



**SCHOOL OF LAW**

**NLLB208: CIVIL PROCEDURE INFERIOR COURTS**

**END OF SEMESTER EXAMINATIONS**

**APRIL/MAY 2024**

**LECTURER: MR. C. MAUNGA**

**DURATION: 3 HOURS**

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**INSTRUCTIONS**

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1. Answer **ALL** questions.
2. This paper is worth seventy (70) marks.
3. Cheating is strictly prohibited.

## **ANSWER ALL QUESTIONS**

1. There are two forms that proceedings in the magistrates' court may take. What are these two forms and what informs the decision to proceed with one instead of the other? [6 Marks]
2. With the aid of case law authorities, discuss the powers and jurisdiction of a magistrate in civil cases. [6 Marks]
3. What are the duties of a clerk of court? [4 Marks]
4. When is a Defendant in action proceedings required to file a plea? Citing the relevant provisions in the *Magistrates Court (Civil) Rules 2018*, what should be contained in a plea? [5 Marks]
5. What happens when a party to civil proceedings dies or becomes incompetent before completion of the proceedings? [3 Marks]
6. George Mbare is a male adult and a director in a company known as Matanda (Private) Limited. Matanda (Private) Limited's registered address and place of business is number 4, Tigerkloof Road, Mutare. On the 18<sup>th</sup> of March 2024, a security company known as Magweja Security approached the offices of Matanda (Private) Limited and negotiated for a contract for the provision of security services at the said offices. A verbal contract was concluded in terms of which Magweja Security would provide security guards at 4, Tigerkloof Road on a rotational basis for a fee of US\$400.00 (Four Hundred United States Dollars). George Mbare concluded the contract on behalf of Matanda (Private) Limited. Magweja Security performed its obligation in terms of the verbal agreement. It provided the security guards for a period of 6 months. No payment was made by Matanda (Private) Limited for the services leading to the withdrawal of security guards. After withdrawal, Magweja Security began to demand for the money owed to it by Matanda (Private) Limited. No money was paid. Magweja Security decided to approach the Magistrates Court for the issuance of summons claiming

payment of the amount owed. Summons were issued. The particulars of claim stated Matanda (Private) Limited`s address as 4, Tigerkloof, Mutare. However, the messenger of court went to George Mbare`s place of residence and served the summons by affixing at the outer principal gate. Matanda (Private) Limited did not see the summons and did not file an appearance to defend the same. It only became aware of the existence of the summons when the messenger of court attached some of the movable properties at 4, Tigerkloof, Mutare.

- a) Matanda (Private) Limited have approached you and instructed that it is its intention to defend the claim because when George Mbare negotiated for the contract he was not authorized to do so. What application are you going to file at court and what should you plead for the same to be successful? [6 Marks]
  - b) What actions are you going to take to ensure that the messenger of court does not proceed with removing the properties attached? [3 Marks]
7. What are the procedural differences between an ordinary court application and an urgent court application? [6 Marks]
8. What should be contained in a founding affidavit in application proceedings? [5 Marks]
9. Give brief explanatory notes of the following terms:
- a. Dies induciae [2 Marks]
  - b. Absolution from the instance [2 Marks]
  - c. Nulla bona return [2 Marks]
  - d. Ex-parte [2 Marks]
  - e. Sine die [2 Marks]
10. In what ways may a judgement of the magistrates` court be executed? [5 Marks]

11. Under what circumstances may a Magistrates' court issue a decree of civil imprisonment? [4 Marks]
12. What is your understanding of taxation of bill of costs? [2 Marks]
13. With the aid of case law, discuss the requirements to be met for the granting of an application for rescission of default judgment. [5 Marks]

\_\_\_\_\_THE END\_\_\_\_\_