule would not be materially curtailed". The High Court noted in its judgment that the parties had approached the matter on the assumption that once the pleadings had been filed at court they became "generally open to the public". But that was in accordance with the then prevailing practice in the High Court.

[40] Rule 62(7) reads:

"Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at his office, examine and make copies of all documents in such cause."

[Section 39\(2\)](#) of the [Constitution](#) enjoins courts, when interpreting any legislation and when developing the common law, to promote the spirit, purport and objects of the Bill of Rights. That requires courts, when interpreting a statute (or in this instance a rule of court), to avoid an interpretation that would render the statute unconstitutional and to adopt an interpretation that would better promote the spirit, purport and objects of the Bill of Rights. The purpose is to find a reasonable interpretation which saves the validity of the subrule. The subrule must be understood in the context of the whole of rule 62. Rule 62 deals with technical, procedural and oftentimes plain mundane matters. It is concerned with the preparation, filing and inspection of documents. It specifies the type of ink and paper that must be used; deals with numbering and indexing; and affords the registrar the power to refuse to accept documents that do not comply with the rule. It would thus be somewhat surprising that if the drafters had meant to drastically restrict access to court documents, they would have done so in terms of the subrule. In the context of the rule as a whole, the subrule is better read as doing no more than permitting the copying and examination of court records, which must occur with the registrar's leave, at his or her office, rather than as a substantive prohibition on access.

RS 22, 2023, D1 Rule 62-3

[41] The High Court held that "the expression personal interest in the context of rule 62(7) connotes something equivalent to a direct legal interest". [fn69] It thus interpreted the subrule to mean that the registrar may only provide access to (a) parties; and (b) those with a direct legal interest in the case. That requires the registrar to make a determination as to whether or not a party has a direct legal interest in the matter. It is entirely unclear how the High Court envisioned this determination would be made by the registrar.

[42] The subrule uses the phrase "personal interest". The qualifier "personal" can equally well be read to mean any person who is personally interested in the matter. The amici submitted that there are several pointers that this is not only the only plausible — but also a preferable — interpretation of the subrule. First, the rules of this court, [fn70] the Constitutional Court, [fn71] the Land Claims Court, [fn72] the Labour Court [fn73] and the Magistrates' [sic] Court [fn74] all state that "any person" may make copies of all court documents in the presence of the registrar (or clerk). Only the Uniform Rules qualify the phrase "any person" with the words "having a personal interest therein". Yet there appears to be no reason in logic that would suggest that the difference in wording requires a different approach in practice in the High Court. The phrase "any person having a personal interest therein" is clearly capable of referring, as the other rules do, simply to "any person". The ambiguity in the meaning should therefore be resolved by adopting the meaning that is consistent with the unambiguous intent of every other rule in South African courts on the issue. Second, this is how the rule has in fact been interpreted in practice. Prior to the High Court judgment, that was the practice in that court. With a few exceptions it remains the default practice in most, if not all, the other divisions that any person may obtain access to court documents. This thus appears the most natural interpretation of the

subrule. Third, such an interpretation, moreover, coheres with how the phrase is used elsewhere in the rules. The only other place the phrase “personal interest” appears is in rule 57. That rule requires an application for the appointment of a *curator ad litem* to be accompanied by an affidavit of a person who knows the patient, and two medical practitioners. If the person “has any personal interest in the terms of any order sought” the affidavit must disclose the “full details of such relationship or interest”. In addition the medical practitioners should be people “without personal interest in the terms of the order sought”. It is meant to capture those people who have an intimate or financial relationship with the patient. That appears to demonstrate that “direct legal interest” is not the necessary, let alone the most obvious, meaning of “personal interest” when the phrase is used in the Uniform Rules. In my view there is much to be said for these submissions by the amici. Textually, it appears the most plausible. It does not seek to give the term “personal interest” a stretched or unnatural meaning. It adopts the ordinary meaning that (a) is consistent with the constitutional right to open justice; (b) is compatible with the position in all other comparable courts as expressed in the rules and as given effect to in practice; and (c) fits with the other uses of “personal interest” in the Uniform Rules. Clearly, there is nothing inherent in the use of the word “interest” that requires it to be interpreted to mean direct legal interest. [fn75] Indeed, it is the interpretation advanced by the amici that best promotes constitutional rights. It is, therefore, the interpretation that this court should endorse. The High Court’s interpretation is inconsistent with the Constitution. It severely limits the basic principle of open justice, and the rights to public hearings, freedom of expression and access to information for the reasons described earlier. And it relies on a contrived textual interpretation. It makes the High Court an outlier, with far more restrictive rules of access than any other superior court. It should be rejected for all those reasons.’

RS 22, 2023, D1 Rule 62-4

**Footnotes:**

<sup>69</sup> Paragraph 35.

<sup>70</sup> Supreme Court of Appeal Rule 4(3)(a) reads:

“Documents filed for Court purposes are public documents and may be inspected by *any person* in the presence of the registrar.” [My emphasis.]

<sup>71</sup> Constitutional Court Rule 4(6) reads, in relevant part:

“Copies of a record may be made by *any person* in the presence of the Registrar.” [My emphasis.].

<sup>72</sup> Land Claims Court Rule 4(4) reads:

“All documents forming part of the records in a case may be perused by *any person* in the presence of the Registrar or any person designated by him or her.” [My emphasis.]

<sup>73</sup> Labour Court Rule 28(4) reads:

“*Any person* may make copies of any document filed in a particular matter, on payment of the fee prescribed from time to time, and in the presence of the registrar, unless a judge otherwise directs.” [My emphasis.]

<sup>74</sup> Magistrates’ Courts [Rule 3\(5\)](#) reads:

“Copies of the documents referred to in rule 3(4) may be made by *any person* in the presence of the registrar or clerk of the court.” [My emphasis.]

Rule 3(4) refers to all documents filed with the court. Magistrates’ Courts [Rule 63\(6\)](#) reads:

“*Any person*, with leave of the registrar or clerk of the court and on good cause shown, may examine and make copies of all documents in a court file at the office of the registrar or clerk of the court.” [My emphasis.]

<sup>75</sup> It is so that where this court was required to interpret a similar phrase, namely “person with an interest” in *Minister of Environmental Affairs and Tourism and Others v Atlantic Fishing Enterprises (Pty) Ltd and Others* [2004 \(3\) SA 176 \(SCA\)](#) para 14, it was willing to assume, without deciding, that it referred to “a legal interest”. Streicher JA stated that “I shall assume in favour of the appellants that the word interest should be given the narrow meaning contended for by them”.

**‘Examine and make copies of all documents.’** It has been held that a stranger to a suit is not entitled as of right to inspect documents in the registrar’s office before judgment has been pronounced in the matter. <sup>7</sup> It is sometimes said, and this seems to be in accordance with current practice, that the records become accessible when the matter has been called in open court. <sup>8</sup> It is desirable that legal practitioners, who are officials of the court, should observe this rule, especially where publicity is being given to only one party’s case. <sup>9</sup> In defamation actions, the privilege of fair and accurate reporting of judicial proceedings does not extend to the publication in the media of documents filed in pending proceedings before the matter has been called in open court. <sup>10</sup>

It has been held that, where a magistrate had excluded the public from his court in the interests of morality in terms of [s 5\(2\)](#) of the Magistrates’ Courts [Act 32 of 1944](#), and had concluded the hearing of the case, he could not impound the record and refuse the public access to it. <sup>11</sup>

<sup>1</sup> See, in general, A Pienaar ‘Court bundles — how to prepare them properly’ 2019 (January/February) *De Rebus* 22.

<sup>2</sup> *Reynolds NO v Mecklenberg (Pty) Ltd* [1996 \(1\) SA 75 \(W\)](#) at 78I–J.

<sup>3</sup> *Star Marine Yacht Services v Nortier* [1993 \(1\) SA 120 \(SE\)](#); *Manna v Lotter* [2007 \(4\) SA 315 \(C\)](#) at 325H–326A.

<sup>4</sup> [2015 \(3\) SA 386 \(SCA\)](#) at 417F–420C.

<sup>5</sup> See *South African National Road Agency Ltd v City of Cape Town: In re Protea Parkway Consortium v City of Cape Town* [2014] 4 All SA 497 (WCC) at paragraph 35.

<sup>6</sup> The footnotes in the judgment are reproduced at the end of the quoted passage.

<sup>7</sup> *ABT v Registrar of Supreme Court* (1899) 16 SC 476; *Visser v Minister of Justice* [1953 \(3\) SA 525 \(W\)](#); *Bell v Van Rensburg NO* [1971 \(3\) SA 693 \(C\)](#) at 722; and see *Kingswell v Robinson* 1913 WLD 129 at 145–50.

<sup>8</sup> See, for example, *Ex parte Bothma: In re R v Bothma* [1957 \(2\) SA 104 \(O\)](#).

<sup>9</sup> *Ex parte Bothma: In re R v Bothma* [1957 \(2\) SA 104 \(O\)](#).

<sup>10</sup> *Kingswell v Robinson* 1913 WLD 129; *Transvaal Chronicle v Roberts* 1915 TPD 188.

<sup>11</sup> *The Argus Company v The Additional Magistrate, Johannesburg* 1924 TPD 535.