

**REPUBLIC OF NAURU**  
**LAWS OF THE REPUBLIC OF NAURU**  
**CIVIL PROCEDURE ACT 1972**  
**CIVIL PROCEDURE RULES 1972**

**IN EXERCISE of the powers conferred on me by section 76 of the Civil Procedure Act 1972, I hereby make the following rules of court -**

**SHORT TITLE**

1. These Rules may be cited as the Civil Procedure Rules 1972.

**RULES OF COURT SET OUT IN SCHEDULE**

2. The Rules of Court set out in the Schedule to these Rules shall, so far as they are applicable, apply to proceedings in the Supreme Court and the District Court in all their jurisdictions, other than their jurisdiction in criminal proceedings, unless otherwise stated and except so far as they are inconsistent with any provision contained in any other written law relating expressly to proceedings in any jurisdiction of either of the Courts:

Provided that, where any proceedings are pending determination in the Supreme Court or the District Court at the commencement of these Rules, the Court may, upon application by any party to such proceedings, give such directions as it thinks just for the procedure to be followed in those proceedings.

MADE this 21st day of July, 1972.

I.R. Thompson  
Chief Justice

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**SCHEDULE**

*(Rule 2)*

**RULES OF COURT**

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## **ORDER 1**

### **INTERPRETATION**

#### **INTERPRETATION OF TERMS (O.1, r.1)**

1. In these Rules of Court, unless the context otherwise requires –

"Admiralty action" means a suit instituted in the Supreme Court of such a nature that, if the proceedings were taken in England, they could be dealt with by the High Court of Justice only in the exercise of its Admiralty jurisdiction;

"bankruptcy" includes insolvency;

"cause book" means the book kept in the registry in which the number of, and other details relating to, a suit are entered;

"judge" means a judge sitting in Chambers;

"originating process" means the document by which a suit is commenced;

"party" includes the party's barrister and solicitor or pleader, if he is represented in the suit by a barrister and solicitor or pleader;

"pleader" means a person entitled to practise as a pleader in the Courts of Nauru;

"probate suit" means a suit relating to the grant, resealing or recall of probate or of letters of administration;

"proper officer", in relation to any duty to be performed, means –

(a) in respect of the Supreme Court, the Registrar or such other officer as he may direct to perform that duty; and

(b) in respect of the District Court, the Clerk or such other officer as the resident magistrate may direct to perform that duty;

"receiver" includes a consignee or manager appointed by or under an order of the Court;

"registry" means –

(a) in respect of the Supreme Court, the office of the Registrar at the Court House;

(b) in respect of the District Court, the office of the Clerk at the Court House;

"the Act" means the Civil Procedure Act 1972;

"these Rules" means these Rules of Court.

#### **FORMS (O.1, r.2)**

2. The forms in Appendix A shall be used where applicable with such variations as the circumstances of the particular case require, a reference to these Rules shall be taken to include a reference to such forms.

#### **REFERENCES TO ORDERS, RULES, ETC. (O.1, r.3)**

3. Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these Rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule or that sub-paragraph of the paragraph in which the reference occur.

#### **REFERENCES TO SUITS FOR INJUNCTIONS, ETC., AND FOR POSSESSION OF LAND (O.1, r.4)**

4. Except where the context otherwise requires, references in these Rules to a suit for an injunction or an order for specific performance or for possession of land shall be construed as including references to a suit against the Republic for an order declaratory of the rights of the parties or for an order declaring that the plaintiff is entitled as against the Republic to the land or the possession thereof, as the case may be.

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## **ORDER 2**

### **EFFECT OF NON-COMPLIANCE**

#### **NON-COMPLIANCE WITH RULES (O.2, r.1)**

1. (1) Where, in commencing or purporting to commence any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply requirements of these Rules, where in respect of time, place, manner, form or content or in any other respect the failure shall be treated as an irregularity and shall not nullify the proceedings or any document, judgement or order therein.

(2) The Court in which proceedings are being taken may, on the ground that there has been such a failure as is mentioned in the last preceding paragraph, and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the

failure occurred, any step taken in those proceedings or any document, judgement or order therein or exercise its powers under these Rules to allow such amendments, if any, to be made and to make such order, if any, dealing with the proceedings generally as it thinks fit.

#### **APPLICATION TO SET ASIDE FOR IRREGULARITY (O.2, r.2)**

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

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### **ORDER 3**

#### **TIME**

#### **VACATION EXCLUDED FROM TIME FOR SERVICE, ETC., OF PLEADINGS (O.3, r.1)**

1. Unless the Court in which any suit is pending otherwise directs, the period any vacation of a Court directed under section 62 of the Courts Act 1972 shall be excluded in reckoning any period prescribed by these Rules or by any order or direction for serving filing or amending any pleading in any suit in that Court.

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### **ORDER 4**

#### **COMMENCEMENT OF CIVIL PROCEEDINGS**

#### **MODE OF COMMENCING CIVIL PROCEEDINGS (O.4, r.1)**

1. Civil proceedings in the Supreme Court and the District shall, subject to the exceptions referred to in Rule 2, be commenced by a writ of summons.

#### **COMMENCEMENT OTHERWISE THAN BY WRIT (O.4, r.2)**

2. Civil proceedings may be commenced otherwise than by writ of summons –

(a) where application is made to a judge for leave for a suit to be commenced in the Supreme Court, notwithstanding that the District Court has jurisdiction to try it;

(b) in the District Court, where a suit is commenced under section 14 of the Act, and

(c) where express provision is made by these Rules or any other written law for commencement otherwise than by writ.

**TITLE OF SUIT (O.4, r. 3)**

3. Every suit shall be entitled "In the Supreme Court of Nauru" or "In the District Court of Nauru", as the case may be.

**RIGHT TO BEGIN, CARRY ON AND DEFEND SUIT IN PERSON OR BY LEGAL REPRESENTATIVE (O.4, r.4)**

4. Subject to any written law abrogating or restricting such right, any person may commence, carry on or defend a civil suit in the Supreme Court or the District Court either by a barrister and solicitor or pleader or in person.

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**ORDER 5**

**WRITS OF SUMMONS: GENERAL PROVISIONS**

**FORM OF WRIT OF SUMMONS (O.5, r.1)**

1. Every writ of summons must be in Form No.1 of Appendix A.

**WRIT TO BEAR DATE OF ISSUE (O.5, r.2)**

2. Every writ of summons shall bear the date on which it is issued.

**INDORSEMENT OF CLAIM (O.5, r.3)**

3. (1) Before a writ of summons is issued it must be indorsed -

(a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the suit begun thereby;

(b) where the claim made by the plaintiff is for a debt or liquidated demand only with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant -

(i) pays the amount so claimed to the plaintiff, his barrister and solicitor or agent; or

(ii) pays that amount into court.

(2) A defendant who pays moneys into court under this rule must give notice in Form 6 of Appendix A to the plaintiff, his barrister and solicitor, pleader or agent.

**INDORSEMENT AS TO CAPACITY (O.5, r.4)**

4. (1) Before a writ of summons is issued it must be indorsed -

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

(2) Before a writ of summons is issued in a suit brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside Nauru, it must be indorsed with a statement of that fact and with the address of the person so resident.

#### **INDORSEMENT AS TO LEGAL REPRESENTATIVE AND ADDRESS (O.5, r.5)**

5. (1) Before a writ of summons is issued it must be indorsed -

(a) where the plaintiff sues by a barrister and solicitor or pleader, with the plaintiff's address and the name or firm and business address within Nauru of the barrister and solicitor and pleader and also, if the barrister and solicitor or pleader has received his instructions in a place outside Nauru, his business address in that place;

(b) where the plaintiff sues in person, with -

(i) the address of his place of residence and, if his place of residence is not within Nauru or if he has no place of residence, the address of a place within Nauru at or to which documents for him may be delivered or sent, and

(ii) his occupation.

(2) the address for service of a plaintiff shall be -

(a) where he sues by a barrister and solicitor or pleader, the business address in Nauru indorsed on the writ, being the address of the barrister and solicitor or pleader;

(b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where the name of a barrister and solicitor or pleader is indorsed on a writ he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a barrister and solicitor or pleader whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the suit begun by the writ.

#### **CONCURRENT WRIT (O.5, r.6)**

6. (1) One or more concurrent writs of summons may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of the last preceding paragraph, a writ for service within Nauru may be issued as a concurrent writ with one of which notice is to be served out of Nauru and a writ of which notice is to be served out of Nauru may be issued as a concurrent writ with one for service within Nauru.

(3) A concurrent writ is a true copy of the original writ with such differences only, if any, as are necessary having regard to the purpose for which the writ is issued.

#### **ISSUE OF WRIT (O.5, r.7)**

7. (1) Writ of summons shall be issued out of the registry of the Court in which the suit is being commenced.

(2) Issue of a writ of summons takes place upon its being sealed by an officer of the registry.

(3) The officer by whom a concurrent writ is issued must mark it as a concurrent writ with an official stamp.

(4) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the registry a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by his barrister and solicitor or pleader.

#### **DURATION AND RENEWAL OF WRIT (O.5, r.8)**

8. (1) For the purpose of service, a writ, other than a concurrent writ, is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court out of which it was issued may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day, if any, as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ, whether original or concurrent, issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.



## **ORDER 6**

### **ORIGINATING SUMMONSES - GENERAL PROVISIONS**

#### **ORIGINATING SUMMONS FOR LEAVE TO COMMENCE A SUIT IN THE SUPREME COURT (O.6, r.1)**

1. Every originating summons for leave to commence a suit in the Supreme Court shall be in Form No.2 of Appendix A and shall in the first instance be issued ex parte.

#### **ORIGINATING SUMMONS ISSUED UNDER SECTION 14 OF THE ACT (O.6, r.2)**

2. Every summons to commence a suit in the District Court under section 14 of the Act shall be in Form No. 3 of Appendix A.

#### **OTHER ORIGINATING SUMMONSES (O.6, r.3)**

3. Where any written law provides for the commencement of any proceedings by an originating summons, otherwise than a summons under section 14 of the Act or a summons for leave to commence a suit in the Supreme Court, every such originating summons shall, unless express provision is made to the contrary, be in a form as near as possible to Form No. 2 of Appendix A.

#### **APPLICATION TO, ORIGINATING SUMMONSES OF CERTAIN PROVISIONS RELATING TO WRITS (O.5, r.4)**

4. (1) The provisions of Rules 4 and 5 of Order 5 shall apply mutatis mutandis to every originating summons.

(2) Upon sealing an originating summons, an officer of the registry shall insert the date and time for attendance before the Court, judge or magistrate, as the case be.

(3) Subject to the last preceding paragraph, the provisions of Rule 7 of Order 5 shall apply mutatis mutandis to originating summonses.

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## **ORDER 7**

### **INTERLOCUTORY MOTIONS AND SUMMONSES**

#### **TYPE OF PROCESS TO BE USED (O.7, r.1)**

1. Interlocutory applications shall, subject to the provisions of paragraph (2) of Rule 1 of Order 27 be made -

(a) by notice of motion, where the application is to the Court; and

(b) by summons, where the application is to a judge or a magistrate in Chambers.

## **FORMS (O.7, r.2)**

2. (1) Every notice of motion shall be in Form No. 4 of Appendix A.
- (2) Every summons shall be in Form No. 5 of Appendix A.
- (3) Every notice of motion and every summons shall bear the number of the suit assigned by the registry.

## **TIME OF HEARING TO BE INSERTED (O.7, r.3)**

3. Upon sealing a notice of motion or a summons, an officer of the registry shall insert the date and time for attendance before the Court, judge, Registrar or magistrate, as the case may be.

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## **ORDER 8**

### **SERVICE OF WRITS OF SUMMONS AND ORIGINATING SUMMONSES**

#### **GENERAL PROVISIONS (O.8, r.1)**

1. (1) Subject to the provisions of any written law and these Rules, a writ of summons must be served personally on each defendant.
- (2) Where a defendant's barrister and solicitor or pleader indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the suit begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.
- (4) Where a writ is duly served on a defendant otherwise than by virtue of either of the last two preceding paragraphs, then, subject to Rule 4 of Order 9, unless the person serving it has indorsed on it the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the suit begun by the writ shall not be entitled to enter final or interlocutory judgment against that defendant in default of appearance or in default of defence.

#### **SERVICE OF WRIT ON AGENT OF OVERSEAS PRINCIPAL (O.8, r.2)**

2. (1) Where the Court out of which a writ of summons has been issued is satisfied on an ex parte application that -

(a) a contract has been entered into within Nauru with or through an agent who is either a natural person residing or carrying on business within Nauru or a body corporate having a registered office or a place of business within Nauru;

(b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such a person nor such a body corporate; and

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorise service of a writ beginning a suit relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of Nauru.

### **SERVICE OF WRIT IN PURSUANCE OF CONTRACT (O.8, r.3.)**

3. (1) Where -

(a) a contract contains a term to the effect that a Court of the Republic shall have jurisdiction to hear and determine any suit in respect of a contract or, apart from any such term, a Court of the Republic has jurisdiction to hear and determine any such suit; and

(b) the contract provides that, in the event of any suit in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner or at such place, whether within or out of Nauru, as may be so specified,

then, if a suit in respect of the contract is begun in that Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to the next following paragraph, be deemed to have been duly served on the defendant.

(2) A writ which is served out of Nauru in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of the last preceding paragraph unless leave to serve the writ, or notice thereof, out of Nauru has been granted under Rule 1 or Rule 2 of Order 9.

### **SERVICE OF ORIGINATING SUMMONS OTHER THAN A SUMMONS UNDER SECTION 14 (O.8, r.4)**

4. The preceding rules of this Order shall apply in relation to an originating summons for leave to commence a suit in the Supreme Court where the judge orders service and, where

under the provisions of these Rules or any other written law a suit may be commenced by an originating process other than a writ of summons, to such originating process.

**SERVICE OF ORIGINATING SUMMONS UNDER SECTION 14 OF THE ACT (O.8, r.5)**

5. An originating summons commencing a suit under section 14 of the Act shall be served on the defendant personally or, if he cannot by the exercise of due diligence be found, on an adult person residing in the house in which the defendant usually resides or, if he is outside Nauru, in which he usually resided immediately before he departed from Nauru.

**WHO MAY SERVE (O.8, r.6)**

6. A writ of summons or originating summons may be served in Nauru by any person other than a party to the suit.

**COST OF SERVICE (O.8, r.7)**

7. A person serving a writ of summons or originating process in Nauru may be paid by the party on whose behalf he serves it a fee therefor not exceeding five dollars.

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**ORDER 9**

**SERVICE OF WRIT OR NOTICE OF WRIT OUT OF JURISDICTION**

**PRINCIPAL CASES IN WHICH SERVICE OF WRIT, OR NOTICE THEREOF OUT OF JURISDICTION IS PERMISSIBLE (O.9, r.1)**

1. (1) Provided that the writ does not contain any such claim as is mentioned in subparagraph (a) of Rule 2(1) of Order 48, service out of Nauru of a writ of summons or notice of a writ of summons issued out of the Supreme Court is permissible with the leave of the Court in the following cases, that is to say -

(a) if the whole subject-matter of the suit begun by the writ is land situated within Nauru, with or without rents or profits, or the perpetuation of testimony relating to land so situated;

(b) if an act, deed, will, contract, obligation or liability affecting land situated within Nauru is sought to be construed, rectified, set aside or enforced in the suit begun by the writ;

(c) if in the suit begun by the writ relief is sought against a person domiciled or ordinarily resident within Nauru;

(d) if the suit begun by the writ is for the administration of the estate of a person who died domiciled within Nauru or if the suit begun by the writ is for any relief or remedy which might be obtained in any such suit as aforesaid;

(e) if the suit begun by the writ is for the execution, as to property situated within Nauru, of the trusts of a written instrument, being trusts that ought to be executed according to the law of Nauru and of which the person to be served with the writ is a trustee or if the suit begun by the writ is for any relief or remedy which might be obtained in any such suit as aforesaid;

(f) if the suit begun by the writ is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being, in either case, a contract which -

(i) was made within Nauru; or

(ii) was made by or through an agent trading or residing within Nauru on behalf of a principal trading or residing out of Nauru; or

(iii) is by its terms, or by implication, governed by Nauruan law;

(g) if the suit begun by the writ is brought in respect of a breach committed within Nauru of a contract made within or out of Nauru, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of Nauru that rendered impossible the performance of so much of the contract as ought to have been performed within Nauru;

(h) if the suit begun by the writ is founded on a tort committed within Nauru;

(i) if in the suit begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within Nauru, whether or not damages are also claimed in respect of a failure to do or the doing of that thing;

(j) if, the suit begun by the writ being properly brought against a person duly served within Nauru, a person out of the jurisdiction is a necessary or proper party thereto;

(k) if the suit begun by the writ is either by a mortgagee of property situated within Nauru, other than land, and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage or by a mortgagor of property so situated, other than land, and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property but not a personal judgment.

In this paragraph "mortgage" includes a charge or lien, "mortgagee" means a person entitled to, or interested in, a mortgage and "mortgagor" means a person entitled to, or interested in property subject to a mortgage.

(2) Service of a writ of summons or a notice thereof in any place out of Nauru is permissible without the leave of the Court if every claim made in the suit begun by the writ is one which by virtue of any written law the Supreme Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within Nauru or that the wrongful act, neglect or default giving rise to the claim did not take place within Nauru.

(3) Where a writ or notice of a writ is to be served out of Nauru under the last preceding paragraph, the time to be inserted in the writ or notice within which the defendant served therewith must enter an appearance shall be limited in accordance with the practice adopted under paragraph (3) of Rule 3.

**SERVICE OUT OR JURISDICTION IN SUITS RELATING TO CERTAIN CONTRACTS (O.9, r.2)**

2. Where it appears to a Court that a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any suit in respect of the contract, the Court may grant leave for service out of Nauru of the writ or notice of the writ by which a suit in respect of the contract is begun.

**APPLICATION FOR AND GRANT OF, LEAVE TO SERVE WRIT OR NOTICE OF WRIT OUT OF NAURU (O.9, r.3)**

(1) An application for the grant of leave under Rule 1 or Rule 2 must be supported by an affidavit stating the grounds on which the application is made and that, in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is or probably may be found.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of Nauru under this Order.

(3) An order granting under Rule 1 or Rule 2 leave to serve a writ, or notice of a writ, out of Nauru must limit a time within which the defendant to be served must enter an appearance.

**SERVICE OF NOTICE OF WRIT OUT OF NAURU: GENERAL (O.9, r.4)**

4. (1) Subject to the following provisions of this Rule, Rule 1 of Order 8 and Rule 4 of Order 42, shall apply in relation to the service of a writ of summons or notice of a writ notwithstanding that the writ or notice is to be served out of Nauru.

(2) Nothing in this Rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ or notice of a writ which is to be served out of Nauru need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.

(4) Where a certificate under the following provisions of this rule is produced in relation to the service of a writ or notice of a writ in accordance with Rule 5, paragraph (4) of Rule 1 of Order 8 shall not apply in relation to that service.

(5) An official certificate stating that a notice of a writ as regards which Rule 5 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate -

(a) by a Nauruan consular authority, or the consular authority of another country prescribed by the Minister by notice in the Gazette, in that country; or

(b) by the government or judicial authorities of that country,

shall be evidence of the facts so stated.

(6) A document purporting to be such a certificate as is mentioned in the last preceding paragraph shall, until the contrary is proved, be deemed to be such a certificate.

**SERVICE OF WRIT OR NOTICE OF WRIT THROUGH FOREIGN GOVERNMENTS, ETC. (O.9, r.5)**

5. (1) Where in accordance with these Rules a writ of summons or notice of a writ is to be served on a defendant in any country with respect to which there subsists any Convention providing for service in that country of process of the Supreme Court, the Writ or notice may be served -

(a) through the judicial authorities of that country; or

(b) through a Nauruan consular authority in that country, subject to any provision of the Convention as to the nationality of persons who may be so served.

(2) Where in accordance with these Rules a writ or notice of a writ is to be served on a defendant in any country with respect to which there does not subsist a Convention providing for service in that country of process of the Supreme Court, the writ or notice may be served -

(a) through the government of that country, where that government is willing to effect service; or

(b) through a Nauruan consular authority, or the consular authority of another country prescribed by the Minister by notice in the Gazette, in that country, except where service through such an authority is contrary of the law of that country.

(3) Where a person wishes to serve a writ or notice of a writ in any country -

(a) through the judicial authorities of that country under paragraph (1); or

(b) through a Nauruan consular authority, or the consular authority of another country, under paragraph (1) or paragraph (2); or

(c) through the government of that country under paragraph (2);

that person must lodge in the registry a request for service of the writ or a notice thereof by that method, together with a copy of the writ or notice and an additional copy thereof for each person to be served.

(4) Every copy of a writ or notice lodged under paragraph (3) must be accompanied by a translation of the writ or notice in the official language of the country in which service is to

be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected;

Provided that this paragraph shall not apply in relation to a copy of a writ or notice which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a Nauruan or other consular authority on a Nauruan citizen or a British subject, unless the service is to be effected under the last preceding paragraph and the Convention with respect of that country expressly requires the copy to be accompanied by a translation.

(5) Every translation lodged under the last preceding paragraph must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, address and occupation and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (3) shall be sent by the Registrar to the Chief Secretary with a request that he arrange for the writ or the notice to be served by the method indicated in the request lodged under paragraph (3) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

#### **UNDERTAKING TO PAY EXPENSES OF SERVICE INCURRED BY THE REPUBLIC (O.9, r.6)**

6. Every request lodged under paragraph (3) of Rule 5 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by or on behalf of the Republic in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Chief Secretary and to produce a receipt for the payment to the Registrar.

#### **SERVICE OF ORIGINATING SUMMONS, NOTICE OF MOTION, ETC. (O.9, r.7)**

7. (1) Service out of Nauru of an originating summons issued out of the Supreme Court is permissible with the leave of the Court.

(2) Service out of Nauru of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.

(3) Paragraphs (1) and (2) of Rule 3 shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under Rule 1 or Rule 2.

(4) Rules 4, 5 and 6 shall apply in relation to any document for the service of which out of Nauru leave has been granted under this rule as they apply in relation to a writ of summons or a notice thereof.



## **ENTRY OF APPEARANCE TO WRIT OF SUMMONS AND ATTENDANCE ON ORIGINATING SUMMONS**

### **MODE OF ENTERING APPEARANCE (O.10, r.1)**

1. (1) Subject to the next following paragraph and to Rule 2 of Order 52, a defendant to a suit begun by writ of summons may, whether or not he is sued as a trustee or personal representative or in any other representative capacity, enter an appearance in the suit and defend it by a barrister and solicitor or pleader or in person.

(2) Except as expressly provided by any enactment, a defendant to such a suit who is a body corporate may not enter an appearance in the suit or defend it otherwise than by a barrister and solicitor or pleader.

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by Rule 2, and a copy thereof, and handing them in at, or sending them by post to, the registry of the Court out of which the writ was issued.

(4) If two or more defendants to a suit enter an appearance by the same barrister and solicitor or pleader and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

(5) Where a defendant attends in person at the registry of the Court, the Registrar or the Clerk, as the case may be, shall, if requested to do so, prepare, or direct an officer of the registry to prepare, the memorandum of appearance for the defendant and shall inform the defendant, or cause an officer of the registry to inform the defendant, of the provisions of paragraph (2) of Rule 3 relating to sending a copy of the memorandum of appearance to the plaintiff, of Order 16 relating to the consequences of failing to serve a defence within the time fixed by these Rules and of Rule 23 of Order 15 relating to verbal statements of defence.

### **MEMORANDUM OF APPEARANCE (O.10, r.2)**

2. (1) A memorandum of appearance is a request to the registry to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 7 or Form No. 8 of Appendix A, as is appropriate, and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the barrister and solicitor or pleader by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify -

(a) in the case of a defendant appearing in person, the address of his place of residence and, if his place of residence is not within Nauru or if he has no place of residence, the address of a place within Nauru at or to which documents for him may be delivered or sent; and

(b) in the case of a defendant appearing by a barrister and solicitor or pleader, a business address of his barrister and solicitor or pleader within Nauru;

and, where the defendant enters an appearance in person, the address within Nauru specified under sub-paragraph (a) shall be his address for service, but otherwise the business address of his barrister and solicitor or pleader shall be his address for service.

(4) Where the defendant enters an appearance by a barrister and solicitor or pleader who is acting as agent for another barrister and solicitor or pleader, the memorandum of appearance must state that the first-named barrister and solicitor or pleader so acts and must also state the name and address of that other barrister and solicitor or pleader.

(5) If the Court out of which the writ was issued is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

### **PROCEDURE ON RECEIPT OF MEMORANDUM OF APPEARANCE (O.10, r.3)**

3. (1) On receiving the requisite documents an officer of the registry must in all cases affix to the copy of the memorandum of appearance an official stamp showing the date on which he received those documents and enter the appearance in the cause book, and -

(a) if the requisite documents were handed in at the registry, hand back that copy of the memorandum, and

(b) If they were sent by post, send that copy by post to the plaintiff or, as the case may be, his barrister and solicitor or pleader at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his barrister and solicitor or pleader at the defendant's address for service a notice of appearance, stamped with an official stamp showing that date, stating that the defendant specified therein entered an appearance on that date.

(2) Where the defendant enters an appearance by handing in the requisite documents at the registry, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's barrister and solicitor or pleader, at the plaintiff's address for service, the copy of the memorandum of appearance handed back to him under paragraph (1).

### **TIME LIMITED FOR APPEARING (O.10, r.4)**

4. References in these Rules to the time limited for appearing are reference -

(a) in the case of a writ served within Nauru, to fourteen days after service of the writ, including the day of service, or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and

(b) in the case of a writ or notice of a writ served out of Nauru, to the time limited under paragraph (3) of Rule 3 of Order 9, or, where that time has been extended as aforesaid, to that time as so extended.

### **LATE APPEARANCE (O.10, r.5)**

5. (1) A defendant may not enter an appearance in a suit after judgment has been entered therein except with the leave of the Court in which the judgment was entered.

(2) Except as provided by the last preceding paragraph, nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from entering an appearance in a suit after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

#### **CONDITIONAL APPEARANCE (O.10, r.6)**

6. (1) A defendant to a suit may with the leave of the Court in which the suit has been commenced enter a conditional appearance in the suit.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under Rule 7 and the Court makes an order thereunder.

#### **APPLICATION TO SET WRIT ASIDE, ETC. (O.10, r.7)**

7. (1) A defendant to a suit commenced by a writ of summons may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within fourteen days after entering the appearance, apply to the Court out of which the writ was issued for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of Nauru.

(2) An application under this rule must be made by summons.

#### **ATTENDANCE IN COMPLIANCE WITH ORIGINATING SUMMONS (O.10, r.8)**

8. A defendant named in and served with an originating summons must attend, either in person or by a barrister and solicitor or pleader, before the Court, judge, Registrar or magistrate, as required thereby, on the date and at the time and place specified.

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### **ORDER 11**

#### **DEFAULT OF APPEARANCE OR ATTENDANCE**

##### **CLAIM BY WRIT FOR LIQUIDATED DEMAND (O.11, r.1)**

1. (1) Where a writ of summons is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 5 per cent per annum.

**CLAIM FOR UNLIQUIDATED DAMAGES (O.11, r.2)**

2. Where a writ of summons is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the suit against the other defendants, if any.

**CLAIM IN DETINUE (O.11, r.3)**

3. Where a writ of summons is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either -

(a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or

(b) interlocutory judgment for the value of the goods to be assessed and costs, and proceed with the suit against the other defendants, if any.

**CLAIM FOR POSSESSION OF LAND (O.11, r.4)**

4. (1) When, a writ of summons is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his barrister and solicitor or pleader, or, if he sues in person, an affidavit, stating that he is not claiming any relief in the suit of the nature specified in Rule 1 of Order 59, enter judgment for possession of the land as against that defendant and costs, and proceed with the suit against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

**MIXED CLAIMS (O.11, r.5)**

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the suit against the other defendants, if any.

**OTHER CLAIMS BY WRIT OF SUMMONS (O.11, r.6)**

6. (1) Where a writ of summons is indorsed with a claim of a description not mentioned in Rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the suit as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the suit, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under the last preceding paragraph shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Rule 9 of Order 42, be served on the defendant against whom it is sought to enter judgment.

**CLAIM BY ORIGINATING SUMMONS UNDER SECTION 14 OF THE ACT (O.11, r.7)**

7. Where a defendant named in an originating summons in a suit commenced under section 14 of the Act fails to attend, either in person or by a barrister and solicitor or pleader, before the District Court on the date and at the time and place specified therein and the plaintiff or his barrister and solicitor or pleader is present, the Court shall, unless it has reason to believe that the failure is not due to the fault of the defendant or his barrister and solicitor or pleader or the plaintiff consents to the proceedings being adjourned, proceed to hear and determine the suit forthwith notwithstanding the absence of the defendant.

**PROOF OF SERVICE OF WRIT, ETC. (O.11, r.8)**

8. (1) Judgment shall not be entered against a defendant under this Order nor shall the District Court hear and determine a suit in the absence of the defendant under Rule 7 unless -

(a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ of summons, notice of the writ or originating summons on the defendant; or

(b) the plaintiff produces the writ indorsed by the defendant's barrister and solicitor or pleader with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in a suit begun by writ, an application is made to the Court out of which the writ was issued for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

**SETTING ASIDE JUDGMENT (O.11, r.9)**

9. (1) The Court in which any judgment has been entered in pursuance of this Order, other than under Rule 7, may set aside or vary such judgment on such terms as it thinks just.

(2) Where the District Court has heard and determined a suit in the absence of a defendant in pursuance of Rule 7, it may, on such terms as it thinks fit, set aside or vary the judgment in such suit in respect of that defendant if it is satisfied that the defendant's failure to attend, either in person or by a barrister and solicitor or pleader, as required by the summons was not due to his own fault or the fault of his barrister and solicitor or pleader and that the defendant has an arguable defence to the claim.

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## **ORDER 12**

### **CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES**

#### **JOINDER OF CAUSES OF ACTION (O.12, r.1)**

1. (1) Subject to section 14 of the Act, to the provisions of any written laws relating to the jurisdiction of the District Court and to paragraph (1) of Rule 6, a plaintiff may in one suit claim relief against the same defendant in respect of more than one cause of action -

(a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action;

(b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others; or

(c) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by originating summons before the issue of the writ, and the affidavit in support must state the grounds of the application.

#### **COUNTERCLAIM AGAINST PLAINTIFF (O.12, r.2)**

2. (1) Subject to the provisions of any written laws relating to the jurisdiction of the District Court and to paragraph (2) of Rule 6, a defendant in any suit, other than a suit commenced under section 14 of the Act, who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the suit in respect of any matter, whenever and however arising, may, instead of bringing a separate suit, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a Counterclaim as if the counterclaim were a separate suit and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the suit or that the suit is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

### **COUNTERCLAIM AGAINST ADDITIONAL PARTIES (O.12, r.3)**

3. (1) Where a defendant to a suit, other than a suit commenced under section 14 of the Act, who makes a counterclaim against the plaintiff alleges that any other person, whether or not a party to the suit, is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the suit, then, subject to paragraph (2) of Rule 6, he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the suit and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the suit, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by the last preceding paragraph to serve a copy of the counterclaim made by him on any person who before service is already a party to the suit must do so within the period within which by virtue of Rule 2 of Order 15 he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the suit, the following provisions of these Rules, namely, Order 8 (except paragraph (4) of Rule 1), Orders 9, 10 and 11 and Rule 4 of Order 48 shall, subject to the last preceding paragraph, apply in relation to the counterclaim and the proceedings arising from it as if -

(a) the counterclaim were a writ and the proceedings arising from it a suit; and

(b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that suit.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the suit must be indorsed with a notice, in Form No. 9 of Appendix A, addressed to that person stating the effect of Rule 1 of Order 10 as applied by the last preceding paragraph.

### **COUNTERCLAIMS IN SUITS COMMENCED UNDER SECTION 14 OF THE ACT (O.12, r.4)**

4. (1) The provisions of Rule 1 shall apply to suits commenced under section 14 of the Act but the total sum claimed in respect of all the causes of action shall not exceed \$100 and no claim shall be included which is not a liquidated demand.

(2) The provisions of Rules 2 and 3 shall not apply to suits commenced under section 14 of the Act.

(3) Where a defendant in a suit commenced under section 14 of the Act alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the suit, whenever and however arising, he may, instead of bringing a separate suit, serve on the plaintiff not less than two days before the date of the hearing shown on the summons a notice in Form No. 10 of Appendix A stating the nature of such claim, relief or remedy alleged and, if he does so, shall file a copy thereof in the registry of the District Court before the date of the hearing.

(4) Where a defendant serves a notice on the plaintiff under the last preceding paragraph, the Court shall -

(a) if the defendant's claim consists only of a liquidated demand for an amount not exceeding \$100, hear and determine the counterclaim as part of the suit; and

(b) if the defendant's claim does not consist only of a liquidated demand for an amount not exceeding \$100, either -

(i) dismiss the suit and direct that it be recommenced by a writ of summons; or

(ii) hear and determine only the plaintiff's claim.

(5) Where under the last preceding paragraph the Court hears and determines only the plaintiff's claim, it shall make such order regarding the execution of the judgment in the suit as it considers necessary to ensure that the defendant's interests will not be prejudiced thereby if with due expedition he commences and prosecutes a suit to enforce his claim against the plaintiff.

#### **JOINDER OF PARTIES (O.12, r.5)**

5. (1) Subject to paragraph (1) of Rule 6, two or more persons may be, joined together in one suit as plaintiffs or as defendants with the leave of the Court or where -

(a) if separate suits were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the suits, and

(b) all rights to relief claimed in the suit, whether they are joint, several or alternative, are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any suit claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any written laws making express provision to the contrary or unless the Court gives leave to the contrary, be parties to the suit and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate suit.

(3) Where relief is claimed in a suit against a defendant who is alleged to be jointly liable with some other person and also severally liable, that other person need not be made a defendant to the suit; but where persons are jointly, but not severally, liable under a contract



and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the suit, by order stay proceedings in the suit until the other persons so liable are added as defendants.

**COURT MAY ORDER SEPARATE TRIAL. (O.12, r.6)**

6. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same suit or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same suit, and it appears to the Court that the joinder of causes of action or of parties as the case maybe, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) if it appears on the application of any party against whom a counterclaim is made that they subject-matter of the counterclaim ought for any reason to be disposed of by a separate suit, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

**MISJOINDER AND NONJOINDER OF PARTIES (O.12, r.7)**

7. (1) No suit shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any suit determine the issue or questions in dispute so far as they affect the rights and interests of the persons who are parties to the suit.

(2) At any stage of the proceedings in any suit the Court may on such terms as it thinks just and either of its own motion or on application -

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party to cease to be a party;

(b) order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the suit may be effectually and completely determined and adjudicated upon be added as a party;

but no person shall be added as a plaintiff without his consent signified in writing or in such manner as may be authorised.

(3) An application by any person for an order under the last preceding paragraph adding him as a defendant must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the suit.

**CHANGE OF PARTIES BY REASON OF DEATH, ETC. (O.12, r.8)**

(1) Where a party to a suit dies or becomes bankrupt but the cause of action survives, the suit shall not abate by reason of the death of bankruptcy.

(2) Where at any stage of the proceedings in any suit the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the suit may be effectually and completely determined and adjudicated upon, order that other person to be made a party to

the suit and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made ex parte.

(3) An order may be made under this rule for a person to be made a party to a suit notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but -

(a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and

(b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the suit or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the suit was commenced.

(5) Any application to the Court by a person with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

#### **PROVISIONS CONSEQUENTIAL ON MAKING OF ORDER UNDER RULE 7 OR RULE 8 (O.12, r.9)**

9. (1) Where an order is made under Rule 7 the writ of summons or originating summons by which the suit in question was begun must be amended accordingly and must be indorsed with -

(a) a reference to the order in pursuance of which the amendment is made; and

(b) the date on which the amendment is made;

and the amendment must be made within such period as maybe specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under Rule 7 a person is to be made a defendant, the rules as to service of a writ of summons or originating summons shall apply accordingly to service of the amended writ or summons on him, but before serving the writ or summons on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where in a suit commenced by a writ of summons by an order under Rule 7 or Rule 8 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under Rule 8, to the modification that the time limited for appearing shall begin with

the date on which the order is served on him under paragraph (4) of Rule 8 or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where in a suit commenced by a writ of summons by an order under Rule 7 or Rule 8 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until -

(a) where the order is made under Rule 7, the writ has been amended in relation to him under this rule and, if he is a defendant, has been served on him, or

(b) where the order is made under Rule 8, the order has been served on him under paragraph (4) of Rule 8 or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(5) Where in a suit commenced by an originating summons under section 14 of the Act by an order made under Rule 7 or Rule 8 a person is to be made a defendant, to be added as a party or to be made a party in substitution for some other party, then, unless the District Court directs otherwise, that person shall be served with a copy of the order and with a copy of the originating summons and with a summons in Form No. 11 of Appendix A requiring his attendance before the Court on a date and at a time specified in the summons.

#### **FAILURE TO PROCEED AFTER DEATH OF PARTY (O.12, r.10)**

10. (1) Where after the death of a plaintiff or defendant in any suit the cause of action survives but no order under Rule 8 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, as defendant, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court in which the suit is pending for all order that, unless the suit is proceeded with within such time as may be specified in the order, the suit shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives, if any, of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any suit a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate suit and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

#### **SUITS FOR POSSESSION OF LAND (O.12, r.11)**

11. (1) Without prejudice to Rule 7, a Court may at any stage of the proceedings in a suit therein for possession of land order any person not a party to the suit who is in possession of the land, whether in actual possession or by a tenant, to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and, if by a tenant, naming him.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the suit within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

#### **RELATOR SUITS (O.12, r.12)**

12. Before the name of any person is used in any suit as a relator, that person must give a written authorisation so to use his name to his barrister and solicitor or pleader and the authorisation must be filed in the registry.

#### **REPRESENTATIVE PROCEEDINGS (O.12, r.13)**

13. (1) Where numerous persons have the same interest in any suit not being such a suit as is mentioned in Rule 14, the suit may be commenced, and, unless the Court in which it is commenced otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of a suit under this Rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the suit; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under Rule 7 adding that person as a defendant.

(3) A judgment or order given in a suit under this Rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the suit except with the leave of the Court.

(4) An application for the grant of leave under the last preceding paragraph must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in a suit may be tried and determined.

#### **REPRESENTATION OF INTERESTED PERSONS WHO CANNOT BE ASCERTAINED, ETC. (O.12, r.14)**

14. (1) In any suit concerning -

- (a) the administration of the estate of a deceased person,
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute,

the Court in which the suit is pending, if satisfied that it is expedient so to do, and that one or more of the conditions specified in the next following paragraph are satisfied, may appoint one or more persons to represent any person, including an unborn person, or class who is or may be interested, whether presently or for any future, contingent or unascertained interest, in or affected by the suit.

(2) The conditions for the exercise of the power conferred by the last preceding paragraph are as follows -

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient, regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined, to exercise the power for the purpose of saving expense.

(3) Where in any suit to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such suit, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the suit, including unborn or unascertained persons, but -

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

**PRESENTATION OF BENEFICIARIES BY TRUSTEES, ETC. (O.12, r.15)**

15. (1) Any suit including a suit to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in that suit shall be binding on those persons unless a Court in the same or another suit otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned suit.

(2) The last preceding paragraph is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the suit or to make an order under Rule 14.

(3) Where the first-mentioned suit in paragraph (1) was heard and determined by the Supreme Court, the District Court shall, notwithstanding the provisions of that paragraph, not have power in any suit therein to make an order at variance with the judgment or order of the Supreme Court.

**REPRESENTATION OF DECEASED PERSON INTERESTED IN PROCEEDINGS**  
(O.12, r.16)

16. (1) Where in any suit it appears to the Court in which that suit is pending that deceased person was interested in the matter in question in the suit and that there is no personal representative of the deceased person, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the suit; and any such order, and any judgment or order subsequently given or made in the suit, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such, if any, of the persons having an interest in the estate as it thinks fit.

**DECLARATORY JUDGEMENT** (O.12, r.17)

17. No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

**CONDUCT OF PROCEEDINGS** (O.12, r.18)

18. A Court may give the conduct of any suit therein to such party as it thinks fit.

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**ORDER 13**

**THIRD PARTY AND SIMILAR PROCEEDINGS**

### **THIRD PARTY NOTICE (O.13, r.1)**

1. (1) Where in any suit commenced by a writ of summons a defendant who has entered an appearance -

(a) claims against a person not already a party to the suit any contribution or indemnity;

(b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject-matter of the suit should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the suit;

then the defendant may issue a notice in Form No. 12 or Form No. 13 of Appendix A, whichever is appropriate, in this Order referred to as a third party notice, containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and ground of the claim made by him or of the question or issue required to be determined.

(2) A third party notice may not be issued without the leave of the Court unless it is issued by the defendant before he serves his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the suit, in this Order referred to as a third party, with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

### **APPLICATION FOR LEAVE TO ISSUE THIRD PARTY NOTICE (O.13, r.2)**

2. Application for leave to issue a third party notice in a suit commenced by a writ of summons may be made ex parte but the Court may direct a summons for leave to be issued. The application must be supported by an affidavit stating -

(a) the nature of the claim made by the plaintiff in the suit;

(b) the stage which proceedings in the suit have reached;

(c) the nature of the claim made by the applicant or particulars of the question issued required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(d) the name and address of the person against whom the third party notice is to be issued.

**ISSUE AND SERVICE OF, AND ENTRY OF APPEARANCE TO, THIRD PARTY NOTICE (O.13, r.3)**

3. (1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ of summons by which the suit was commenced and of the pleadings, if any, served in the suit.

(3) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, paragraphs (2) and (4) of Rule 7 of Order 5, Order 8 (except paragraph (4) of Rule 1), Order 9, Order 10 and Rule 4 of Order 48, shall apply in relation to a third party notice and to the proceedings begun thereby as if -

(a) the third party notice were a writ of summons and the proceedings begun thereby a suit; and

(b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that suit.

**THIRD PARTY DIRECTIONS (O.13, r.4)**

4. (1) If the third party enters an appearance, the defendant who issued the third party notice must, by summons to be served on all the other parties to the suit, apply to the Court for directions.

(2) If no summons is served on the third party under the last preceding paragraph, the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the suit, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may -

(a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice; and may do so either before or after any judgment in the suit has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the suit, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the suit.



(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

**DEFAULT OF THIRD PARTY, ETC. (O.13, r.5)**

5. (1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so -

(a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment, including, judgment by consent, or decision in the suit in so far as it is relevant to any claim, question or issue stated in that notice; and

(b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the suit, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third, party or the defendant by whom a third party notice was issued makes default in serving any, pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgement entered under sub-paragraph (b) of paragraph (1) or under the last preceding paragraph on such terms, if any, as it thinks just.

**SETTING ASIDE THIRD PARTY PROCEEDINGS (O.13, r.6)**

6. Proceedings on a third party notice may, at any stage of the suit, be set aside by the Court.

**JOINDER OF THIRD PARTY IN SUIT COMMENCED UNDER SECTION 14 OF THE ACT (O.13, r.7)**

7. (1) Where a suit has been commenced under section 14 of the Act and the defendant claims against any person not already a party to the suit any contribution or indemnity, he may at the time set for hearing the suit apply to the District Court for leave to joint such person as a third party to the suit.

(2) No summons, notice or affidavit in support of the application need be filed, but the Court may require the defendant to state on oath the nature of his claim before it grants leave to join the person as a third party.

(3) Where under this rule leave is given to a defendant to joint any person as a third party, the Court shall set a new date and time for hearing the suit and the defendant shall cause a notice in Form No. 14 of Appendix A to be served on such person requiring him to attend before the Court on the date and at the time specified therein.

(4) At the hearing of the suit the District Court may hear and determine the plaintiff's claim against the defendant and the defendant's claim against the third party either separately or together as it thinks most expedient in the interests of justice.

(5) Leave shall not be granted under this rule where the person whom the defendant seeks to join as a third party is not a natural person normally resident in Nauru but, where the Court is satisfied that, if the person sought to be joined had been a natural person normally resident in Nauru, it would have been proper to grant leave, it shall stay the proceedings and direct that the suit be recommenced by a writ of summons.

#### **JUDGEMENT BETWEEN DEFENDANT AND THIRD PARTY (O.13, r.8)**

8. (1) Where in any suit a defendant has issued a third party notice under Rule 7 and such notice has been served, the Court may at or after the trial of the suit or, if the suit is decided otherwise than by trial, on an application by summons or motion, order such judgement as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where in a suit judgement is given against a defendant and judgement is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

#### **CLAIMS AND ISSUES BETWEEN DEFENDANT AND ANOTHER PARTY (O.13, r.9)**

9. (1) Where in any suit a defendant who has entered an appearance -

(a) claims against a person who is already a party to the suit any contribution or indemnity;

(b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject-matter of the suit should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the suit;

then, subject to the next following paragraph, the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

(2) Where a defendant makes such a claim as is mentioned in the last preceding paragraph and that claim could be made by him by counterclaim in the suit, that paragraph shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the suit or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom,

such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and, where he has entered an appearance in the suit or is a plaintiff, had entered an appearance to the notice.

(4) Paragraph (2) of Rule 4 shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after entering an appearance" there were substituted the words "14 day after service of the notice on him."

(5) Where in a suit commenced under section 14 of the Act a defendant claims any contribution or indemnity against a person who is already a party, not being a claim which could be made by counterclaim in the suit, he may state that claim at the commencement of the hearing of the suit, or, with the leave of the Court, at any later stage therein, and, if he does so, such claim shall be determined by the Court at the same time as it determines the issues to be determined in the suit.

### **CLAIMS BY THIRD AND SUBSEQUENT PARTIES (O.13, r.10)**

10. (1) Where a defendant has served a third party notice or a notice under Rule 7 and the third party makes such a claim or requirement as is mentioned in Rule 1, Rule 7 or Rules 9, this Order shall, with the modification mentioned in the next following paragraph and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim requirement.

(2) The modification referred to in the last preceding paragraph is that the next following paragraph shall have effect in relation to the issue of a notice under Rule 1 by a third party in substitution for paragraph (2) of Rule 1.

(3) A third party may not issue a notice under Rule 1 without the leave of the Court unless he issues the notice before the expiration of 14 days after the time limited appearing to the notice issued against him.

### **OFFER OF CONTRIBUTION (O.13, r.11)**

11. If, before the trial of a suit, a party to the suit who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable in the suit to another party to contribute towards any debt or damages which may be recovered against that other party in the suit, makes, without prejudice to his defence, a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the Court at the trial, the offer shall not be brought to the attention of the Court until questions of liability and amount of debt or damages have been decided.

### **COUNTERCLAIM BY DEFENDANT (O.13, r.12)**

12. Where in any suit a counterclaim is made by a defendant, the preceding provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the suit, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

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**ORDER 14**

**INTERPLEADER**

**CLAIM TO GOODS, ETC., TAKEN IN EXECUTION (O.14, r.1)**

1. (1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of a Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the Director of Police and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the Director must forthwith give notice thereof to the execution creditor and the execution creditor must, within 8 days after receiving the notice, give notice to the Director informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the Director for any fees and expenses incurred by the Director before receipt of that notice.

(3) Where -

(a) the Director receives a notice from an execution creditor under the last preceding paragraph disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice, and

(b) the claim made under this rule is not withdrawn, the Director may apply to a Court for relief under this Order.

(4) The Court to which the Director may apply under the last preceding paragraph shall be -

(a) where -

(i) the process, or any one of the process, in execution of which the money, goods or chattels were taken was issued out of the District Court; or

(ii) the value of the money, goods or chattels claimed does not exceed three thousand dollars, the District Court; and

(b) where all the process in execution of which the money, goods or chattels were taken were issued out of the Supreme Court and their value exceeds three thousand dollars, the Supreme Court.

(5) Where the Director receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule, he shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of proceedings against him for or in respect of his having taken possession of that money or those goods or chattels.

## **MODE OF COMMENCING INTERPLEADER PROCEEDINGS (O.14, r.2)**

2. (1) Where no suit is pending in which the rights of the parties can be properly decided, any application for relief by way of interpleader shall be made by a writ of summons in Form No. 15 of Appendix A commencing a suit of interpleader.

(2) Where a suit of interpleader is commenced, the persons on whom the writ of summons, of the notice thereof, is served must enter an appearance within the time limited on the writ but no pleadings shall be required. At any time after the expiration of the time allowed for all the parties to enter an appearance, the person who commenced the suit may apply by summons for his application for relief to be heard. If he fails to make such application within 30 days of such expiration, any other party to the suit may make the application.

(3) Where a suit is pending in which the rights of the parties can be properly decided, the application shall be made by summons in that suit.

(4) Subject to the next following paragraph, a writ of summons under this rule must be supported by evidence that the applicant -

(a) claims no interest in the subject-matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

(5) Where the applicant is the Director of Police, he shall not provide such evidence as is referred to in the last preceding paragraph unless directed by the Court so to do.

## **POWERS OF COURT (O.14, r.3)**

3. (1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute, hereafter in this Order referred to as "the claimants", appear, the Court may order -

(a) that any claimant be made a defendant in any suit pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order;

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where -

(a) the applicant on a summons under this Order is the Director of Police;

(b) all the claimants consent or any of them so requests; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

(4) Where a defendant to a suit applies for relief under this Order in the suit, the Court may by order stay all further proceedings in the suit.

(5) Where an application for relief is made under this Order by the Director of Police and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels taken by the Director in execution of any process by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

(6) Subject to the preceding provisions of this Order, the Court may in, or for the purposes of, any interpleader proceedings make such order as to costs or any other matter as it thinks just.

#### **DISCOVERY (O.14, r.4)**

4. Orders 21 and 23 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

#### **TRIAL OF INTERPLEADER ISSUE (O.14, r.5)**

5. (1) Order 30 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of a suit.

(2) The Court by which an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

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### **ORDER 15**

#### **PLEADINGS**

#### **SERVICE OF STATEMENT OF CLAIM (O.15, r.1)**

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim, or cause a statement of claim to be served, on the defendant or, if there are two or more defendants, on each defendant, and the statement of

claim must be served either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.

**SERVICE OF DEFENCE (O.15, r.2)**

2. A defendant who enters an appearance in, and intends to defend, a suit must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on film, whichever is the later.

**SERVICE OF REPLY AND DEFENCE TO COUNTERCLAIM (O.15, r.3)**

3. (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with Rule 8; and if no reply is served, paragraph (1) of Rule 14 will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to the counterclaim.

(3) Where a plaintiff serves both a reply and a defence to a counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to a counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

**PLEADINGS SUBSEQUENT TO REPLY (O.15, r.4)**

4. No pleading subsequent to a reply or a defence to a counterclaim shall be served except with the leave of the Court in which the suit is pending.

**SERVICE OF PLEADINGS DURING VACATION (O.15, r.5)**

5. Pleadings shall not be served during a vacation of the Court in which the proceedings are pending except with the leave of that Court or with the consent of all the parties to the action.

**PLEADINGS: FORMAL REQUIREMENT (O.15, r.6)**

6. (1) Every pleading in a suit must bear on its face -

- (a) the year in which the writ of summons in the suit was issued and the number of the suit;
- (b) the title of the suit;
- (c) the Court in which the suit is pending;
- (d) the description of the pleading; and

(e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed -

(a) where the party sues or defends in person, with his name and address;

(b) in any other case, with the name or firm and business address of the barrister and solicitor or pleader by whom it was served and also, if the, barrister and solicitor or pleader is the agent of another, the name or firm and business address of his principal.

(5) Every pleading of a party must be signed by the party's barrister and solicitor or pleader or by the party, if he sues or defends in person.

#### **FACTS, NOT EVIDENCE, TO BE PLEADED (O.15, r.7)**

7. (1) Subject to the provisions of this Rule and Rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence; as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to the last preceding paragraph, the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, but the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

#### **MATTERS WHICH MUST BE SPECIFICALLY PLEADED (O.15, r.8)**

8. (1) A party must in any pleading subsequent to a statement of claim, plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality -

(a) which he alleges makes any claim or defence of the opposite party not maintainable;



(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to the last preceding paragraph, a defendant to a suit for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

#### **MATTER MAY BE PLEADED WHENEVER ARISING (O.15, r.9)**

9. Subject to paragraph (1) of Rule 7, Rule 10 and paragraph (2) of Rule 15, a party may in a party pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

#### **DEPARTURE (O.15, r.10)**

10. A party shall not in any pleading make an allegation of fact, or raise any new ground or claim, inconsistent with a previous pleading of his.

(2) The last preceding paragraph shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

#### **POINTS OF LAW MAY BE PLEADED (O.15, r.11)**

11. A party may by his pleading raise any point of law.

#### **PARTICULARS OF PLEADING (O.15, r.12)**

12. (1) Subject to the next following paragraph, every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words -

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed one hundred words, a figure counting as a word, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made or, such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of fact, matter or thing then, without prejudice to the generality of the last preceding paragraph, the Court may, on such terms as it thinks just, order that party to serve on any other party -

(a) where he alleges knowledge, particulars of the facts on which he relies; and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particular; he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

### **ADMISSIONS AND DENIALS (O.15, r.13)**

13. (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under Rule 14 operates as a denial of it.

(2) A traverse maybe made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) subject to the next following paragraph, every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

### **DENIAL BY JOINDER OF ISSUE (O.15, r.14)**

14. (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to the next following paragraph -

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an

express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

#### **STATEMENT OF CLAIM (O.15, r.15)**

15. (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of cause of action unless that cause of action is mentioned in the writ of summons or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ of summons in the suit was issued.

#### **DEFENCE OF TENDER (O.15, r.16)**

16. Where in any suit a defence of tender before commencement of the suit is pleaded the defendant must pay into court in accordance with Order 19 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

#### **DEFENCE OF SET-OFF (O.15, r.17)**

17. Where a claim by a defendant to a sum of money, whether of an ascertained amount or not, is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

#### **COUNTERCLAIM AND DEFENCE TO COUNTERCLAIM (O.15, r.18)**

18. Without prejudice to the general application of this Order to a counterclaim and defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically, -

(a) paragraph (1) of Rule 15 shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff; and

(b) paragraph (2) of Rule 8, Rule 16 and Rule 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

#### **STRIKING OUT PLEADINGS AND INDORSEMENTS (O.15, r.19)**

19. (1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ of summons in the suit, or anything in any pleading or in the indorsement, on the ground that -

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the suit; or
- (d) it is otherwise an abuse of the process of the Court;

and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under sub-paragraph (a) of the last preceding paragraph.

#### **CLOSE OF PLEADINGS (O.15, r.20)**

20. (1) The pleadings in a suit are deemed to be closed -

(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) The pleadings in a suit are deemed to be closed at the time provided by the last preceding paragraph notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

#### **TRIAL WITHOUT PLEADINGS (O.15, r.21)**

21. (1) Where in a suit to which this Rule applies any defendant has entered an appearance in the suit, the plaintiff or that defendant may apply to the Court by summons for an order that the suit shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this Rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the suit can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the suit to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under the last preceding paragraph, it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the suit as may be appropriate.

#### **SAVING FOR DEFENCE UNDER THE MERCHANT SHIPPING ACTS, 1894 TO 1965, OF ENGLAND (APPLIED) (O.15, r.22)**

22. Nothing in Rules 2 and 35 to 38 of Order 48 shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant

Shipping Acts, 1894 to 1965, or England in their application to Nauru which limits the amount of his liability in connection with a ship or other property.

**PLEADINGS IN SUITS WHERE A PARTY IS NOT REPRESENTED (O.15, r.23)**

23. (1) Where in any suit commenced by a writ of summons a defendant is not represented by a barrister and solicitor or pleader, he may apply in his memorandum of appearance for an appointment to state his defence verbally -

(a) where the suit is in the Supreme Court, to the Registrar, and

(b) Where the suit is in the District Court, to the resident magistrate,

and for his defence to be recorded in writing by the Registrar or the resident magistrate, as the case may be.

(2) Where a defendant states his defence verbally under the preceding paragraph, the Registrar or the resident magistrate shall record it in writing and, where the defendant does not admit any allegation of fact made in the statement of claim, shall record that it is denied, wholly or in part as the case may be. Three typed copies of the defence, indorsed with a note of the fact that the defence was recorded by the Registrar or the resident magistrate under the provisions of this rule, shall as soon as conveniently possible thereafter be supplied to the defendant by the Registrar or the resident magistrate and the defendant shall be informed of the provisions of Rule 2.

(3) A defence recorded by the Registrar or the resident magistrate under this rule may include a set-off but the registrar or resident magistrate shall not prepare a counterclaim.

(4) A defence recorded by the Registrar or the resident magistrate shall be signed and dated by him and shall remain on the case file of the suit in the records of the Court.

(5) Where in any suit commenced by a writ of summons a plaintiff who is not represented by a barrister and solicitor or pleader is served with a counterclaim, he may within three days of such service apply verbally or in writing at the registry of the Court in which the suit has been commenced for an appointment to state his defence to the counterclaim verbally to the Registrar or the resident magistrate, as the case may be, and for his defence to be recorded in writing by the Registrar or the resident magistrate.

(6) The provisions of paragraphs (2), (3) and (4) with necessary modifications shall apply to a defence to a counterclaim in respect of which application is made by the plaintiff under the last preceding paragraph.

(7) Where an application for an appointment to state verbally a defence or a defence to a counterclaim is not made within the time specified in this rule, leave to apply out of time may be granted by the Registrar or the resident magistrate, as the case may be, if he thinks fit, upon written application filed in the registry.

**NO PLEADINGS IN SUITS COMMENCED UNDER SECTION 14 OF THE ACT  
(O.15, r.24)**

24. Where a suit is commenced by an originating summons under section 14 of the Act, Rules 1 to 15 and 17 to 23 of this Order shall not apply and there shall be no pleadings in any such suit but the originating summons shall be indorsed with a clear statement of the nature of the plaintiff's claim.

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## **ORDER 16**

### **DEFAULT OF PLEADINGS**

#### **DEFAULT IN SERVICE OF STATEMENT OF CLAIM (O.16, r.1)**

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the suit and the Court may by order dismiss the suit or make or make such other order on such terms as it thinks just.

#### **DEFAULT OF DEFENCE: CLAIM FOR LIQUIDATED DEMAND (O.16, r.2)**

2. (1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ of summons in respect of the demand and for costs, and proceed with a suit against the other defendants, if any.

(2) Paragraph (2) of Rule 1 of Order 11 shall apply for the purposes of this Rule as it applies for the purposes of that Rule.

#### **DEFAULT OF DEFENCE: CLAIM FOR UNLIQUIDATED DAMAGES (O.16, r.3)**

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the suit against the other defendants, if any.

#### **DEFAULT OF DEFENCE: CLAIM IN DETINUE (O.16, r.4)**

4. Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter either -

(a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs, or

(b) interlocutory judgment against that defendant for the value of the goods to be assessed and costs,

and proceed with the suit against the other defendants, if any.

**DEFAULT OF DEFENCE: CLAIM FOR POSSESSION OF LAND (O.16, r.5)**

5. (1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his barrister and solicitor or pleader, or, if he sues in person, an affidavit, stating that he is not claiming any relief in the suit of the nature specified in Rule 1 of Order 59 enter judgment for possession of the land as against that defendant and for costs, and proceed with the suit against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this Rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

**DEFAULT OF DEFENCE: MIXED CLAIMS (O.16, r.6)**

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in Rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the suit against the other defendants, if any.

**DEFAULT OF DEFENCE: OTHER CLAIMS (O.16, r.7)**

7. (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant or all the defendants, where there is more than one, fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in the last preceding paragraph against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may -

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the suit against the other defendants; or

(b) set down the suit on motion for judgment against the defendant in default at the time when the suit is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

**DEFAULT OF DEFENCE TO COUNTERCLAIM (O.16, r.8)**

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of Rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim were a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

**SETTING ASIDE JUDGMENT (O.16, r.9)**

9. A Court may, on such terms as it thinks just, set aside or vary any judgment in any suit therein entered in pursuance of this Order.

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**ORDER 17**

**AMENDMENT**

**NO AMENDMENT OF WRIT OF SUMMONS, ETC., WITHOUT LEAVE (O.17, r.1)**

(1) No party to a suit in any Court shall, without the leave of the Court, amend the writ of summons, the originating summons, the memorandum of appearance or any pleadings or other documents in that suit, save for the purpose of correcting a clerical or typographical error.

(2) Leave to amend may be granted at any stage of the suit before judgment and maybe given subject to such conditions as the Court thinks just as to costs or otherwise.

(3) Leave to amend may be given, if the Court thinks it just to give it, notwithstanding that the application for leave was made after any relevant period of limitation expired.

(4) An amendment to correct the name of a party may be allowed notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(5) An amendment to alter the capacity in which a party sues, whether as plaintiff or as defendant by counterclaim, may be allowed if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(6) An amendment may be allowed notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

**APPLICATION FOR LEAVE TO AMEND (O.17, r.2)**



2. A party wishing to amend his writ of summons, his memorandum of appearance or any of his pleadings or other documents shall make application by summons for leave to do so, but a Court may, if it thinks fit, grant such leave in the course of the trial without application, if it thinks it just to do so.

**FAILURE TO AMEND AFTER ORDER (O.17, r.3)**

3. Where a Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

**MODE OF AMENDMENT OF WRIT, ETC. (O.17, r.4)**

4. (1) Where the amendments authorised under any Rule of this Order to be made in a writ; pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ of summons, re-issued, but, except as aforesaid and subject to any direction given under Rule 1, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ of summons, causing it to be re-sealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which the amendment was made.

**AMENDMENT OF JUDGMENTS AND ORDERS (O.17, r.5)**

5. Clerical and typographical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on application by summons without an appeal.

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**ORDER 18**

**WITHDRAWAL AND DISCONTINUANCE**

**WITHDRAWAL OF APPEARANCE (O.18, r.1)**

1. A party who has entered an appearance in a suit may withdraw the appearance at any time with the leave of the Court.

**DISCONTINUANCE OF SUIT, ETC., WITHOUT LEAVE (O.18, r.2)**

2. (1) The plaintiff in a suit begun by writ of summons may, without the leave of the Court, discontinue the suit, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) A defendant may, without the leave of the Court-

(a) withdraw his defence or any part of it at any time; or

(b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to a suit not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to a suit with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to the counterclaim, to the defendant and to the last preceding paragraph respectively.

(4) If all the parties to a suit consent, the suit may be withdrawn without the leave of the Court at any time before trial by filing in the registry of the Court a written consent to the suit being withdrawn signed by all the parties.

### **DISCONTINUANCE OF SUIT, ETC., WITH LEAVE (O.18, r.3)**

3. (1) Except as provided by Rule 2, a party may not discontinue a suit, whether begun by writ of summons or otherwise, or a counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court in which the suit is pending and the Court hearing an application for the grant of such leave may order the suit or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent suit or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons.

### **EFFECT OF DISCONTINUANCE (O.18, r.4)**

4. Subject to any terms imposed by the Court in granting leave under Rule 3, the fact that a party has discontinued a suit or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent suit for the same, or substantially the same, cause of action.

**STAY OF SUBSEQUENT SUIT UNTIL COSTS PAID (O.18, r.5)**

5. (1) Where a party has discontinued a suit or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the suit or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings a suit for the same, or substantially the same, cause of action, the Court may order the proceedings in that suit to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons.

**WITHDRAWAL OF SUMMONS (O.18, r.6)**

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

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**ORDER 19**

**PAYMENT INTO AND OUT OF COURT**

**PAYMENT INTO COURT (O.19, r.1)**

1. (1) In any suit for a debt or damages any defendant may at any time after he has entered an appearance in the suit pay into court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more cause of action are joined in the suit, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 6 of Appendix A to the plaintiff and every other defendant, if any; and within three days after receiving the notice the plaintiff must send the defendant a written acknowledgement of its receipt.

(3) A defendant may, without leave, give notice of an increase in a payment under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the suit and money is paid into court under this rule in respect of all, or some only of, those causes of action, the notice of payment-

(a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which the payment is made; and

(b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to the next following paragraph, order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Fatal Accidents Acts, 1846 to 1959, of England in their application to Nauru and a cause of action under the Law Reform (Miscellaneous Provisions) Act, 1934, of England in its application to Nauru are joined in a suit, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of the last preceding paragraph, be treated as one cause of action.

### **PAYMENT IN BY DEFENDANT WHO HAS COUNTERCLAIMED (O.19, r.2)**

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under Rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy-

(a) the cause of action in respect of which he claims; or

(b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

### **ACCEPTANCE OF MONEY PAID INTO COURT (O.19, r.3)**

3. (1) Where money is paid into court under Rule 1, then subject to the next following paragraph, within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after the receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the suit begins, the plaintiff may-

(a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be; or

(b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 16 of Appendix A to every defendant to the suit.

(2) Where after the trial or hearing of a suit has begun-

(a) money is paid into court under Rule 1; or

(b) money in court is increased by a further payment into court under that rule,

the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the judge begins to deliver judgment.

(3) Paragraph (5) of Rule 1 shall not apply in relation to money paid into court in a suit after the trial or hearing of the suit has begun.

(4) On the plaintiff accepting any money paid into court all further proceedings in the suit or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him, shall be stayed.

(5) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to Rules 4 and 9 and to Rule 11 of Order 52, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

#### **ORDER FOR PAYMENT OUT OF MONEY ACCEPTED REQUIRED IN CERTAIN CASES (O.19, r.4)**

4. (1) Where a plaintiff accepts any sum paid into court and that sum was paid into court-

(a) by some but not all of the defendants sued jointly or in the alternative by him;

(b) with a defence of tender before suit; or

(c) in satisfaction either of causes of action arising under the Fatal Accident Acts, 1846 to 1959, of England in their application to Nauru and the Law Reform (Miscellaneous Provisions) Act, 1934, of England in its application to Nauru or of a cause of action arising under the first-mentioned Acts where more than one person is entitled to the money;

the money in court shall not be paid out except under the next following paragraph or in pursuance of an order of the Court, and the order shall deal with the whole costs of the suit or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under the preceding paragraph by reason only of sub-paragraph (a) of that paragraph, than if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the suit against all other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of a suit has begun a plaintiff accepts any money paid into court and all further proceedings in the suit or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of paragraph (4) of Rule 3, then, notwithstanding anything in the last preceding paragraph, the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the suit.

**MONEY REMAINING IN COURT (O.19, r.5)**

5. If any money paid into court in a suit is not accepted in accordance with Rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the suit; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

**COUNTERCLAIM (O.19, r.6)**

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with Rule 1, and that rule and Rule 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.

**NON-DISCLOSURE OF PAYMENT INTO COURT (O.19, r.7)**

7. Except in a suit to which a defence of tender before suit is pleaded, and except in a suit all further proceedings in which are stayed by virtue of paragraph (4) of Rule 3 after the trial or hearing has begun, the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the suit or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

**MONEY PAID INTO COURT UNDER ORDER (O.19, r.8)**

8. Money paid into court under an order of the Court relating to security for costs shall not be paid out except in pursuance of an order of the Court into which it was paid or, in the case of money paid into court as security for the costs of an appeal, of the Court empowered to make an order relating to payment of the costs of the appeal.

**PERSON TO WHOM PAYMENT TO BE MADE (O.19, r.9)**

9. (1) Money in court shall be paid out to the party entitled or, on his written authority, to his barrister and solicitor or, if the Court so orders, to his barrister and solicitor without such authority.

(2) This rule applies whether the money in court has been paid into court under Rule 1 or under an order of the Court.

**PAYMENT OUT: SMALL INTESTATE ESTATE (O.19, r.10)**

10. Where a person entitled to money in court, or a share of such money, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed \$500 in value, including the value of the money in court or the share thereof, it shall order that the money or share shall be paid to the Director of Police to be dealt with by him in accordance with section 30 of the Nauru Police Force Act 1972.

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## **ORDER 20**

### **SECURITY FOR COSTS**

#### **SECURITY FOR COSTS OF SUITS, ETC. (O.20, r.1)**

1. (1) Where, on the application of a defendant to a suit or to a counterclaim in a suit in any Court, it appears to the Court -

(a) that the plaintiff is ordinarily resident out of Nauru;

(b) that the plaintiff, not being a plaintiff who is suing in a representative capacity, is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

(c) subject to the next following paragraph, that the plaintiff's address is not stated in the writ of summons or originating summons or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the suit as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of sub-paragraph (c) of the preceding paragraph if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the preceding paragraphs to a plaintiff and a defendant shall be construed as references to the person, howsoever described on the record, who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

#### **MANNER OF GIVING SECURITY (O.20, r.2)**

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time and on such terms, if any, as the Court may direct.

#### **SAVING FOR WRITTEN LAWS (O.20, r.3)**

3. This Order is without prejudice to the provisions of any written law which empowers the Court to require security to be given for the costs of any proceedings.

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## **ORDER 21**

### **DISCOVERY AND INSPECTION**

#### **ORDER FOR DISCOVERY (O.21, r.1.)**

1. (1) Upon application by summons by any party to a suit the Court in which that suit is pending may, after the close of the pleadings in that suit, order all or any of the parties thereto to make available to all or any of the other parties therein a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the suit, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on all or any of the other parties:

Provided that an application shall not be made under this section for an order for discovery to be directed to any party unless, not less than 21 days before such application is made a written request for such discovery has been served upon that party by or on behalf of the applicant and that party has refused or failed to comply with such request; affidavit evidence of the request and of refusal or failure to comply with it shall be filed in support of the application.

(2) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the suit, as may be specified in the order.

#### **ORDER FOR DETERMINATION OF ISSUE, ETC., BEFORE DISCOVERY (O.21, r.2)**

2. Where on an application for an order under Rule 1 it appears to the Court that any issue or question in the suit should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

#### **FORM OF LIST AND AFFIDAVIT (O.21, r.3)**

3. (1) A list of documents made in compliance with an order under Rule 1 must be in Form No. 17 of Appendix A, and must enumerate the documents in a convenient, order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 18 of Appendix A.

#### **ORDER FOR DISCOVERY OF PARTICULAR DOCUMENTS (O.21, r.4)**



4. (1) The Court may at any time, on the application of any party to a suit, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it:

Provided that an application shall not be made under this rule unless, not less than 21 days before such application is made, a written request for the information was served upon the other party by or on behalf of the applicant and that other party refused or failed to comply with such request; affidavit evidence of the request and of refusal or failure to comply with it shall be filed in support of the application.

(2) An order may be made against a party under this rule notwithstanding that he may already have been required to make a list of documents or affidavit under Rule 1.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the suit.

#### **INSPECTION OF DOCUMENTS REFERRED TO IN LIST (O.21, r.5)**

5. (1) A party who has served a list of documents on any other party whether in accordance with a written request to do so or in compliance with an order under Rule 1 must allow the other party to inspect the documents referred to in the list, other than any which he objects to produce, and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 14 days after the service thereof at which the said documents may be inspected at a place in Nauru or where the party serving the list and all parties on whom it is served normally reside or keep their business records out of Nauru in the same country, in that country specified in the notice.

(2) For the purpose of this rule and paragraph (2) of Rule 6, where the parties normally reside or keep their business records in Australia or the United States of America, "country" shall be taken as meaning "State" or "Territory" depending upon the circumstances.

#### **INSPECTION OF DOCUMENTS REFERRED TO IN PLEADINGS AND AFFIDAVITS (O.21, r.6)**

6. (1) Any party to a suit shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under the last preceding paragraph must, within 14 days after service of the notice, serve on the party giving the notice a notice stating a time within 14 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place in Nauru or, where the party serving the notice and all parties on whom it is served normally reside out of Nauru in the same country,

in that country specified in the notice, and stating which, if any, of the documents he objects to produce and on what grounds.

**ORDER FOR PRODUCTION FOR INSPECTION (O.21, r.7)**

7. (1) If a party who is required by Rule 5 to serve such a notice as is therein mentioned or who is served with a notice under paragraph (1) of Rule 6 -

(a) fails to serve a notice under Rule 5 or, as the case may be, paragraph (2) of Rule 6;

(b) objects to produce any document for inspection; or

(c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to paragraph (1) of Rule 9, the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to the last preceding paragraph but subject to paragraph (1) of Rule 9 the Court may, on the application of any party to a suit, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the suit.

(3) An application for an order under the last preceding paragraph must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the suit.

**ORDER FOR PRODUCTION TO COURT (O.21, r.8)**

8. At any stage of the proceedings in any suit the Court may, subject to paragraph (1) of Rule 9, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the suit and the Court may deal with the document when produced in such manner as it thinks fit.

**PRODUCTION TO BE ORDERED ONLY IF NECESSARY, ETC. (O.21, r.9)**

9. (1) No order for the production of any documents for inspection or to the Court shall be made under any of the preceding rules unless the Court is of opinion that the order is necessary either for disposing fairly of the suit or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

**PRODUCTION OF BUSINESS BOOKS (O.21, r.10)**

10. (1) Where production of any business books for inspection is applied for under any of the preceding rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

#### **DOCUMENT DISCLOSURE OF WHICH WOULD BE INJURIOUS TO PUBLIC INTEREST (O.21, r.11)**

11. The preceding provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

#### **FAILURE TO COMPLY WITH REQUIREMENTS OF DISCOVERY, ETC. (O.21, r.12)**

12. (1) If any party who is required by any of the preceding rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, or if, although purporting to comply with a written request for discovery or for the information referred to in Rule 4, any party fails to make full, proper and accurate discovery or to provide full, proper and accurate information, as the case may be, then, without prejudice to paragraph (1) of Rule 7, the Court may make such order as it thinks just including, in particular, an order that the suit be dismissed or, as the case may be, an order that the defence be struck out and judgement be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to the last preceding paragraph, he shall be liable to committal.

(3) Service on a party's barrister and solicitor or pleader of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A barrister and solicitor or pleader on whom such an order, made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

#### **REVOCATION AND VARIATION OF ORDERS (O.21, r.13)**

13. Any order made under this Order, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the suit in connection with which the original order was made.

**THIS ORDER NOT TO APPLY TO SUITS COMMENCED UNDER SECTION 14 OF THE ACT (O.21, r.14)**

14. The preceding provisions of this Order shall not apply to suits commenced in the District Court under section 14 of the Act.

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**ORDER 22**

**SUMMONS FOR DIRECTIONS**

**SUMMONS FOR DIRECTIONS (O.22, r.1)**

1. Any party to a suit may at any time after the pleadings are closed and before the trial has commenced take out a summons to obtain the directions of the court as to the future course of the suit with a view to securing the just, expeditious and economical disposal thereof.

**SUMMONS FOR DIRECTIONS NOT OBLIGATORY (O.22, r.2)**

2. There shall be no obligation on any party to a suit to take out a summons for directions therein and the suit may be set down for hearing without directions if no directions have been given but, where the directions have been given, the suit shall not be set down for hearing otherwise than after compliance or in accordance with those directions.

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**ORDER 23**

**INTERROGATORIES**

**DISCOVERY BY INTERROGATORIES (O.23, r.1)**

1. (1) A party to any suit may apply to the Court in which that suit is pending for an order –

(a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the suit; and

(b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the suit or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

#### **INTERROGATORIES WHERE PARTY IS A BODY OF PERSONS (O.23, r.2)**

2. Where a party to a suit is a body of persons, whether corporate or unincorporated, being a body which is empowered by law to sued or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

#### **STATEMENT AS TO PARTY REQUIRED TO ANSWER (O.23, r.3)**

3. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

#### **OBJECTION TO ANSWER ON GROUND OF PRIVILEGE (O.23, r.4)**

4. Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

#### **INSUFFICIENT ANSWER (O.23, r.5)**

5. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

#### **FAILURE TO COMPLY WITH ORDER (O.23, r.6)**

6. (1) If a party against whom an order is made under Rule 1 or Rule 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the suit be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under Rule 1 or Rule 5 fails to comply with it, then, without prejudice to the last preceding paragraph, he shall be liable to committal.

(3) Service on a party's barrister and solicitor or pleader of an order to answer interrogatories made against the party shall be sufficient service to found an application committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A barrister and solicitor or pleader on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

## **USE OF ANSWERS TO INTERROGATORIES AT TRIAL (O.23, r.7)**

7. A party may put in evidence at the trial of a suit or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and, if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer, answer or part shall be put in evidence.

## **REVOCAION AND VARIATION OF ORDERS (O.23, r.8)**

8. Any order made under this Order, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the suit in connection with which the original order was made.

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## **ORDER 24**

### **ADMISSIONS**

#### **ADMISSION OF CASE OF OTHER PARTY (O.24, r.1)**

1. Without prejudice to Rule 13 of Order 15 a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

#### **NOTICE TO ADMIT FACTS (O.24, r.2)**

2. (1) A party to a suit may, not later than 14 days after the cause or matter is set down for trial, serve on any other party a notice requiring him to admit, for the purpose of that suit only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the suit for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

#### **JUDGMENT ON ADMISSION OF FACTS (O.24, r.3)**

3. (1) Where admissions of fact are made by a party to a suit either by his pleadings or otherwise, any other party to the suit may apply to the Court for such judgement or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

(2) An application for an order under this rule shall be made by motion.

**ADMISSION AND PRODUCTION OF DOCUMENTS SPECIFIED IN LIST OF DOCUMENT (O.24, r.4)**

4. (1) Subject to the next following paragraph and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 21 shall, unless the Court otherwise orders, be deemed to admit -

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 14 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expire, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under the last preceding paragraph.

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 21 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Rule 4 of Order 21 as they apply in relation to a list of document served in pursuance of any provision of that Order.

**NOTICES TO ADMIT OR PRODUCE DOCUMENTS (O.24, r.5)**

5. (1) Except where paragraph (1) of Rule 4 applies, a party to a suit may within 14 days after the suit is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under the last preceding paragraph is served desires to challenge the authenticity of any document therein specified he must, within 14 days after service of the notice, serve on the party by whom it was given a notice stating he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with the last preceding paragraph in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where paragraph (3) of Rule 4 applies, a party to a suit may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the suit.

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## **ORDER 25**

### **INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.**

#### **APPLICATION FOR INTERLOCUTORY INJUNCTION (O.25, r.1)**

1. (1) An application for the grant of an interlocutory injunction may be made by any party to a suit commenced by writ of summons before or after the trial of the suit, whether or not a claim for the injunction was included in that party's writ, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte by summons but, except as aforesaid, such application must be made by inter partes summons.

(3) The plaintiff may not make such an application before the issue of the writ of summons by which the suit is to be commenced.

#### **DETENTION, PRESERVATION, ETC., OF SUBJECT-MATTER OF SUIT (O.25, r.2)**

2. (1) On the application of any party to a suit commenced by writ of summons the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the suit, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the suit.

(2) For the purpose of enabling any order under the last preceding paragraph be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the suit.

(3) Where the right of any party to a specific fund is in dispute in a suit, the Court may, on the application of a party to the suit, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

#### **POWER TO ORDER SAMPLES TO BE TAKEN (O.25, r.3)**

3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any suit, the Court may, on the application of a party to the suit,



and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the suit or of any counterclaim therein or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under the last preceding paragraph to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the suit.

(3) Paragraphs (5) and (6) of Rule 2 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

#### **SALE OF PERISHABLE PROPERTY, ETC. (O.25, r.4)**

4. (1) The Court may, on the application of any party to a suit, make an order for the sale by such person, in such manner and on such terms, if any, as may be specified in the order of any property, other than land, which is the subject-matter of the suit or of any counterclaim therein or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph "land" includes any interest in, or right over, land.

(2) Paragraphs (5) and (6) of Rule 2 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

#### **ORDER FOR EARLY TRIAL (O.25, r.5)**

5. (1) Where on the hearing of an application, made before the trial of a suit, for an injunction or the appointment of a receiver or an order under any of Rules 2, 3 and 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order in respect of the period before trial as the justice of the case requires.

(2) Where the Court makes an order for early trial it shall by the order determine the mode of the trial.

#### **RECOVERY OF PERSONAL PROPERTY SUBJECT TO LIEN, ETC. (O.25, r.6)**

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property, other than land, and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings, if any, or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum, if any, for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

**DIRECTIONS (O.25, r.7)**

7. Where an application is made under any of the preceding provisions of this Order, the Court may give directions as to the further proceedings in the suit.

**ALLOWANCE OF INCOME OF PROPERTY PENDING DETERMINATION OF SUIT (O.25 r.8)**

8. Where any real or personal property forms the subject-matter of any proceedings and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

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**ORDER 26**

**RECEIVERS**

**APPLICATION FOR APPOINTMENT OF RECEIVER (O.26, r.1)**

1. (1) An application for the appointment of a receiver under section 28 of the Act shall be made by summons.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) A Court to which an application is made under the last preceding paragraph may hear that part of the summons ex parte forthwith and may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver.

**GIVING OF SECURITY BY RECEIVER (O.26, r.2)**

2. (1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of the last preceding paragraph, or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed \$2,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the registry and it shall be kept as of record until duly vacated.

**REMUNERATION OF RECEIVER (O.26, r.3)**

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

**RECEIVER'S ACCOUNTS (O.26, r.4)**

4. (1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they maybe passed.

(2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.

(3) The receiver's account and affidavit, if any, must be left at the registry, and the plaintiff or party having the conduct of the suit must thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account must be certified by the Registrar or, where the order was made by the District Court, the resident magistrate.

**PAYMENT OF BALANCE, ETC., BY RECEIVER (O.26, r.5)**

5. The days on which a receiver must pay into court the amounts shown by his account as due from him, or such part thereof as the court may certify as proper to be paid in by him, shall be fixed by the Court.

**DEFAULT OF RECEIVER (O.26, r.6)**

6. (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to the last preceding paragraph, where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at such rate as it thinks fit on that sum while in his possession as receiver.

## **APPLICATIONS AND PROCEEDINGS IN CHAMBERS**

### **MODE OF MAKING APPLICATION (O.27, r.1)**

1. (1) Every application in chambers must, subject to the next following paragraph, be made by summons and every application which is properly made by summons shall, subject to the power of the judge or magistrate, as the case may be, to adjourn it into court or to direct that it be heard in court, be heard in chambers.

(2) On the hearing of any summons, a party may, with leave of the judge or magistrate, as the case may be, and with the consent of any other party who will be affected by any direction or order made thereon, make verbal application for a direction or order not sought in the summons.

### **ISSUE OF SUMMONS (O.27, r.2)**

2. (1) Issue of a summons takes place on its being sealed by an officer of the registry of the Court out of which it is issued.

(2) A summons may not be amended after issue without leave of the Court.

### **SERVICE OF SUMMONS (O.27, r.3)**

3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid or unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be, served on every other party not less than seven clear days before the day so specified.

### **ADJOURNMENT OF HEARING (O.27, r.4)**

4. (1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on seven clear days' notice to all the other parties on whom the summons was served.

### **PROCEEDING IN ABSENCE OF PARTY (O.27, r.5)**

5. (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it just and expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons has proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

**ORDER MADE EX PARTE MAY BE SET ASIDE (O.27, r.6)**

6. The Court may set aside an order made ex parte.

**SUMMONS FOR ATTENDANCE OF WITNESS (O. 27, r.7)**

7. A summons may be issued to compel the attendance of a witness at proceedings in chambers in the same way as such a summons is issuable to compel a witness to attend at the trial of a suit. The summons may include a direction that the witness is to bring with him such documents or other articles required for examination in the proceedings as may be specified.

**REGISTRAR AND CERTAIN OTHER OFFICERS MAY ADMINISTER OATHS, ETC., (O.27, r.8)**

8. (1) The Registrar and any officer employed in the registry of the Supreme Court and authorised in writing in that behalf by the Chief Justice may administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

(2) Any officer employed in the registry of the District Court and authorised in writing in that behalf by the Chief Justice may administer oaths and affidavits for the purpose of proceedings in the District Court.

**JURISDICTION OF REGISTRAR (O.27, r.9)**

9. (1) In respect of proceedings in the Supreme Court the Registrar shall have power to transact in chambers all such business and exercise all such authority and jurisdiction as under the Act or these Rules may be transacted and exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say-

- (a) appeals from decisions, orders and directions of the Registrar;
- (b) applications for review of decisions of the Registrar on the taxation of costs;
- (c) any other matter or proceeding which by any of these rules is required to be heard only by a judge:

Provided that the Registrar shall not transact such business or exercise such authority and jurisdiction at any time when a judge is available to transact or exercise it.

(2) An appeal shall lie to a judge against any decision, order or direction of the Registrar but, unless a judge or the Registrar otherwise orders, the decision, order or direction of the Registrar shall have full force and effect pending the determination of the appeal.

### **REFERENCE OF MATTER TO JUDGE (O.27, r.10)**

10. The Registrar may refer to a judge any matter which he thinks requires to be decided by a judge, and may adjourn the hearing of the summons insofar as it relates to that matter for that purpose.

### **POWER TO DIRECT HEARING IN COURT (O.27, r.11)**

11. (1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under the last preceding paragraph may be adjourned from court into chambers.

### **REMOVAL OF MATTERS INTO CHAMBERS (O.27, r.12)**

12. The judge may by any judgment or order made in court in any proceedings direct that such matters, if any, in the proceedings as he may specify shall be disposed of in chambers; the hearing in chambers shall be by a judge and not by the Registrar.

### **NOTES OF PROCEEDINGS IN CHAMBERS (O.27, r.13)**

13. A note shall be kept of all proceedings in chambers with the dates thereof so all such proceedings in any suit are noted in chronological order with a short statement of the matters decided at each hearing.

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## **ORDER 28**

### **MODE, ETC., OF TRIAL**

#### **MODE OF TRIAL (O.28, r.1)**

1. (1) Save as provided for by these Rules of Court or any other written law, every suit shall be tried in court.

(2) If any party wishes the Court to be assisted by one or more assessors in any suit of the kind referred to in subsection (2) of section 15 of the Act, he shall make application by summons not later than fourteen days after the close of the pleadings. If all parties to the suit agree that the Court should be assisted by one or more assessors, a direction shall be given accordingly. If the parties do not all agree, the Court shall decide whether or not to give the direction sought.

#### **TIME OF TRIAL OF QUESTIONS OR ISSUES (O.28, r.2)**

2. The Court may order any question or issue arising in a suit, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before,

at or after the trial of the cause or matter, and may give directions as to the manner in which the question shall be stated.

**TRIAL WITH ASSISTANCE OF ASSESSORS (O.28, r.3)**

3. Where a suit is tried with the assistance of one or more assessors, the assessor or assessors shall attend throughout the trial and shall retire with the Court when the Court retires to prepare its decision on the facts in issue.

**DISMISSAL OF SUIT AFTER DECISION OF PRELIMINARY ISSUE (O.28, r.4)**

4. If it appears to the Court that the decision of any question or issue arising in a suit and tried separately from the suit substantially disposes of the suit or renders the trial of the suit unnecessary, it may dismiss the suit or make such other order or give such judgment therein as may be just.

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**ORDER 29**

**SETTING SUIT DOWN FOR TRIAL**

**TIME FOR SETTING SUIT DOWN (O.29, r.1)**

1. (1) Subject to any directions given by the Court in the suit, the plaintiff may set a suit commenced by a writ of summons down for hearing at any time after the elapse of seven days from the close of pleadings.

(2) If the plaintiff fails to set the suit down in accordance with any directions given in the suit or, if no such directions have been given, within 21 days of the close of pleadings, any other party to the suit may do so.

(3) Without prejudice to the last preceding paragraph, if any party fails to set the suit down for hearing in accordance with any directions given in the suit, any other party thereto may apply to the Court to dismiss the suit or any counterclaim therein made by the party in default.

**MODE OF SETTING SUIT DOWN (O.29, r.2)**

2. (1) A party may set a suit down for trial by delivering to the registry of the Court in which the suit is pending a request in Form No. 19 of Appendix A for a hearing date to be assigned.

(2) A request for a hearing date to be assigned must be accompanied by two bundles, one of which shall serve as the record and the other for the use of the judge or magistrate, each containing one copy of each of the following documents -

(a) the writ of summons;

(b) the pleadings, any request or order for particulars and the particulars given; and

(c) all orders made on any summonses issued in the suit.

**SERVICE OF COPY OF REQUEST ON OTHER PARTIES (O.29, r.3)**

3. The party setting a suit down for hearing shall within 24 hours of doing so serve, or cause to be served, on each of the other parties to the suit a copy of the request for assignment of a hearing date.

**DUTY OF PARTIES TO FURNISH INFORMATION AS TO ESTIMATED LENGTH OF TRIAL (O.29, r.4)**

4. It shall be the duty of all parties to a suit entered in any list to furnish without delay to the Registrar or Clerk, as the case may be, all available information as to the suit being or being likely to be settled, or affecting the estimated length of the trial, and, if the suit is settled or withdrawn, to notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

**ABATEMENT OF CAUSE OF ACTION (O.29, r.5)**

5. (1) Where after a suit has been set down for trial the suit becomes abated, or the interest or liability of any party to the suit is assigned or transmitted to or devolves on some other person, the barrister and solicitor or pleader for the plaintiff or other party having the conduct of the suit must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar or Clerk, as the case may be, and that officer shall cause the appropriate entry to be made in the cause book and take such other action as may be necessary.

(2) Where a suit stands for one year abated or ordered to stand over generally, the suit shall on the expiration of that year be struck out of the list unless, in the case of a suit ordered to stand over generally, the order otherwise provides.

**ASSIGNMENT OF HEARING DATE (O.29, r.6)**

6. (1) Subject to Rule 3 of Order 31 and to any directions of -

(a) where the suit is in the Supreme Court, the Chief Justice; and

(b) where the suit is in the District Court, the resident magistrate,

the Registrar or the Clerk of the District Court, as the case may be, shall assign a hearing date to any suit set down for trial and shall cause a notice of the hearing date in Form No. 20 of Appendix A to be served on the barrister and solicitor or pleader of each of the parties to the suit or, if any party is not represented by a barrister and solicitor or pleader, on that party.

(2) Except with the consent of all the parties to a suit, the date set as the hearing date for the suit shall be not less than 14 days after the date on which the suit is set down for trial.

**PLACE OF TRIAL (O.29, r.7)**



7. (1) Unless stated otherwise in the notice of the hearing date or by any subsequent notice, the place of trial shall be the Court House at Yaren.

(2) No other place shall be stated in any notice as the place of the trial of any suit unless so directed by the Chief Justice or, in relation to a suit in the District Court, the resident magistrate.

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**TIME OF TRIAL (O.29, r.8)**

8. Unless stated otherwise in the notice of the hearing date or by any subsequent notice, a suit shall be called on for trial at 9 o'clock in the forenoon.

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**ORDER 30**

**PROCEEDINGS AT TRIAL**

**FAILURE TO APPEAR BY ALL PARTIES OR ONE OF THEM (O.30, r.1)**

1. (1) If, when the trial of a suit is called on, none of the parties appears, the suit may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of -

(a) where the suit was in the Supreme Court, a judge; and

(b) where the suit was in the District Court, the resident magistrate.

(2) If, when the trial of a suit is called on, one party does not appear, the Court may proceed with the trial of the suit or any counterclaim in the absence of that party.

**JUDGMENT GIVEN IN ABSENCE OF PARTY MAY BE SET ASIDE (O.30, r.2)**

2. (1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

**ADJOURNMENT OF TRIAL (O.30, r.3)**

3. The Court may, if it thinks its expedient in the interest of justice, adjourn a trial for such time, and to such place and upon such terms, if any, as it thinks fit.

**ORDER OF SPEECHES (O.30, r.4)**

4. (1) The Court by which a suit is tried may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then -

(a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;

(b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(c) If some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the suit lies on the defendant or, where there are two or more defendant and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

(8) Instead of, or in addition to, making any speech authorised by this rule, a party may present his argument, or any part of his argument, in writing. Such written argument shall be typed in English and shall not be admissible unless a copy thereof has been served on all the other parties to the suit not less than 24 hours before the time at which it is tendered. It shall be tendered to the Court together with two carbon or photographic copies thereof.

#### **INSPECTION BY COURT (O.30. r.5)**

5. (1) The Court by which a suit is tried may inspect any place or thing with respect to which any question arises in that suit.

(2) Where the Court inspects any place or thing under the last preceding paragraph, it shall –

(a) if assisted by assessors, be accompanied in the inspection by the assessors; and

(b) be accompanied by the parties, if they wish to be present.

#### **DEATH OF PARTY BEFORE JUDGMENT (O.30, r.6)**

6. Where a party to any suit dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the Court to make an order under paragraph (2) of Rule 8 of Order 12 before giving judgment.

#### **LIST OF EXHIBITS (O.30, r.7)**

7. (1) In the Supreme Court the Registrar, and in the District Court the Clerk, shall take charge of every document or object put in as an exhibit during the trial of any suit and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or by whose witness it is proved, and with a number, so that all the exhibits put in by a party, or proved by that party's witnesses, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The Registrar or the Clerk, as the case may be, shall cause a list to be made of all the exhibits in the suit, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the suit.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

#### **CUSTODY OF EXHIBIT AFTER TRIAL (O.30, r.8)**

8. It shall be the duty of every party to a suit who has put in any exhibit to apply to the Registrar or the Clerk immediately after the trial for the return of the exhibit, and, so far as is practicable, regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required by the appellate court to do so.

#### **IMPOUNDED DOCUMENTS (O.30, r.9)**

9. (1) Documents impounded by order of a Court shall not be delivered out of the custody of the Court except in compliance with an order made by judge or resident magistrate, as the case may be, on an application made by summons:

Provided that, where the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of a Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a judge or, where the document is in the custody of the District Court, of the resident magistrate.

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## **ORDER 31**

### **REFERENCE TO REFEREES FOR INQUIRY AND REPORT**

#### **REFERENCE TO A REFEREE (O.31, r.1)**

1. Where reference of a suit or of any question therein to a referee for inquiry and report is authorised by section 32 of the Courts Act 1972, the reference may be made by -

(a) where the suit is in the Supreme Court a judge; and

(b) where the suit is in the District Court, the resident magistrate, upon application by summons.

#### **SUMMONS FOR ORDER (O.31, r.2)**

2. (1) Every summons for an order for the reference of a suit or of a question therein to a referee for inquiry and report shall include -

(a) a statement whether reference of the whole suit or only of a question therein is sought and, if the latter, a statement of such question;

(b) where the appointment of a referee resident outside Nauru will be sought, the names of suitable persons for appointment and, if known, a statement whether or not the other parties to the suit would consent to their appointment; and

(c) an undertaking to deposit in the Court, or where the referee is resident outside Nauru with such other person as the Court may order, before the reference is made a sum adequate to defray the referee's, fees and expenses in respect of the inquiry and report.

(2) Where a summons contains a statement that the other parties to the suit would consent to the appointment as referee of any person named therein, the summons shall be accompanied by a statement signed by such other party or his barrister and solicitor or pleader that he would so consent.

(3) The judge or resident magistrate, as the case may be, shall not be bound to appoint any person as referee, notwithstanding that all the parties to the suit would agree to his appointment.

#### **ORDER ON COURT'S OWN MOTION (O.31, r.3)**

3. (1) Where -

- (a) in respect of a suit in the Supreme Court, a judge or the Registrar; and
- (b) in respect of a suit in the District Court, the resident magistrate,

upon perusing the pleading and other documents therein before the trial considers that reference to a referee may be expedient because either of the conditions referred to in sub-paragraph (i) and (ii) of section 32(1) (a) of the Courts Act 1972 exist in that suit, he may cause a summons to issue to all parties in the suit and, after hearing them, if they wish to be heard, may, if he thinks fit, order that the suit be referred to a referee for inquiry and report.

(2) At any stage of the trial of a suit, the Court may, of its own motion, refer the suit to a referee for inquiry and report if either of the conditions referred to in sub-paragraphs (i) and (ii) of section 32(1) (a) of the Courts Act 1972 exist in that suit, and in that event shall adjourn the trial until the referee's report is received.

#### **HEARING DATE NOT TO BE ASSIGNED UNLESS DIRECTED IF REFERENCE ORDERED (O.31, r.4)**

4. (1) Where prior to the trial of a suit an order is made referring that suit, or any question therein, to a referee for inquiry and report, a hearing date shall not be assigned for the trial of that suit unless the judge or the resident magistrate, as the case may be, directs otherwise.

(2) If a hearing date has been assigned and a notice of the hearing date has been served on any party prior to the making of an order of reference, then, unless the judge or the resident magistrate, as the case may be, directs at the time of making the order that the trial is to proceed, the notice shall be cancelled and notice of the cancellation served on the party concerned.

#### **REPORT ON REFERENCE (O.31, r.5)**

5. (1) The report made by a referee in pursuance of a reference shall be made to the Court and notice thereof served on the parties to the reference.

(2) The referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the referee's report, the Court may -

- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him;
- (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or

(e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the suit or of the question originally referred may be made on the hearing by the Court of the further consideration of the cause or matter, after giving not less than 10 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference the Court orders that the further consideration of the suit in question shall not stand adjourned until the receipt of the official referee's report, the order may contain directions with respect to the proceedings on the receipt of the report, and the preceding provisions of this rule shall have effect subject to any such directions.

#### **POWERS ETC., OF REFEREES (O.31, r.6)**

6. (1) Subject to any directions contained in the order referring any suit or question to a referee –

(a) the referee shall for the purpose of, and so far as is necessary for his inquiry, have in Nauru the same jurisdiction, powers and duties as the Court, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the **in the** like cases, in the like manner and subject to the like limitations; and

(b) all proceedings before a referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before the Court.

(2) A referee may hold any proceeding before him at any place which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

#### **FEEES AND EXPENSES OF REFEREES (O.31, r.7)**

7. (1) No fees shall be paid to a referee who is a public officer.

(2) No reference to a referee shall be made unless the judge or the resident magistrate, as the case may be, is satisfied that a sum of money adequate to defray all the fees and expenses of the referee in respect of his inquiry and report, and all expenses of and incidental to his inquiry and report have been paid into court or, where the referee is resident outside Nauru, deposited with a person outside Nauru authorised in that behalf by the Court to be held by that person to await the orders of the Court.

(3) Neither the Republic nor the Court shall be liable to pay in respect of any fees or expenses of a referee or of or incidental to his inquiry and report a sum greater than the sum deposited for that purpose under the last preceding paragraph or to pay such fees and expenses in any place or in any currency other than the place in which the money is deposited and the currency of the money deposited.

## **EVIDENCE: GENERAL**

### **GENERAL RULE: WITNESSES TO BE EXAMINED ORALLY (O.32, r.1)**

1. Subject to the provisions of these Rules and of any written law or applied statute relating to evidence, any fact required to be proved at the trial of any suit by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

### **EVIDENCE BY AFFIDAVIT (O.32, r.2)**

2. (1) A Court may, at or before the trial by it of a suit, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under the last preceding paragraph may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

### **EVIDENCE OF PARTICULAR FACTS (O.32, r.3)**

3. (1) Without prejudice to Rule 2, a Court may, at or before the trial by it of any suit, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by the last preceding paragraph extends in particular to ordering that evidence of any particular fact may be given at the trial –

(a) by statement on oath of information or belief;

(b) by the production of documents or entries in books;

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

### **LIMITATION OF EXPERT EVIDENCE (O.32, r.4)**

4. A Court may, at or before the trial by it of any suit, order that the number of medical or other witnesses who may be called at the trial shall be limited as specified by the order.

### **LIMITATION OF PLANS, ETC., IN EVIDENCE (O.32, r.5)**

5. Unless, at or before the trial, the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of a suit unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

**EXPERT EVIDENCE IN SUIT ARISING OUT OF ACCIDENT (O.32, r.6)**

6. In a suit arising out of an accident on land due to a collision or apprehended collision, unless at or before the trial the Court otherwise orders, the oral expert evidence of an engineer sought to be called on account of his skill and knowledge in respect of motor vehicles shall not be receivable unless at least 10 days before the commencement of the trial a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection.

**REVOCAION OR VARIATION OF ORDERS UNDER RULES 2 TO 6 (O.32, r.7)**

7. Any order under Rules 2 to 6, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

**APPLICATION TO TRIALS OF ISSUES, ETC. (O.32, r.8)**

8. The preceding rules of this Order shall apply to trials of issues or questions of fact or law, references and inquiries as they apply to the trial of suits.

**DEPOSITIONS: WHEN RECEIVABLE AT TRIAL (O.32; r.9)**

9. (1) No deposition taken in any suit shall be received in evidence at the trial of the suit unless -

(a) the deposition was taken in pursuance of an order under Rule 1 of Order 33; and

(b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or outside Nauru or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a suit must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

**COURT DOCUMENTS ADMISSIBLE OR RECEIVABLE IN EVIDENCE (O.32, r.10)**

10. (1) Office copies of writs, records, pleadings and documents filed in the registry the Supreme Court or the District Court shall be admissible in evidence in any suit and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any written law, every document purporting to be sealed with the seal of the Supreme Court or of the District Court shall received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of the registry of that Court shall be deemed to be an office copy of that document without further proof unless the contrary is shown.



**EVIDENCE OF CONSENT OF NEW TRUSTEE TO ACT (O.32, r.11)**

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

**EVIDENCE AT TRIAL MAY BE USED IN SUBSEQUENT PROCEEDINGS (O.32, r.12)**

12. Any evidence taken at the trial of any suit may be used in any subsequent proceedings in that suit.

**ORDER TO PRODUCE DOCUMENT AT PROCEEDING OTHER THAN TRIAL (O.32, r.13)**

13. (1) At any stage in a suit the Court may order any person to attend any proceedings in the suit and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under the last preceding paragraph to produce any document at a proceeding in a suit which he could not be compelled to produce at the trial of that suit.

**FORM AND ISSUE OF WITNESS SUMMONS (O.32, r.14)**

14. (1) A witness summons must be in Form No. 21 of Appendix A.

(2) Issue of a witness summons takes place upon its being signed by -

(a) in respect of proceedings in the Supreme Court, the Registrar; and

(b) in respect of proceedings in the District Court, the Clerk, and sealed with the seal of the Court.

(3) Before a witness summons is issued a written application signed by the barrister and solicitor or pleader of the party applying for the issue of the summons or, where that party is not represented, by that party himself for the issue of the summons must be filed in the registry of the Court of which the summons is to issue.

**MORE THAN ONE NAME MAY BE INCLUDED IN SUMMONS (O.32, r.15)**

15. The names of two or more persons may be included in one witness summons.

**AMENDMENT OF WITNESS SUMMONS (O.32, r.16)**

16. Where there is a mistake in any person's name or address in a witness summons, then if the summons has not been served, the party at whose request it was issued may have it re-sealed in correct form by filing a second application under paragraph (3) of Rule 14 and the summons shall be indorsed with the words "Amended and re-sealed".

**SERVICE OF WITNESS SUMMONS (O.32, r.17)**

17. A witness summons must be served personally and the service shall not be valid unless effected within 12 weeks after the date of its issue.

**DURATION OF SUMMONS (O.32, r.18)**

18. A witness summons continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

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**ORDER 33**

**EVIDENCE BY DEPOSITION**

**POWER TO ISSUE COMMISSION FOR DEPOSITION TO BE TAKEN (O.33, r.1)**

1. (1) A Court may, in any suit where it appears necessary for the purposes of justice, issue a commission in Form No. 22 of Appendix A for the examination on oath before an officer of the Court, a Commissioner appointed under section 72 of the Courts Act 1972 or some other person, at any place in Nauru, of any person.

(2) A commission under the last preceding paragraph may be made on such terms, including, in particular, terms as to the giving of discovery before the examination takes place, as the Court thinks fit.

(3) Application for the issue of a commission under paragraph (1) shall be by summons.

**DEPOSITION OF PERSON OUTSIDE NAURU (O.33, r.2)**

2. (1) Where a person whose examination is required is outside Nauru, an application may be made -

(a) for an order, in Form No. 23 of Appendix A, for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or

(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for a commission in Form No. 24 of Appendix A to a Commissioner appointed under section 72 of the Courts Act 1972 or some other person to take the evidence of that person in that country.

(2) An application under the last preceding paragraph may be made only in respect of a person whose evidence is required for a suit in the Supreme Court.

**ORDER FOR ISSUE OF LETTER OF REQUEST (O.33, r.3)**

3. (1) Where an order is made under Rule 2 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it to the registry of the Supreme Court, and the letter must be in Form No. 25 of Appendix A, with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Unless the official language, or one of the official languages, of the country in which the examination is to be taken is English, each document lodged under the last two preceding paragraphs must be accompanied by a translation of the document in the official language of that country or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken.

(5) Every translation lodged under the last preceding paragraph must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the registry the documents mentioned in the last four preceding paragraphs, also file in that office an undertaking signed by him or by his barrister and solicitor or pleader to be responsible personally for all expenses incurred by the Republic in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Registrar.

#### **ENFORCING ATTENDANCE OF WITNESS AT EXAMINATION (O.33, r.4)**

4. Where an order has been made under Rule 1 -

(a) for the examination of any person before any person, in this rule and Rules 5 to 14 referred to as "the examiner"; or

(b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document the examination may be enforced by a witness summons in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

#### **REFUSAL OF WITNESS TO ATTEND, BE SWORN, ETC. (O.33, r.5)**

5. (1) If any person, having been duly summoned by a witness summons to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the registry of the Court in which the suit is proceeding, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made ex parte.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

#### **APPOINTMENT OF TIME AND PLACE FOR EXAMINATION (O.33, r.6)**

6. (1) The examiner must give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under the last preceding paragraph is given must on receiving it forthwith give notice of the appointment to all the other parties.

(3) In this rule and in Rules 7 to 14 the expression "the examiner" includes a person appointed under sub-paragraph (b) of Rule 2(1).

#### **EXAMINER TO HAVE CERTAIN DOCUMENTS (O.33, r.7)**

7. The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the suit as are necessary to inform him of the questions at issue in the suit.

#### **CONDUCT OF EXAMINATION (O.33, r.8)**

8. (1) Subject to any directions contained in the order for examination -

(a) any person ordered to be examined before the examiner may be cross-examined and re-examined; and

(b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, it necessary, adjourn the examination from time to time.

#### **EXAMINATION OF ADDITIONAL WITNESSES (O.33, r.9)**

9. The examiner may, with the written consent of all the parties to the suit, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

### **OBJECTION TO QUESTIONS (O.33 r.10)**

10. (1) if any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.

(3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

### **TAKING OF DEPOSITIONS (O.33, r.11)**

11. (1) The deposition of any person examined before the examiner must be taken down by the examiner or by a shorthand writer or some other person in his presence but, subject to the next following paragraph and paragraph (1) of Rule 10, the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the registry of the Court in which the suit is proceeding and shall be filed therein.

### **TIME TAKEN BY EXAMINATION TO BE INDORSED ON DEPOSITIONS (O.33, r.12)**

12. Before sending any deposition to the registry under paragraph (4) of Rule 11, the examiner, must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees, if any, received in respect thereof.

### **SPECIAL REPORT BY EXAMINER (O.33, r.13)**

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person there at, and the

Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

**ORDER FOR PAYMENT OF EXAMINER'S FEES AND EXPENSES (O.33, r.14)**

14. (1) If the fees and expenses due to an examiner are not paid, he may report that fact to the Court and the Court may direct the Registrar or the Clerk, as the case may be, to apply for an order against the party on whose application the commission for examination of the witness was issued to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice, any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

**PERPETUATION OF TESTIMONY (O.33, r.15)**

15. (1) Witnesses shall not be examined to perpetuate testimony unless a suit has been commenced for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin a suit to perpetuate any testimony which may be material for establishing such right or claim.

(3) No suit to perpetuate the testimony of witnesses shall be set down for trial.

**FEES AND EXPENSES OF PERSONS TO WHOM COMMISSIONS ARE ISSUED TO EXAMINE WITNESSES (O.33, r.16)**

16. (1) A person to whom a commission is issued under Rule 1 or sub-paragraph (b) of Rule 2(1) shall be entitled to receive such fee, if any, as the judge or the resident magistrate issuing the commission directs and to be reimbursed his proper expenses of attending for the examination.

(2) The party on whose application the commission was issued shall be liable to pay such fees and expenses:

Provided that on the taxation of costs or by an order of the Court any other party may be adjudged liable to pay to that party the costs of the examination.

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**ORDER 34**

**AFFIDAVITS**

**FORM OF AFFIDAVIT (O.34, r.1)**

1. (1) Subject to the next two following paragraphs every affidavit sworn in a suit must be entitled in that suit.

(2) Where a suit is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and another matter" or "and other matters" as appropriate, and where a suit is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and another" or "and others" as appropriate, and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

(5) Every affidavit must be in book form, following continuously from page to page, one side only of the paper being used, and each page being initialled at its foot by the deponent and the person before whom the affidavit is sworn.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Sums and other numbers, cardinal and ordinal, must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by every deponent thereto and a separate jurat in respect of each deponent must be completed and signed by the person before whom it is sworn.

#### **FORM OF JURAT (O.34, r.2)**

2. Subject to Rules 3 and 4, the form of the jurat of every affidavit shall be "Sworn by ..... at ..... this ..... day of ....., 19....., before me".

#### **AFFIDAVIT BY ILLITERATE OR BLIND PERSON (O.34, r.3)**

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that -

(a) the affidavit was read in his presence to the deponent;

(b) the deponent seemed perfectly to understand it; and

(c) the deponent made his signature or mark in his presence;

and the affidavit shall not be use in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

**AFFIDAVIT IN ENGLISH BY PERSON WHO DOES NOT UNDERSTAND ENGLISH (O.34, r.4)**

4. (1) Where an affidavit is made in the English language and it appears to the person administering the oath that the deponent does not understand the English language,

he must certify in the jurat that -

- (a) the affidavit was read to the deponent in a language, to be specified, understood by him;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to the deponent in a language understood by him and appeared to be perfectly understood by him.

(2) Where the person administering the oath is not able himself to understand the language in which the affidavit is read to the deponent, the person so reading it shall certify at the foot of the affidavit that -

- (a) he read the affidavit to the deponent in a language, to be specified, understood by the deponent;
- (b) he has a good command of that language and of the English language; and
- (c) the deponent seemed perfectly to understand the affidavit when it was read to him in that language.

**USE OF DEFECTIVE AFFIDAVIT (O.34, r.5)**

5. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

**CONTENTS OF AFFIDAVIT (O.34, r.6)**

6. (1) Subject to the next following paragraph and to any order made under Rule 3 of Order 32, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

**SCANDALOUS, ETC., MATTER IN AFFIDAVIT (O.34, r.7)**

7. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or oppressive.



**ALTERATIONS IN AFFIDAVITS (O.34, r.8)**

8. (1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at the registry of the Supreme Court or the District Court the official stamp of that registry may be substituted for the signature or initials required by this rule.

**AFFIDAVIT NOT TO BE SWORN BEFORE BARRISTER AND SOLICITOR OR PLEADER OF PARTY (O.34, r.9)**

9. No affidavit shall be sufficient if sworn before the barrister and solicitor or pleader of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that barrister and solicitor or pleader.

**FILING OF AFFIDAVITS (O.34, r.10)**

10. (1) Every affidavit used in a suit must be filed in that registry of the Court in which the suit is proceeding.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

**USE OF ORIGINAL AFFIDAVIT OR OFFICE COPY (O.34, r.11)**

11. (1) Subject to paragraph (2), an original affidavit may be used in proceedings in any Court with the leave of that Court, notwithstanding that it has not been filed in accordance with Rule 10.

(2) An original affidavit may not be used in any proceedings unless it has previously been stamped with the appropriate fee stamp, if any.

(3) Where an original affidavit, is used, then, unless the party whose affidavit undertakes to file it, he must immediately after it is used leave it with the Registrar or the Clerk, as the case may be, in court or in chambers, as the case maybe, together with the proper filing fee and that officer shall send it to be filed.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

**DOCUMENT TO BE USED IN CONJUNCTION WITH AFFIDAVIT TO BE EXHIBITED TO IT (O.34, r.12)**

12. (1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn. The certificate must be entitled in the same manner as the affidavit and paragraph (1), (2) and (3) of Rule 1 shall apply accordingly.

**CERTAIN AFFIDAVITS TAKEN OUTSIDE NAURU ADMISSIBLE WITHOUT PROOF OF SEAL (O.34, r.13)**

13. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside Nauru or in a State of the United States of America or in Japan in testimony of an affidavit being taken before it or him in that place shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

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**ORDER 35**

**DECREES, JUDGMENTS AND ORDERS**

**FORM OF DECREE IF ISSUED (O.35, r.1)**

1. It shall not be necessary for a decree to be drawn up and sealed in respect of any judgment but, if a decree is issued, the form thereof shall be Form No. 26 of Appendix A adapted as required to meet the case.

**FORM OF DEFAULT JUDGMENT (O.35, r.2)**

2. Where judgment is entered in default of appearance, defence or defence to counterclaim, the form of the judgment shall be Form No. 27 of Appendix A.

**DATE FROM WHICH JUDGMENT OR ORDER TAKES EFFECT (O.35, r.3)**

3. A judgment or order of a Court takes effect from the day when it is pronounced or made, as the case may be, unless the Court otherwise orders.

**ORDERS GENERALLY NEED NOT BE DRAWN UP (O.35, r.4)**

4. Unless, the Court by which an order is made directs that it be drawn up, no order need be drawn up.

**DRAWING UP AND ENTRY OF DEFAULT JUDGMENTS (O.35, r.5)**

5. (1) A party seeking to enter judgment in default of appearance, defence or defence to counterclaim must draw up the judgment and present it at the registry of the Court in which the suit was commenced.

(2) Where judgment is entered in default of appearance the plaintiff must present with the judgment the writ, or notice of the writ, indorsed in accordance with paragraph (4) of Rule 1 of Order 8 or bearing a certificate in accordance with paragraph (5) of Rule 4 of Order 9.

(3) Where judgment is entered in default of defence or defence to a counter-claim, the party entering judgment must present with the judgment an affidavit that no defence or defence to counterclaim, as the case may be, has been served on him.

(4) A default judgment, if in order, shall be filed by an officer of the registry and a duplicate thereof shall be returned, sealed with the seal of the Court, to the party who presented it for entry.

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## **ORDER 36**

### **ENFORCEMENT OF JUDGMENTS AND ORDER**

#### **APPLICATION FOR ENFORCEMENT (O.36, r.1)**

1. (1) A decree-holder wishing to enforce the judgment or order of a Court shall make application ex parte by summons -

(a) where the method of enforcement sought is the arrest and detention of any person or the attachment of the salary or wages of the judgment debtor, for leave to issue a summons under section 32 of the Act or a notice to show cause under Rule 10, as the case may be;

(b) where the method of enforcement sought is the attachment of debts, for a garnishee order nisi; and

(c) in any other case, for an order for the issue of the process of the Court appropriate to the method of enforcement sought:

Provided that application for the appointment of a receiver shall not be made ex parte.

(2) Every application made under paragraph (1) shall be heard and determined -

(a) in the Supreme Court, by the Registrar; and

(b) in the District Court, by the resident magistrate.

(3) Evidence in proceedings under this rule shall be by affidavit.

#### **ORDER FOR ENFORCEMENT AND LEAVE TO ISSUE SUMMONS (O.36, r.2)**

2. The Registrar or the resident magistrate, as the case may be, may subject to the provisions of Rule 6 order the issue of any one or more of the types of process sought and such order may be in addition to the granting of leave to issue a summons or notice to show cause.

#### **PREPARATION OF WRIT, SUMMONS, ETC. (O.36, r.3)**

3. The party wishing to have a judgment or order enforced shall be responsible for the preparation of any writ, summons or other process which the Registrar or resident magistrate may order to be issued, and for its presentation at the registry of the Court for issue.

**ALL PROCESS TO ENFORCE JUDGMENTS, ETC. TO BE SIGNED AND SEALED**  
(O.36, r.4)

4. Every process issued by a Court to enforce a judgment or order shall be signed by the Registrar or the resident magistrate, as the case may be, and bear the seal of the Court.

**FORM OF PROCESS** (O.36, r.5)

5. Process issued by a Court to enforce a judgment or order shall be in the form of one or other of Forms Nos. 28 to 33, inclusive, of Appendix A or as near thereto as may be appropriate to the circumstances of the case.

**OPPRESSIVE ENFORCEMENT NOT TO BE ORDERED** (O. 36, r.6)

6. The Registrar or the resident magistrate, as the case may be, hearing an application for an order for enforcement of a judgment or order shall have due regard for the proper interests of the decree-holder but shall not order enforcement by sale of land or by the issue of a summons to the judgment-debtor to attend and be examined unless he is satisfied that no other method of enforcement is likely to be successful or that the cost of other methods of enforcement available would be likely to be excessive.

**ENFORCEMENT MAY BE STAYED WHERE PAYMENT IS MADE BY INSTALMENTS** (O.36, r.7)

7. (1) A Court may order at the time of a judgment or order for the payment of money, or at any thereafter upon application by the judgment-debtor made by summons that the money may be paid by instalments and that, for so long as the instalments are paid on or before their due dates, the judgment or order may not be enforced without, special leave of the Court.

(2) Special leave may be granted only where the Court is satisfied that, if the judgment or order is not enforced forthwith, it is likely that it will not be discharged.

(3) If no judge is present in Nauru, an application to the Supreme Court for an order under paragraph (1) or for special leave under the last preceding paragraph may be heard and determined by the Registrar.

**ENFORCEMENT MAY BE DELAYED OR MADE CONDITIONAL** (O.36, r.8)

8. (1) A Court may for good reason order at the time of a judgment or order, or at any time thereafter upon application by the judgment-debtor made by summons, that the judgment or order is not to be enforced before a specified date or event or before the decree-holder has complied with a specified condition.

(2) An order made under the last preceding paragraph may be revoked by the Court at any time for good cause.

(3). If no judge is present in Nauru, an order in proceedings in the Supreme Court may be made under paragraph (1), or revoked under paragraph (2), by the Registrar.

#### **ENFORCEMENT BY SALE OF PROPERTY (O.36, r.9)**

9. (1) Where property is sold in order to enforce a judgment or order of a Court, the sale shall be by public auction not less than seven days after notice of the date, time and place of the auction has been given by notice in the Gazette, unless the Court, upon application by the Director of Police or any party to the suit made by summon, otherwise orders.

(2) The proceeds of the sale shall be paid by the Director of Police into the registry of the Court out of which the process was issued and the Registrar or the Clerk, as the case may be, shall pay them into the Courts Trust Fund to be held therein until payment out is sought by the decree-holder.

#### **ENFORCEMENT BY ATTACHMENT OF SALARY OR WAGES (O.36, r.10)**

10. (1) Where leave is granted under Rule 1 to do so, a degree-holder may cause a notice in Form No. 34 of Appendix A to be issued out of the registry of the Court inviting a judgment-debtor to attend in chambers and show cause why a judgment or order of that Court should not be enforced by the attachment of his salary or wages.

(2) A notice issued under the last preceding paragraph shall set out the details of the judgment-debtor's employer and of his salary or wages, if they are known to the decree-holder, and shall be served on the judgment-debtor personally not less than two days before the date on which the judgment-debtor's attendance is invited.

(3) If the judgment-debtor does not attend on the date and at the time specified in the notice, he shall be taken to admit any details of his employer and of his salary or wages set out therein and not to wish to show cause why his salary or wages should not be attached.

(4) If the judgment-debtor attends on the date and at the time specified in the notice, he may adduce such evidence relevant to his salary or wages and his financial commitments as he thinks fit, and the decree-holder may adduce evidence of a similar nature if he wishes.

(5) Unless the judgment-debtor shows cause why his salary or wages should not be attached, the Court shall order, subject to the provisions of paragraph (g) of the proviso to subsection (1) of section 36 of the Act and to the provisions of any other written law, such attachment to the extent which it thinks fit, having regard to the judgment-debtor's other commitments; and, where his salary or wages are already subject to an attachment order in another suit, the Court may order that the new order shall not take effect until the expiry of that other order.

(6) Where an order for the attachment of a judgment-debtor's salary or wages is made under the last preceding paragraph, the decree-holder shall cause a notice in Form No. 35 of Appendix A to the employer concerned to be issued out of the registry of the Court and to be served on the employer.

(7) An employer who is served with a notice to attach the salary or wages of any person employed by him shall, while the judgment-debtor is employed by him and until such date as is specified in the notice, on each pay day, commencing with the pay day next but one after

the service upon him of the notice, deduct from the salary or wages of the judgment-debtor the amount specified in the notice and pay it forthwith into the registry of the Court and, if he fails to do so, shall be personally liable to the decree-holder for any amount not so deducted and paid in.

(8) All amounts paid into the registry under the last preceding paragraph shall be paid by the Registrar or the Clerk, as the case may be, into the Courts Trust Fund to be held therein until payment out is sought by the decree-holder.

#### **ENFORCEMENT BY ATTACHMENT OF DEBTS (O.36, r.11)**

11. (1) Where a garnishee order nisi is made under Rule 1, the decree-holder shall draw it up in Form No. 36 of Appendix A and present it with three copies at the registry of the Court to be signed and sealed; after being signed and sealed the three copies, sealed with the seal of the Court, shall be returned to the decree-holder.

(2) A sealed copy of the order nisi shall be served, not less than 7 days before the date specified therein for the further consideration of the matter, on the person alleged to be indebted to the judgment-debtor, hereafter in this rule called "the garnishee", and, unless the Court otherwise orders, on the judgment-debtor.

(3) Upon service of the copy of the order on the garnishee, any debt specified therein or so much of any such debt as may be so specified shall be bound in the hands of the garnishee.

(4) If the garnishee does not attend on the date and at the time specified in the order for the further consideration of the matter or if he does not dispute the debt alleged to be owed by him to the judgment-debtor, the Court may make the garnishee order absolute, and such order may then be enforced against the garnishee in the same manner as any other order of the Court for payment of money.

(5) Where on the further consideration of the matter the garnishee disputes liability to pay the alleged debt to the judgment-debtor, the Court may summarily determine the question at issue or order that it be tried in such manner as it thinks fit.

(6) Where it appears to the Court that some person other than the judgment-debtor may be entitled to the whole or any part of the debt sought to be attached, it may give notice to him in Form No. 51 of Appendix A and, if he attends in response to such notice shall hear him as to the nature and particulars of his claim after hearing him, the Court may summarily determine the questions at issue between claimants or order that they be tried in such manner as it thinks fit.

(7) Any payment made by a garnishee in compliance with an order absolute under this rule, and any execution levied against him in respect thereof, shall be a valid discharge of his liability to the judgment-debtor to the extent of the amount paid or levied, notwithstanding that the garnishee proceedings are subsequently set aside or the judgment order enforced thereby is reversed.

(8) Unless the Court otherwise directs, the costs of proceedings under this rule or incidental thereto shall be paid to the decree-holder out of the money recovered under the garnishee order and in priority to the judgment debt.

(9) All amounts paid into the registry in compliance with an order made under this rule shall be paid by the Registrar or the Clerk, as the case may be, into the Courts Trust Fund to be held therein until payment out is sought by the decree-holder.

#### **MONEY IN COURT (O.36, r.12)**

12. (1) Where money is standing to the credit of the judgment-debtor in court, the decree-holder shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the decree-holder.

(2) On issuing a summons under this rule the applicant must serve a copy thereof on the Registrar and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Registrar.

(3) Unless the Court otherwise directs, the summons must be served on the judgment-debtor at least 7 days before the day named therein for the hearing of it.

(4) Subject to Rule 24 of Order 48 the Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

#### **CERTAIN OF SUPREME COURT MAY EXERCISE BY REGISTRAR IN ABSENCE OF JUDGE (O.36, r.13)**

13. The powers of the Supreme Court to order enforcement of any of its judgment or orders by the arrest and detention of the judgment-debtor may be exercised by the Registrar, if no judge is present in Nauru.

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### **ORDER 37**

#### **COMMITTAL**

##### **COMMITTAL FOR CONTEMPT OF COURT (O.37, r.1)**

1. (1) A judge may exercise the powers of the Supreme Court of committal for contempt of its authority either upon his own motion or upon application made ex parte by any interested person by summons.

(2) A judge may exercise the powers of the Supreme Court of committal for contempt of the authority of the District Court or the Family Court upon written notification by the resident magistrate or application made ex parte by any interested person by summon.

(3) Unless the person alleged to be in contempt is present in the Supreme Court, a summons may, if the judge thinks fit, be issued requiring the attendance of that person to answer the allegation:

Provided that, where the judge has reason to believe that that person will not attend and that the interests of justice require that the matter be dealt with without delay, he may issue a warrant for that person to be arrested and brought before Court.

(4) No person shall be required to answer an allegation of contempt of court where the contempt is alleged only to consist of disobedience to an order which could be enforced in a manner authorised by section 28 of the Act.

### **HEARING OF CONTEMPT PROCEEDINGS GENERALLY TO BE IN OPEN COURT (O.37, r.2)**

2. (1) Unless the contempt is alleged to consist of disobedience of an order of the Family Court or the judge considers that in the interests of the administration of justice or for reasons of national security the contempt proceedings should be heard in private, they shall be heard in open court.

(2) Where contempt proceedings are heard in private and a committal order is made, the judge shall state in open court -

(a) the name of the person committed;

(b) in general terms the nature of the contempt in respect of which the committal order is being made; and

(c) if he is being committed for a fixed period, the length of that period.

### **POWER TO SUSPEND EXECUTION OF COMMITTAL ORDER (O.37, r.3)**

3. The Supreme Court may by order direct that the execution of an order of committal shall be suspended for such period or on such terms or conditions as it may specify.

### **DISCHARGE OF PERSON COMMITTED (O.37, r.4)**

4. The Supreme Court may, on the application of any person committed to prison or any contempt of court, discharge him.

### **SAVING FOR OTHER POWERS (O.37, r.5)**

5. Nothing in the preceding provisions of this Order shall be taken as affecting the powers of the Supreme Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Supreme Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.



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**ORDER 38**

**APPLICATIONS FOR ORDERS OF MANDAMUS PROHIBITION, CERTIORARI,  
ETC.**

**NO SUIT FOR ORDER OF MANDAMUS, ETC., WITHOUT LEAVE (O.38, r.1)**

1. (1) No suit for an order of mandamus, prohibition or certiorari shall be commenced unless leave therefore has been granted in accordance with this rule.

(2) An application for such leave must be made by originating summons ex parte to the Registrar and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits, to be filed before the application is made, verifying the facts relied on.

(3) In granting leave the Registrar shall direct upon whom the writ of summons is to be served.

(4) The Registrar may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit.

(5) The grant of leave under this rule to commence a suit for an order of prohibition or an order of certiorari shall, if the Registrar so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court otherwise orders.

(6) Where an application for leave under this rule is refused by the Registrar, the applicant may make a fresh application for such leave to a judge and such application shall be heard only by a judge.

(7) An application made to a judge by virtue of the last preceding paragraph must be made within 8 days after the Registrar's refusal to give leave or, if no sittings of the Supreme Court are held within that period, on the first day of the next such sittings.

**TIME FOR APPLYING FOR LEAVE LIMITED IN CERTAIN CASES (O.38, r.2)**

2. Leave shall not be granted to commence a suit for an order of certiorari to remove any judgement, order, conviction or other proceeding into the Supreme Court for the purpose of its being quashed, unless the application for leave is made within 3 months after the date of the proceeding or such other period, if any, as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Registrar; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Registrar may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

**MODE OF APPLYING FOR AN ORDER OF MANDAMUS, ETC. (O.38, r.3)**

3. (1) Where leave has been granted to commence a suit for an order of mandamus, prohibition or certiorari, the suit for such order must be commenced by a writ of summons in

Form No. 37 of Appendix A which, or a notice thereof if service is made outside Nauru, must be served on every person on whom the Registrar has directed that it is to be served together with a copy of the statement and affidavits referred to in paragraph (2) of Rule 1 which were presented in support of the application for leave to commence the suit.

(2) Any person on whom the writ is served must, if he wishes to be heard in the suit, enter an appearance within 8 days of such service, or such further period as the Registrar may direct or the Court allow.

(3) There shall be no pleadings in a suit for an order of mandamus, prohibition or certiorari.

(4) At any time after appearances have been entered by all the persons served or the period for entering appearance has elapsed, the applicant for the order shall cause a notice of motion for the grant of the order to be issued out of the registry of the Court and served on all persons served in the writ who have entered an appearance and, where it relates to any proceedings in or before a Court and the object is either to compel the Court or an officer thereof to do any act in relation to the proceedings or to quash there or any order made therein, the notice or summons must be served on the Clerk of that Court.

#### **NO GROUNDS TO BE RELIED UPON OTHER THAN THOSE IN STATEMENT** (O.38, r.4)

4. (1) Subject to the next following paragraph, no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the statement in support of the application for leave under Rule 1.

(2) The Court or judge may on the hearing of the motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other person who has entered an appearance in the suit and, where applicable, to the Clerk of the District Court or the Family Court, and must supply copies of such further affidavits.

(3) Every party to the application must supply to every other party copies of the affidavits he proposes to use at the hearing.

#### **RIGHT TO BE HEARD IN OPPOSITION** (O.38, r.5)

5. On the hearing of any motion under Rule 3, any person who desires to be heard in opposition to the motion or summons and who has entered an appearance in the suit or, although not a person on whom the writ of summons has been served, appears to the Court or judge to be a proper person to be heard shall be heard.

#### **ORDER OF CERTIORARI TO QUASH PROCEEDINGS** (O.38, r.6)

6. Where an order of certiorari is made in any suit or an order of certiorari to remove any proceedings into the Supreme Court for the purpose of their being quashed the order shall direct that the proceedings shall be quashed forthwith on their removal into the Supreme Court.

**MODIFICATION IN CASE OF CERTIORARI OR PROHIBITION TO DISTRICT COURT OR FAMILY COURT (O.38, r.7)**

7. The provisions of this Order relating to certiorari and prohibition shall, in the case of certiorari to remove proceedings from the District Court, the Family Court or any other inferior court of civil jurisdiction for trial in the Supreme Court or in the case of prohibition to any such Court, have effect subject to the following modifications -

(a) the application for leave may be made to a judge in chambers; and

(b) the judge hearing the application for leave may in special circumstances make in the first instance an order of certiorari or prohibition, as the case may be.

**SAVING FOR PERSON ACTING IN OBEDIENCE TO MANDAMUS (O.38, r.8)**

8. No suit or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

**APPLICATION TO RESTRAIN PERSON FROM ACTING IN AN OFFICE IN WHICH HE IS NOT ENTITLED TO ACT (O.38, r.9)**

9. (1) The procedure in applications under section 9 of the Administration, of Justice (Miscellaneous Provisions) Act, 1938, of England in its application to Nauru shall be the same as in applications for an order of mandamus and Rules 1, 3, 4 and 5 shall apply so far as applicable to such applications.

(2) An application under the said section 9 shall not be granted if the respondent has acted in the office in question for the last six years before proceedings under that section are begun, but -

(a) nothing in this rule shall restrict the power of the Supreme Court to refuse such an application on the ground of undue delay;

(b) the applicant may, in answer to a plea under this rule, set up any forfeiture, surrender or avoidance of the office by the respondent within the said six years.

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**ORDER 39**

**APPEALS FROM REGISTRAR**

**APPEALS FROM DECISIONS OF REGISTRAR TO JUDGE IN CHAMBERS (O.39, r.1)**

1. (1) An appeal shall lie to a judge in chambers from any order or decision of the Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the order or decision was given or made a notice to attend before the judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

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## **ORDER 40**

### **COSTS**

#### **AMOUNT OF COSTS MAY BE FIXED AT TRIAL OR HEARING (O.40, r.1)**

1. A Court may at the trial of a suit or the hearing of any proceedings therein, other than proceedings taken ex parte, fix the amount of the costs of and incidental to the suit, or to the trial or hearing, which are ordered therein but shall not do so if any party thereto informs the Court at that time that he wishes the costs to be taxed.

#### **TAXATION OF COSTS IN SUIT (O.40, r.2)**

2. (1) Where in any suit a Court orders the payment of costs, the amount of such costs shall, unless it is fixed by the Court under Rule 1, agreed to by the parties under Rule 3 or set by Rule 4, be determined by taxation of the bill of costs of the party to whom the costs are to be paid.

(2) Costs shall be taxed -

(a) in the Supreme Court, by the Registrar; and

(b) in the District Court, by the resident magistrate or, if for any reason the resident magistrate is unable to undertake the taxation, a magistrate nominated by the resident magistrate to do so.

(3) The party seeking to have his bill of costs taxed shall present the bill at the registry of the Court and obtain an appointment for the bill to be taxed. He shall then prepare and serve on every other party to the suit affected by the order for the payment of such costs, other than a party who has not entered an appearance a notice in Form No. 38 of Appendix A stating the time of the appointment, together with a copy of the bill of costs. The notice shall be served not less than 2 days before the date appointed for the taxation.

(4) In taxing costs the Registrar, resident magistrate or other magistrate, as the case may be, shall comply with any directions given by the Court in that regard at the time when the costs were awarded but otherwise shall allow costs for professional services only within any scales prescribed from time to time, together with proper disbursements.

(5) Any party dissatisfied with an order of the Registrar made upon the taxation of costs in proceedings in the Supreme Court may appeal, within 7 days of such order being made, to a judge in chambers.

**PARTIES MAY AGREE TO AMOUNT OF COSTS (O.40, r.3)**

3. Where in any suit the payment of costs has been ordered and any party presents at the registry of the Court a written agreement as to the amount of such costs signed by himself and all the other parties affected by the order, the agreement shall be filed and shall be binding on all the parties who have signed it, unless the Court for special reasons, upon the application of any party, orders otherwise.

**FIXED COSTS (O.40, r.4)**

4. (1) Where any suit for a liquidated demand has been commenced, whether or not the writ of summons or originating summons has been served, and the amount of the claim is paid to the plaintiff by any defendant before judgment is entered or an appearance is entered, or, in the case of an originating summons under section 14 of the Act, before the day on which the defendant is required to attend for the hearing of the claim, the plaintiff shall be entitled to recover as costs such amount as is prescribed in Part 1 of Appendix B and may enter judgment therefore, provided that a demand for the payment of such amount as costs has been included in the writ of summons or the originating summons, as the case may be.

(2) Where in any suit for a debt or a liquidated demand only final judgment has been entered in default of appearance, defence or defence to counterclaim, the party who has entered the judgment shall be entitled to recover as costs such amount as is prescribed in Part 2 of Appendix B and may enter judgment therefore.

**COSTS MAY BE DEALT WITH AT ANY STAGE OF PROCEEDINGS (O.40, r.5)**

5. Costs may be dealt with by a Court at any stage of a suit or of proceeding therein or after the conclusion thereof. Any order for the payment of any costs may, if the Court thinks fit, require the costs to be paid forthwith, notwithstanding that the proceedings have not been concluded.

**SPECIAL MATTERS TO BE TAKEN INTO ACCOUNT IN EXERCISING DISCRETION (O.40, r.6)**

6. A Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account -

(a) any such offer of contribution as is mentioned in Rule 11 of Order 13 which is brought to its attention in pursuance of a reserved right to do so;

(b) any payment of money into court and the amount of such payment.

**COSTS ARISING FROM MISCONDUCT OR NEGLIGENCE (O.40, r.7)**

7. (1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of the last preceding paragraph the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say -

(a) the omission to do any thing of which would have been calculated to save costs;

(b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;

(c) any unnecessary delay in the proceedings.

(3) The Supreme Court may, instead of giving a direction under paragraph (1) in relation to any thing done or omission made, direct the Registrar to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The taxing officer shall, in relation to anything done or omission made in the course of taxation and in relation to any failure to procure taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the taxing officer, in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

#### **PERSONAL LIABILITY OF BARRISTER AND SOLICITOR OR PLEADER FOR COSTS (O.40, r.8)**

8. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any barrister and solicitor or pleader whom it considers to be responsible, whether personally or through a servant or agent, an order-

(a) disallowing the costs as between the barrister and solicitor or pleader and his client; and

(b) directing the barrister and solicitor or pleader to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(c) directing the barrister and solicitor or pleader personally to indemnify such other parties against costs payable by them.

(2) No order under this rule shall be made against a barrister and solicitor or pleader unless he has been given a reasonable opportunity to appear before the Court and show cause why the

order should not be made, except where any proceeding in Court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made, -

(a) because of the failure of the barrister and solicitor or pleader to attend in person or by a proper representative; or

(b) because of the failure of the barrister and solicitor or pleader to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) Before making an order under this rule the Supreme Court may, if it thinks fit, refer the matter, except in the cases excepted from the last preceding paragraph or in the case of undue delay in any proceedings under an order or judgment as to which the Registrar has reported to the Court, to the Registrar for inquiry and report and direct the barrister and solicitor or pleader in the first place to show cause before the Registrar.

(4) The Court may direct that notice of any proceedings or order against a barrister and solicitor or pleader under this rule shall be given to his client in such manner as may be specified in the direction.

(5) Where in any proceedings before a taxing officer the barrister and solicitor or pleader representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing officer may direct the barrister and solicitor or pleader to pay costs personally to any of the parties to those proceedings and where any barrister and solicitor or pleader fails to present his bill of costs, with the documents required by this Order, for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing officer otherwise directs, the barrister and solicitor or pleader shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(6) If, on the taxation of costs to be paid out of a fund, one sixth or more of the amount of the bill for those costs is taxed off, the barrister and solicitor or pleader whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(7) In any proceeding before a referee in which the party by whom the fees are payable is represented by a barrister and solicitor or pleader, if the fees or any part of the fees payable are not paid as prescribed, the Court may, on the application of the Secretary for Justice by summons, order the barrister and solicitor or pleader personally to pay that amount in the manner so prescribed and to pay the costs of the Secretary for Justice of the application.

#### **ORDER FOR PART ONLY OF TAXED COSTS (O.40, r.9)**

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified.

## **SUPPLEMENTARY POWERS OF REGISTRAR, ETC. (O.40, r.10)**

10. A taxing officer may, in the discharge of his functions with respect to the taxation of costs, -

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings.

## **EXTENSION, ETC., OF TIME (O.40, r.11)**

11. (1) A taxing officer may -

- (a) extend the period within which a party is required by or under his Order to begin proceedings for taxation or to do anything in or in connection with proceedings before him;
- (b) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer then, unless the Court otherwise directs, the taxing officer may from time to time extend the period so specified on such terms, if any, as he think just.

(3) A taxing officer may extend any such period as is referred to in the preceding provisions of this rule although the application for extension is not made until the expiration of that period.

## **INTERIM CERTIFICATES (O.40, r.12)**

12. (1) A taxing officer may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of the bill of a barrister and solicitor or pleader to his own client, it appears to the taxing officer that in any event the barrister and solicitor or pleader will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the barrister and solicitor or pleader to his client.

(3) On the filing of a certificate issued under the last preceding paragraph the Court may order the amount specified therein to be paid forthwith to the client or into court.



**POWER OF REGISTRAR, ETC., WHERE PARTY BOTH ENTITLED TO RECEIVE AND LIABLE TO PAY COSTS (O.40, r.13)**

13. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may -

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

**PROVISIONS AS TO BILLS OF COSTS (O.40, r.14)**

14. (1) In any bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(2) Before a bill of costs is left for taxation it must be indorsed with -

- (a) the name or firm and business address of the barrister and solicitor or pleader whose bill it is' and
- (b) if the barrister and solicitor or pleader is the agent of another barrister and solicitor, with the name or firm and business address of that other barrister and solicitor.

**PROVISIONS AS TO TAXATION PROCEEDINGS (O.40, r.15)**

15. (1) if any party entitled to be heard in any taxation proceedings does not attend at the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

**SCALE OF COSTS (O.40, r.16)**

16. Scales of fees chargeable by barristers and solicitors and by pleaders contained in the written laws of Nauru relating to legal practitioners shall, when made, be applied in the taxation of the costs, unless in any suit the Court for special reasons directs otherwise.

**POWERS OF REGISTRAR, ETC., TAXING COSTS PAYABLE OUT OF FUND (O.40, r.17)**

17. (1) Where any costs are to be paid out of a fund the taxing officer may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that the bill of costs of a barrister and solicitor or pleader be taxed for the purpose of being paid out of a fund the taxing officer by whom the bill is being

taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the barrister and solicitor or pleader to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say -

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing officer for taxation;
- (b) the time and place appointed by the taxing officer at which the taxation will be continued; and
- (c) such other information, if any, as the taxing officer may direct.

**MEANING OF "TAXING OFFICER" IN THIS ORDER (O.40, r.18)**

18. In this Order "taxing officer" means -

- (a) in the Supreme Court, the Registrar; and
- (b) in the District Court, the resident magistrate or another magistrate nominated by the resident magistrate to tax the costs in the proceedings concerned.

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**ORDER 41**

**REGISTRY PRACTICE**

**CONTROL OF PRACTICE AND PROCEDURE OF REGISTRY (O.41, r.1)**

1. The Registrar and the resident magistrate respectively shall superintend the business performed in the registries of the Supreme Court and the District Court and give any directions which may be required on questions of practice and procedure.

**DATE OF FILING TO BE MARKED, ETC. (O.41, r.2)**

2. (1) Any document filed in the registry of a Court in any proceedings must be sealed with the seal of that Court showing the date on which the document was filed.

(2) Particulars of the time of delivery at the registry of any document for filing, the date of the document and the title of the suit of which the document forms part of the record shall be entered in books kept in the registry for the purpose.

**RIGHT TO INSPECT, ETC., CERTAIN DOCUMENTS FILED IN REGISTRY (O.41, r.3)**

3. (1) Subject to the provisions of any written law restricting the right of access to court records in certain cases, any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the registry of a Court, namely -

- (a) the copy of any writ of summons or other originating process;
- (b) any judgment or order given or made in court or the copy of any such judgment or order; and
- (c) with the leave of a judge or the Registrar in the Supreme Court or the resident magistrate in the District Court, which may be granted on an application in writing made ex parte, any other document.

(2) Nothing in the preceding subsection shall be taken as preventing any party to a suit searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the registry in that suit or filed therein before the commencement of that suit but made with a view to its commencement.

#### **DEPOSIT OF DOCUMENTS (O.41, r.4)**

4. Where a Court orders that any documents are to be lodged in court, then, unless the order directs otherwise, the documents must be deposited in the registry of that Court.

#### **RESTRICTION ON REMOVAL OF DOCUMENTS (O.41, r.5)**

5. No document filed in or in the custody of the registry of any Court shall be taken out of that registry without the leave of the Court unless the document is to be sent to another such Court.

#### **OFFICE-HOURS (O.41, r.6)**

6. The registry of the Supreme Court and the registry of the District Court shall be open to the public from 8.45 a.m. to 11 a.m. and from 2 p.m. until 4 p.m. on all days other than Saturdays, Sundays and public holidays.

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## **ORDER 42**

### **SERVICE OF DOCUMENTS**

#### **WHEN PERSONAL SERVICE REQUIRED (O.42, r.1)**

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) The last preceding paragraph shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

#### **PERSONAL SERVICE: HOW EFFECTED (O.42, r.2)**

2. Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him -

(a) in the case where the document is a writ of summons or other originating process, the original; and

(b) in any other case, the original or an office copy.

**PERSONAL SERVICE ON BODY CORPORATE (O.42, r.3)**

3. Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any written law, be effected by serving it in accordance with Rule 2 on the chairman or president of the body, or the clerk, secretary, treasurer or other similar officer thereof.

**SUBSTITUTED SERVICE (O.42, r.4)**

4. (1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made ex parte by summons supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

(4) The power of the Supreme Court to order substituted service may be exercised by the Registrar and the like power of the District Court may be exercised by the resident magistrate in chambers.

**ORDINARY SERVICE: HOW EFFECTED (O.42, r.5)**

5.(1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, may be effected -

(a) by leaving the document at the proper address of the person to be served;

(b) in such manner as is permitted by section 66 of the Interpretation Act 1971;

(c) in such other manner as the Court may direct.

(2) For the purposes of this rule, and of section 66 of the Interpretation Act 1971 in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his proper address for the purposes aforesaid shall be -

(a) in any case, the business address of the barrister and solicitor or pleader, if any, who is acting for him in the proceedings in connection with which service of the document in question is to be effected;

(b) in the case of a natural person, his usual or last known address;

(c) in the case of natural persons who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or

(d) in the case of a body corporate, the registered or principal office of the body.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

#### **SERVICE ON PRESIDENT, ETC., (O.42, r.6)**

6. Where for the purpose of any proceedings in the Supreme Court or the District Court any document is required by these Rules or any other written law to be served on the President, the Cabinet, a Minister or a public officer in his official capacity, it shall be served by delivering it at the office of the Secretary for Justice.

#### **EFFECT OF SERVICE AFTER CERTAIN HOURS (O.42, r.7)**

7. Any document other than a writ of summons or other originating process, service of which is effected under Rule 2 or under sub-paragraph (a) of Rule 5 (1) after 4 o'clock in the afternoon of any weekday or on a Saturday, Sunday or a public holiday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the day next following after the day on which it is served which is not a Saturday, Sunday or public holiday.

#### **AFFIDAVIT OF SERVICE (O.42, r.8)**

8. An affidavit of service of any document must state by whom the document was served, the day of the week and the date on which it was served, where it was served and how.

#### **NO SERVICE REQUIRED IN CERTAIN CASES (O.42, r.9)**

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally, and at the time when service is to be effected that person is in default as to entry of appearance or has no address for service the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise expressly provides.

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### **ORDER 43**

#### **PAPER, PRINTING, NOTICES AND COPIES**

### **QUALITY AND SIZE OF PAPER (O.43, r.1)**

1. Unless the nature of the document renders it impracticable, every document prepared by a party for use in any Court must be on paper of durable quality, approximately 13 inches long, by 8 inches wide, having a margin, not less than 1½ inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse: Provided that paper approximately 10 inches long by 8 inches wide may be used where the whole of the document can be produced on one side of the paper.

### **REGULATIONS AS TO PRINTING, ETC. (O.43, r.2)**

2. (1) Except where these Rules otherwise provide, every document prepared by a party for use in any Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any print or type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

### **COPIES OF DOCUMENTS FOR OTHER PARTY (O.43, r.3)**

3. (1) Where a document prepared by a party for use in any Court is printed the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding 10, as may be specified in the request.

(2) Where a document prepared by a party for use in any Court is written or typewritten, the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of it, not being a party on whom it has been served, supply him with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

### **REQUIREMENT AS TO COPIES (O.43, r.4)**

4. (1) For the purposes of these Rules, a copy may be produced from an original document by a photographic or similar process and the provisions of paragraph (4) of Rule 2 shall apply, mutatis mutandis, to every such copy.

(2) Before a copy of a document is supplied to a party under these Rules, it must be indorsed with the name, and address of the party or barrister and solicitor or pleader by whom it was supplied.

(3) The party by whom a copy is supplied under Rule 3, or, if he sues or appears by a barrister and solicitor or pleader, his barrister and solicitor or pleader, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

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## **ORDER 44**

### **CHANGE OR BARRISTER AND SOLICITOR OR PLEADER**

#### **NOTICE OF CHANGE (O.44, r.1)**

1. (1) A party to any suit who sues or defends by a barrister and solicitor or pleader may change his barrister and solicitor or pleader without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former barrister and solicitor or pleader shall, subject to Rules 5 and 6, be considered the barrister and solicitor or pleader of the party until the final conclusion of the suit in the Court in which it is proceeding and of any appeal from the judgment or any order of that Court therein.

(2) Notice of a change of barrister and solicitor or pleader must be filed, and a copy thereof lodged in the registry of the Court in which the suit is proceeding.

(3) The party giving the notice must serve on every other party to the suit, not being a party in default as to entry of appearance, and on the former barrister and solicitor pleader, a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the registry.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new barrister and solicitor or pleader.

#### **NOTICE OF CHANGE OF AGENT (O.44, r.2)**

2. (1) Where a barrister and solicitor for whom some other barrister and solicitor or pleader is acting as agent in a suit changes the barrister and solicitor or pleader so acting, notice of the change must be given, and paragraph (2) of Rule 1 shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of barrister and solicitor or pleader.

(2) The barrister and solicitor giving the notice must serve on every party to the cause or matter, not being the party for whom he is acting or a party in default as to entry of

appearance, and on the barrister and solicitor or pleader formerly acting as agent, a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the registry.

**NOTICE OF APPOINTMENT (O.44, r.3)**

3. Where a party, after having sued or defended in person, appoints a barrister and solicitor or pleader to act in the cause or matter on his behalf, the change may be made without an order for that purpose and paragraphs (2), (3) and (4) of Rule 1 shall, with the necessary modifications, apply in relation to a notice of appointment of a barrister and solicitor or pleader as they apply in relation to a notice of change of barrister and solicitor or pleader.

**NOTICE OF INTENTION TO ACT IN PERSON (O.44, r.4)**

4. Where a party, after having sued or defended by a barrister and solicitor or pleader, intends and is entitled to act in person, the change may be made without an order for that purpose and Rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of barrister and solicitor or pleader except that the notice of intention to act in person must contain an address for service of the party giving it.

**REMOVAL FROM RECORD AT INSTANCE OF ANOTHER PARTY (O.44, r.5)**

5. (1) Where -

(a) a barrister and solicitor or pleader who has acted for a party in a suit has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of barristers and solicitors or of pleaders or has been suspended from practising or has for any other reason ceased to practice; and

(b) the party has not given notice of change of barrister and solicitor or pleader or notice of intention to act in person in accordance with the preceding provisions of this Order,

any other party to the suit may apply to the Court in which the suit is proceeding or, if an appeal from the judgment or an order therein is pending, to the Supreme Court for an order declaring that the barrister and solicitor or pleader has ceased to be the barrister and solicitor or pleader acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party to whose barrister and solicitor or pleader the application relates.

The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must -

(a) serve on every other party to the suit, not being a party in default as to entry of appearance, a copy of the order; and



(b) leave at the registry a copy of the order and a certificate signed by him or his barrister and solicitor or pleader that the order has been duly served as aforesaid.

(4) An order made under this rule shall not affect the rights of the barrister and solicitor or pleader and the party for whom he acted as between themselves.

#### **WITHDRAWAL ON CEASING TO ACT FOR PARTY (O.44, r.6)**

6. (1) Where a barrister and solicitor or pleader who has acted for a party in a suit has ceased so to act and the party has not given notice of change in accordance with Rule 1, or notice of intention to act in person in accordance with Rule 4, the barrister and solicitor or pleader may apply to the Court for an order declaring that he has ceased to be the barrister and solicitor or pleader acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the barrister and solicitor or pleader -

(a) serves on every party to the suit, not being a party in default as to entry of appearance, a copy of the order; and

(b) leaves at the registry a copy of the order and a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the preceding provisions of this Order, be considered the barrister and solicitor or pleader of the party till the final conclusion of the suit and any appeal from the judgment or an order therein.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the barrister and solicitor or pleader acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the barrister and solicitor or pleader and the party for whom he acted as between themselves.

#### **ADDRESS FOR SERVICE AFTER REMOVAL OR WITHDRAWAL (O.44, r.7)**

7. Where -

(a) an order is made under Rule 5; or

(b) an order is made under Rule 6, and the applicant for that order has complied with paragraph (1) of Rule 6,

then, unless and until the party to whose barrister and solicitor or pleader the order relates either appoints another barrister and solicitor or pleader and complies with Rule 3 or, being entitled to act in person, gives notice of his intention so to do and complies with Rule 4, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

**ORDER TO APPLY TO MATRIMONIAL SUITS (O.44, r.8)**

8. This Order shall have effect in relation to matrimonial suits.

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**ORDER 45**

**SERVICE OF FOREIGN PROCESS**

**INTERPRETATION (O.45, r.1)**

1. In the order "process" includes a citation.

**SERVICE OF FOREIGN LEGAL PROCESS (O.45, r.2)**

2. (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in Nauru of any such process sent with the letter is received by the Chief Secretary and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(3) Subject to the next following paragraph and to any written law which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server appointed under Rule 5.

(4) Where an application in that behalf is made by the Secretary for Justice, the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or, if such be the case, attempts to effect service of it have failed, the process server, shall leave with the Registrar a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate -

(a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in the last preceding paragraph;

(b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the Supreme Court regulating the service of process of that Court in Nauru or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying that the cost of effecting, or attempting to effect services is the amount so specified.

(7) The certificate given under the last preceding paragraph shall be sealed with the seal of the Supreme Court and shall be sent to the Chief Secretary.

### **SERVICE OF FOREIGN LEGAL PROCESS UNDER CIVIL PROCEDURE CONVENTION (O.45, r.3)**

3. (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a convention providing for service in Nauru of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Nauru of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a copy of a translation in English of the process to be served.

(3) Subject to any written law which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server appointed under Rule 5.

(4) After service of the process has been effected or, if such be the case, attempts to effect service of it have failed, the process server shall leave with the Registrar an affidavit stating when, where and how he did or attempted to serve the process, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The Registry shall give a certificate certifying -

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified; and

(b) that the cost of effecting, or attempting to effect, service, is the amount so specified.

(6) The certificate given under the last preceding paragraph shall be sealed with the seal of the Supreme Court and shall be sent to the consular or other authority by whom the request for service was made.

**COSTS OF SERVICE, ETC., TO BE SCRUTINISED BY REGISTRAR (O.45, r.4)**

4. Before giving a certificate under paragraph (6) of Rule 2 or paragraph (5) of Rule 3 certifying that the cost of effecting, or attempting to effect, service is the amount specified, the Registrar shall scrutinise the amount of such costs and satisfy himself that the amount specified is correct.

**PROCESS SERVER TO BE APPOINTED BY THE REGISTRAR (O.45, r.5)**

The Registrar shall appoint a process server, as required, for the purposes of this order.

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**ORDER 46**

**OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.**

**JURISDICTION OF REGISTRAR TO MAKE ORDER (O.46, r.1)**

1. (1) Subject to the next following paragraph, the power of the Supreme Court or a judge under either of the Foreign Tribunals Evidence Act, 1856, and the Evidence by Commission Act, 1859, of England in their application to Nauru to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

**APPLICATION FOR ORDER (O.46, r.2)**

2. (1) Subject to paragraph (3) and Rule 3, an application for an order under either of the Foreign Tribunals Evidence Act, 1856, and the Evidence by Commission Act, 1859, of England in their application to Nauru must be made ex parte to the Supreme Court by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by summons.

**APPLICATION BY SECRETARY FOR JUSTICE IN CERTAIN CASES (O.46, r.3)**

3. Where a letter of request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained -

(a) is received by the Chief Secretary and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Nauru of any party to the matter pending before the court or tribunal; or

(b) is received by the Registrar in pursuance of a Convention providing for the taking of the evidence of any person in Nauru for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Registrar shall send the document to the Secretary for Justice who may, with the consent of the Chief Secretary, make an application for an order under the Foreign Tribunals Evidence Act, 1856, of England in its application to Nauru and take such other steps as may be necessary, to give effect to the request.

#### **PERSON TO TAKE AND MANNER OF TAKING EXAMINATION (O.46, r.4)**

4. (1) Any order made in pursuance of this Order for the examination of a witness may direct the examination to be taken before any fit and proper person nominated or the person applying for the order or before such other person as to the Court seems fit.

(2) Subject to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in the manner provided by Rules 5 to 10 and paragraphs (1) to (3) of Rule 11 of Order 33 and an order may be made under Rule 14 of that Order for payment of the fees and expense due to the examiner, and those rules shall apply accordingly with any necessary modifications.

#### **DEALING WITH DEPOSITION (O.46, r.5)**

5. Unless any order made in pursuance of this Order for the examination on any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and Registrar shall -

(a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, the order of the Court for examination and the deposition taken in pursuance of the order; and

(b) send the certificate with the document annexed thereto to the Chief Secretary or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Convention, to that other person for transmission to that court or tribunal.

## **ORDER 47**

### **ARBITRATION PROCEEDINGS**

#### **COMMENCEMENT OF ARBITRATION PROCEEDINGS (O.47. r.1)**

1. (1) Every suit in which application is made to the Supreme Court for exercise by the Court or a judge of powers conferred on the Court or a judge by the Arbitration Act 1950 of England in its application to Nauru or for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction shall be made by writ of summons.

(2) Any person served with a writ of summon in such a suit must enter an appearance if he wishes to be heard in the matter but no pleadings shall be required or allowed.

#### **MATTERS FOR A JUDGE IN COURT (O.47, r.2)**

2. (1) In a suit where an order is sought -

(a) remitting an award under section 22 of the Arbitration Act 1950 of England in its application to Nauru;

(b) removing an arbitrator or umpire under subsection (1) of section 23 of that Act; or

(c) setting aside an award under subsection (2) of section 23 thereof;

or where a declaration is sought that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction, application for the order or declaration shall be made, after the time allowed for all persons served with the writ of summons to enter an appearance has elapsed, by motion to a single judge in court.

(2) A special case stated for the decision of the Supreme Court by an arbitrator or umpire under section 21 of the Arbitration Act 1950 of England in its application to Nauru shall be heard and determined by a single judge in court.

#### **MATTERS FOR A JUDGE IN CHAMBERS (O.47, r.3)**

3. (1) Subject to the preceding provisions of this Order, application for an order which the Supreme Court or a judge has jurisdiction under the Arbitration Act 1950 of England in its application to Nauru to make shall be made, after the time allowed for all persons served with the writ of summons to enter an appearance has elapsed, by summons.

(2) Where no judge is present in Nauru, the jurisdiction referred to in the last preceding paragraph may be exercised by the Registrar.

(3) An application for an order under section 21 of the said Act directing an arbitrator or umpire to state a case must be made by originating summons and the summons must be served on the arbitrator or umpire and the other party to the reference.

**SPECIAL PROVISIONS AS TO APPLICATIONS TO REMIT OR SET ASIDE  
AWARD (O.47, r.4)**

4. (1) A suit for an order of the Supreme Court -

(a) remitting an award under section 22 of the Arbitration Act 1950 of England in its application to Nauru; or

(b) setting aside an award under subsection (2) of section 23 of that Act or otherwise;

may be made at any time within 6 weeks after the award has been made and published to the parties but not thereafter.

(2) In every such suit, the notice of motion must state in general terms the grounds of the application; and, where the motion is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with that notice.

**SERVICE OF WRIT OUT OF NAURU (O.47, r.5)**

5. Service of a writ of summons in a suit commenced under this Order out of Nauru is permissible with the leave of the Court.

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**ORDER 48**

**ADMIRALTY PROCEEDINGS**

**APPLICATION AND INTERPRETATION (O.48, r.1)**

1. (1) This order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order -

"action in rem" means an Admiralty action in rem;

"caveat against arrest" means a caveat entered in the caveat book under Rule 6;

"caveat against release and payment" means a caveat entered in the caveat book under Rule 14;

"caveat book" means the book kept in the registry in which caveats issued under this Order are entered;

"limitation suit" means a suit by shipowners or other persons under the Merchant Shipping Acts 1894 to 1967 of England in their application to Nauru for the limitation of the amount of their liability in connection with a ship or other property;

"registry", except where the context otherwise requires, means the registry of the Supreme Court;

"ship" includes any description of vessel used in navigation.

## **ADMIRALTY ACTIONS (O.46, r.2)**

2. (1) The expression "Admiralty action" includes-

(a) every suit to enforce a claim for damage, loss of life or personal injury arising out of -

(i) a collision between ships; or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

(iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations; and

(b) every limitation suit.

(2) Where any person who would be liable in an action in personam on any such claim as is mentioned in the next following paragraph, being a claim arising in connection with a ship, was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship, the Admiralty jurisdiction of the Supreme Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against -

(a) that ship, if at the time when the suit is brought it is beneficially owned respect of all the shares therein by that person; or

(b) any other ship which, at the time when the suit is brought, is beneficially owned as aforesaid.

(3) The claims referred to in the last preceding paragraph are -

(a) any claim for damage done by a ship;

(b) any claim for damage received by a ship;

(c) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(d) any claim for loss of or damage to goods carried in a ship;



(e) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(f) any claim in the nature of salvage, including any claim arising by virtue of the application, by or under section 29 of the Air Navigation Act 1971, of the law relating to salvage to aircraft and their apparel and cargo;

(g) any claim in the nature of towage in respect of a ship or an aircraft;

(h) any claim in the nature of pilotage in respect of a ship or an aircraft;

(i) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(j) any claim in respect of the construction, repair or equipment of a ship or dock chargers or dues;

(k) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1967, of England in their application to Nauru is recoverable as wages;

(l) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(m) any claim arising out of an act which is or is claimed to be a general average act;

(n) any claim arising out of bottomry.

(4) In this rule "collision regulations" means regulations under section 418 of the Merchant Shipping Act, 1894, of England in its application to Nauru, or any such rules as are mentioned in subsection (1) of section 421 of that Act or any rules made under subsection (2) of the said section 421.

#### **ISSUE OF WRIT AND ENTRY OF APPEARANCE (O.48, r.3)**

3. (1) An action in rem must be begun by a writ of summons; and the writ must be in Form No. 39 of Appendix A.

(2) Rule 7 of Order 5 and Order 10 shall apply in relation to a writ by which an Admiralty action is begun.

#### **SERVICE OF WRIT OUT OF NAURU (O.48, r.4)**

4. (1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing any such claim as is mentioned in sub-paragraph (a) of Rule 2 (1) is permissible with the leave of the Court if, but only if -

(a) the defendant has his habitual residence or a place of business within Nauru;

(b) the cause of action arose within the territorial waters of Nauru or within the limits of a port of Nauru;

(c) a suit arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or

(d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) The last preceding paragraph shall not apply to an action in rem.

(3) Paragraph (2) of Rule 1 of Order 9 shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

### **WARRANT OF ARREST (O.48, r.5)**

5. (1) After a writ has been issued in an action in rem a warrant in Form No. 40 of Appendix A for the arrest of the property against which the suit or any counterclaim in the suit is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(2) A party applying for the issue out of the registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a written request in Form No. 41 of Appendix A requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a High Commissioner, a consulate or a diplomatic or consular representative in Nauru, being a suit for possession of the ship or for wages, until notice that the action has been begun has been sent to the High Commissioner, consul or representative.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state -

(a) the name, address and occupation of the applicant for the warrant;

(b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and

(c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action in rem brought against a ship by virtue of paragraph (2) of Rule 2 must state -

(a) whether the ship against which the suit is brought is the ship in connection with which the claim in the suit arose;

(b) that in the belief of the deponent the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the suit is brought; and

(c) the grounds of the deponent's belief.

(8) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the suit is brought and that the notice, if any, required by paragraph (4) has been sent.

A copy of any such notice must be annexed to the affidavit.

(9) An affidavit in such a suit as is referred to in paragraph (5) must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

#### **CAVEAT AGAINST ARREST (O.48, r.6)**

6. (1) A person who desires to prevent the arrest of any property must file in the registry a written request, in Form No. 42 of Appendix A, signed by him or his barrister and solicitor or pleader undertaking -

(a) to enter an appearance in any suit that may be begun against the property described in the request; and

(b) within 3 days after receiving notice that such a suit has been begun, to give bail in the suit in a sum not exceeding an amount specified in the request or to pay the amount so specified into court;

and on the filing of the request a caveat against the issue of a warrant to arrest the property described in the request shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

#### **REMEDY WHERE PROPERTY PROTECTED BY CAVEAT IS ARRESTED (O.48, r.7)**

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property

had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

#### **SERVICE OF WRIT OF SUMMONS IN ACTION IN REM (O.48, r.8)**

8. (1) Subject to the next following paragraph, a writ by which an action in rem is begun must be served on the property against which the suit is brought except -

(a) where the property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or

(b) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property mentioned in the last preceding paragraph or the Registrar if the writ is deemed to have been duly served on the defendant by virtue of paragraph (2) or paragraph (3) of Rule 1 of Order 8.

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the Director of Police, he must leave the writ and a copy thereof at the registry and file therein a written request in Form No. 43 of Appendix A; and where he does so the Director shall serve the writ, or cause it to be served by another police officer, on the property described in the request.

The prescribed fee payable to, and the expenses incurred by, the Director of Police or the other police officer in effecting service shall be paid to the Director on demand by him.

(4) Where the plaintiff in an action in rem, or his barrister and solicitor or pleader, becomes aware that there is in force a caveat against arrest with respect to the property against which the suit is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 17, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered an appearance in the suit or, if no defendant has entered an appearance therein, on the property mentioned in paragraph (1) or the Registrar.

#### **COMMITTAL OF BARRISTER AND SOLICITOR OR PLEADER FAILING TO COMPLY WITH UNDERTAKING (O.48, r.9)**

9. Where the barrister and solicitor or pleader of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his barrister and solicitor or pleader to enter an appearance in the suit, give bail or pay money into court in lieu of bail, he shall be liable to committal.

#### **EXECUTION, ETC., OF WARRANT OF ARREST (O.48, r.10)**

10. (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the Director of Police or by another police officer under his directions.

(3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the Director of Police to pay the fees and expenses of the Director has been lodged in the Director's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the Director of Police.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to the last preceding paragraph, a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the execution of a warrant of arrest, the warrant must be filed in the registry by the Director of Police.

#### **SERVICE, ETC., ON SHIPS, ETC.: HOW EFFECTED (O.48, r.11)**

11. (1) Subject to the next following paragraph, execution of a warrant of arrest or service of a writ in an action in rem against a ship, freight or cargo shall be effected by -

(a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and

(b) on removing the warrant or writ, leaving a copy of it affixed, in the case of the warrant, in its place or, in the case of the writ, on a sheltered, conspicuous part of the ship.

(2) Execution of a warrant of arrest or service of a writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transshipped, be effected -

(a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo; or

(b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

#### **APPLICATIONS WITH RESPECT TO PROPERTY UNDER ARREST (O.48, r.12)**

12. (1) The Director of Police may at any time apply to a judge or, when no judge is present in Nauru, the Registrar for directions with respect to property under arrest in at Admiralty action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every suit against the property.

(2) The Director of Police shall send a copy of any order made under the last preceding paragraph to all the parties to every suit against the property to which the order relates.

#### **RELEASE OF PROPERTY UNDER ARREST (O.48, r.13)**

13. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release, in this rule referred to as a "release", in Form No. 44 of Appendix A, issued out of the registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the suit, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to the next following paragraph and paragraph (5), be issued with respect to that property.

(3) Unless a judge or, when no judge is present in Nauru, the Registrar otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if a judge or, when no judge is present in Nauru, the Registrar so orders, or, subject to the last preceding paragraph, if all the other parties to the suit in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must -

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his barrister and solicitor or pleader requiring the caveat to be withdrawn; and

(b) file a written request in Form No. 45 of Appendix A requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Director of Police, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(7) A judge or, when no judge is present in Nauru, the Registrar, on the application of any party who objects to directions given to him by the Director of Police under the last preceding paragraph, may vary or revoke the directions.

#### **CAVEAT AGAINST RELEASE AND PAYMENT (O.48, r.14)**

14. (1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of court of any money in court representing the proceeds of sale of that property must file in the registry a written request in Form No. 46 of Appendix A, and on the filing of the request a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

#### **DURATION OF CAVEATS (O.48, r.15)**

15. (1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a written request in Form No. 47 of Appendix A.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

#### **BAIL (O.48, r.16)**

16. (1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 48 of Appendix A; and the sureties to the bond must enter into the pond before a Commissioner of Oaths, not being a Commissioner who, or whose partner, is acting as barrister and solicitor or pleader or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to the next following paragraph, a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under the last preceding paragraph on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the Commissioner or Registrar before whom the bail bond was entered into: and after the expiration of 24 hours from the service of the notice, or sooner with the consent of the opposite party, he may file the bond and must at the same time file the affidavits, if any, made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

#### **INTERVENERS (O.48, r.17)**

17. (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of a judge or, when no judge is present in Nauru, the Registrar, intervene in the suit.

(2) An application for the grant of leave under this rule must be made ex parte by summons supported by an affidavit showing the interest of the applicant in the property against which the suit is brought or in the money in court.

(3) A person to whom leave is granted to intervene in a suit must enter an appearance therein in the registry within the period specified in the order granting leave; and Rules 1 to 3 of Order 10 shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in a suit shall; within such period as may be specified in the order, serve on every other party to the suit such pleading as may be so specified.

#### **PRELIMINARY ACTS (O.48, r.18)**

18. (1) In a suit to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless a judge or, when no judge is present in Nauru, the Registrar otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the suit, and before any pleading is served, lodge in the registry a document, in these rules referred to as a preliminary act, containing a statement of the following particulars -

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (viii) the lights, if any, carried by the ship;
- (ix)(a) the distance and bearing of the other ship if and when her echo was first observed by radar;
- (b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights, if any, of the other ship was first seen;
- (xi) what other lights or combinations of lights, if any, of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations, if any, were made to the course and speed of the ship after the earlier of the two times referred to in particular (vii) up to the time of the collision, and when, and what measures, if any, other than alterations of course or speed, were taken to avoid the collision, and when;



(xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;

(xiv) what sound signals, if any, were given, and when;

(xv) what sound signals, if any, were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the Registrar and shall be filed in a closed envelope, stamped with an official stamp showing the date of filing, and unless the Court otherwise orders, no envelope shall be opened until the pleadings closed and a consent signed by each of the parties or his barrister and solicitor or pleader to the opening of the preliminary acts filed with the Registrar.

(3) Where the Court orders the preliminary acts to be opened, the Court further order the suit to be tried without pleadings but, where the Court orders the suit to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the suit to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Rule 1 of Order 15 shall not apply to a suit in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the suit is filed.

#### **FAILURE TO LODGE PRELIMINARY ACT: PROCEEDINGS AGAINST PARTY IN DEFAULT (O.48, r.19)**

19. (1) Where in such a suit as is referred to in paragraph (1) of Rule 18 the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the suit, and the Court may by order dismiss the suit or make such other order on such terms as it thinks just.

(2) Where in such a suit, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Rules 2 and 3 of Order 16 shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to any rule relating to the entry of judgment against the Republic, accordingly enter judgment against that defendant in accordance with the said Rule 2 or the said Rule 3, as the circumstances of the case require.

(3) Where in such a suit, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under the last preceding paragraph the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under the last preceding paragraph satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the suit is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of paragraph (1) of Rule 18 or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

#### **SPECIAL PROVISIONS AS TO PLEADINGS IN COLLISION, ETC., ACTIONS** (O.48, r.20)

20. (1) Notwithstanding anything in Rule 3 of Order 15, the plaintiff in any such suit as is referred to in sub-paragraph (a) of Rule 2(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such a suit there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding paragraph (3) of Rule 14 of Order 15, but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

#### **JUDGMENT BY DEFAULT** (O.48, r.21)

21. (1) Where a writ is served under paragraph (4) of Rule 8 on a party at whose instance a caveat against arrest was issued, then if -

(a) the sum claimed in the suit begun by the writ does not exceed the amount specified in the undertaking given by that party or his barrister and solicitor or pleader to procure the entry of the caveat; and

(b) that party or his barrister and solicitor or pleader does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the suit is based, apply to the Court for judgment by default.

(2) Judgment given under the last preceding paragraph may be enforced by the arrest of the property against which the suit was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ of summons and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the suit is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of paragraph (2) of Rule 1 of Order 8, or was served on the Registrar under Rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said paragraph (2) of Rule 1 or indorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the suit is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the suit is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to the next following paragraph, after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under the last preceding paragraph against the plaintiff in any such suit as is referred to in sub-paragraph (a) of Rule 2(1).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the suit or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 11 and Order 16, except Rule 1, shall not apply to actions in rem.

## **ORDER FOR SALE OF SHIP: DETERMINATION OF PRIORITY OF CLAIMS**

(O.48, r.22)

22. (1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may -

(a) in a case where the order for sale contains the further order referred to in the next following paragraph, after the expiration of the period specified in the order under sub-paragraph (a) of that paragraph; or

(b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order -

(a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;

(b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the suit to which he is a party to extend the period specified in the order;

(c) that within such time after the date of payment into court of the proceeds of sale as the Court directs the Director of Police shall send for publication in such newspaper as the Court may direct a notice complying with the next following paragraph.

(3) The notice referred to in sub-paragraph (c) of the last preceding paragraph must state -

(a) that the ship, naming her, has been sold by order of the Supreme Court in an action in rem, identifying the suit;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period, specifying it, specified in the order for sale; and

(d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The Director of Police must lodge in the registry a copy of each newspaper in which the notice referred to in sub-paragraph (c) of paragraph (2) appeared.

(5) The expenses incurred by the Director of Police in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in sub-paragraph (a) of paragraph (2) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" means the judge in person.

#### **APPRAISEMENT AND SALE OF PROPERTY (O.48, r.23)**

23. (1) A commission for the appraisal and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a written request in Form No. 49 of Appendix A.

(2) Such a commission must, unless the Court otherwise orders, be executed by the Director of Police and must be in Form No. 50 of Appendix A.

(3) A commission for appraisal and sale shall not be executed until an undertaking in writing satisfactory to the Director of Police to pay the fees and expenses of the Director on demand has been lodged in the Director's office.

(4) The Director of Police shall pay into court the gross proceeds of the sale and property sold by him under a commission for sale and shall bring into court the account relating to the sale, with vouchers in support, for taxation.

(5) On the taxation of the Director's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard.

#### **PAYMENT INTO AND OUT OF COURT (O.48, r.24)**

24. (1) Order 19, except Rules 3, 4 and 5, shall apply in relation to an Admiralty action as it applies to a suit for debt or damages.

(2) Subject to the next following paragraph, money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say -

(a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;

(b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;

(c) where in any other case there is no dispute between the parties.

**ASSESSORS (O.48, r.25)**

25. Trial of an Admiralty action shall be by a judge assisted by two assessors suitably qualified to give assistance therein, unless the Court on the application of any party to the suit or of its own motion orders otherwise; such assessors shall be appointed by the Registrar in accordance with directions given by the Chief Justice.

**ORDER LIMITING WITNESSES (O.48, r.26)**

26. Upon application by any party to an Admiralty action or upon the Court's own motion, the Court may, at or before the trial, order that the number of witnesses who may be called at the trial, whether they are expert witnesses or not, is to be limited.

**FIXING DATE FOR TRIAL, ETC. (O.48, r.27)**

27. (1) The Court may at any stage of a suit, either on an application made by summons by any party or by order made by virtue of Rule 33, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the suit has been fixed, the suit must be set down for trial -

(a) where the date was fixed on an application made under the last preceding paragraph, by the applicant;

(b) where the date was fixed by order made by virtue of Rule 33, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the suit down for trial, any other party may set it down or an application may be made to the Court to dismiss the suit for want of prosecution and, on the hearing of any such application, the Court may order the suit to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the suit was set down for trial must, unless the Court otherwise orders, file in the registry three copies, plus one additional copy for each of the assessors, if any, of any pleadings, preliminary acts, notices given under paragraph (3) of Rule 18 and statements filed under paragraph (4) of Rule 18.

(4) If a suit which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registrar of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Paragraph (4) of Rule 2 of Order 18 and Rule 1 of Order 29 shall not apply to Admiralty actions.

**STAY OF PROCEEDINGS IN COLLISION, ETC., SUITS UNTIL SECURITY GIVEN (O.48, r.28)**

28. Where an action in rem, being a suit to enforce any such claim as is referred to in subparagraph (a) of Rule 2(1), is begun and a cross-action in rem arising out of the same collision or other occurrence as the first-mentioned suit is subsequently begun, or a counterclaim arising out of that occurrence is made in the first-mentioned suit, then -

(a) if the ship in respect of or against which the first-mentioned suit is brought has been arrested or security given to prevent her arrest; but

(b) the ship in respect of or against which the cross-suit is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross-suit or making the counterclaim,

the Court may stay proceedings in the first-mentioned suit until security is given to satisfy any judgment given in favour of that party.

**INSPECTION OF SHIP, ETC. (O.48, r.29)**

29. Without prejudice to its powers under Rules 2 and 3 of Order 25 and Rule 5 of Order 30, the Court may, on the application of any party, make an order for the inspection by the assessors, if the suit is tried with assessors, or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the suit.

**EXAMINATION OF WITNESSES AND OTHER PERSONS (O.48, r.30)**

30. (1) The power conferred by Rule 1 of Order 33 shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said Rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under the last preceding paragraph, it may make provision for any consequential matters and, subject to any provision so made the following provisions shall have effect -

(a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;

(b) any representative, being a barrister and solicitor or a pleader, of either of the parties shall have authority to administer the oath to the witness;

(c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the barrister and solicitor or pleader for the party whose witness was examined, and that barrister and solicitor or pleader shall file it in the registry;

(d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the barristers and solicitors or pleaders or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In suits in which preliminary acts fall to be filed under Rule 18, an order shall not be made under Rule 1 of Order 33 authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

#### **PROCEEDINGS FOR APPORTIONMENT OF SALVAGE (O.48, r.31)**

31. (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be commenced by writ of summons but no pleadings shall be required or allowed.

(2) At any time after entry of appearance by all persons served with the writ of summons or the expiry of the time allowed therefore application for hearing of the suit may be made by notice of motion.

(3) The notice of motion must be filed in the registry at least 7 days before the hearing of the motion unless the Court gives leave to the contrary; a copy of the notice and one of the affidavits must be served on every person who has entered an appearance.

(4) Any person who has not been served with the writ of summons may, if the Court so orders, be permitted to take part in the proceedings on the hearing of the motion.

(5) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act, 1894, of England in its application to Nauru.

#### **FILING AND SERVICE OF NOTICES OF MOTION (O.48, r.32)**

32. (1) Notice of a motion in any Admiralty action, together with the affidavits, if any, in support thereof must be filed in the registry 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits, if any, in support thereof must be served on all the other parties to the proceedings before the originals are filed.

#### **AGREEMENT BETWEEN BARRISTERS AND SOLICITORS OR PLEADERS MAY BE MADE ORDER OF COURT (O.48, r.33)**



33. Any agreement in writing between the barristers and solicitors or pleaders of the parties to an Admiralty cause or matter, dated and signed by those barristers and solicitors and pleaders, may, if the Registrar thinks it reasonable and such as the judge would under the circumstances allow, be filed in the registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the judge in person.

**ALL ADMIRALTY PROCEEDINGS TO BE COMMENCED BY WRIT OF SUMMONS (O.48, r.34)**

34. All Admiralty causes and matters shall be commenced by writ of summons.

**LIMITATION SUIT: PARTIES (O.48, r.35)**

35. (1) In a limitation suit the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the suit and may make any or all of the others defendants also.

(3) At least one of the defendants to the suit must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and Rules 36, 37 and 38 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the suit relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

**LIMITATION SUIT: SUMMONS FOR DECREE OR DIRECTIONS (O.48, r.36)**

36. (1) Within 7 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 7 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the suit.

(2) The summons must be supported by an affidavit or affidavits proving -

(a) the plaintiff's case in the suit; and

(b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state -

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the suit relates, not being defendants to the suit who are named in the writ by their names; and

(b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the suit as appear to him to be appropriate.

(8) Any defendant who, after the Registrar has given directions under the last preceding paragraph, ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the registry and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under the last preceding paragraph, the plaintiff may take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

#### **LIMITATION SUIT: PROCEEDINGS UNDER DECREE (O.48, r.37)**

37. (1) Where the only defendants in a limitation suit are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the suit limiting the plaintiff's liability, whether made by the Registrar or on the trial of the suit -

(a) need not be advertised; but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within the last preceding paragraph, any decree in the suit limiting the plaintiff's liability, whether made by the Registrar or on the trial of the suit -

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree; and

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the suit relates may enter an appearance in the suit, if they have not already done so, and file their claims, and, in cases to which Rule 38 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under sub-paragraph (a) of the last preceding paragraph shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers in Nauru or elsewhere specified in the decree, identifying the suit, the casualty and the relation of the plaintiff thereto, whether as owner of a ship involved in the casualty or otherwise as then case may be, stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under sub-paragraph (b) of the last preceding paragraph file in the registry a copy of each newspaper in which the advertisement required under sub-paragraph (a) of that paragraph appears.

(4) The time to be allowed under sub-paragraph (b) of paragraph (2) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisement; and after the expiration of the time so allowed no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on an appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability, whether made by the Registrar or on the trial of the suit, may make any such provision as is authorised by section 504 of the Merchant Shipping Act, 1894, of England in its application to Nauru.

#### **LIMITATION SUIT: PROCEEDINGS TO SET ASIDE DECREE (O.48, r.38)**

38. (1) Where a decree limiting the plaintiff's liability, whether made by the Registrar or on the trial of the suit fixes a time in accordance with paragraph (2) of Rule 37, any person with a claim against the plaintiff in respect of the casualty to which the suit relates, who -

(a) was not named by his name in the writ as a defendant to the suit; or

(b) if so named, neither was served with the writ nor entered an appearance, may, within that time, after an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the suit as appear to him to be appropriate.

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## **ORDER 49**

### **PROBATE PROCEEDINGS+**

#### **APPLICATION AND INTERPRETATION (O.49, r.1)**

1. (1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules "probate suit" means a suit for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being a suit which is non-contentious or common form probate business.

(3) In this Order -

"registry" means the registry of the Supreme Court;

"will" includes a codicil.

(4) In this Order "probate causes and matters" and "probate suit" do not include proceedings before the Nauru Lands Committee in respect of the estates and wills of Nauruans or appeals from any decision of the said Committee.

#### **REQUIREMENTS IN CONNECTION WITH ISSUE OF WRIT (O.49, r.2)**

2. (1) A probate suit must be begun by writ of summons.

(2) Before a writ beginning a probate suit is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the suit relates.

(3) A writ beginning a suit for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under Rule 7 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the registry.

#### **SERVICE OF NOTICE OF WRIT OUT OF JURISDICTION (O.40, r.3)**

3. (1) Subject to the next following paragraph, service out of Nauru of a notice of a writ by which a probate suit is begun is permissible with the leave of the Court.

(2) Rule 3 of Order 9 shall apply in relation to an application for the grant of leave under this rule as it applies in relation to an application for the grant of leave under Rule 1 or Rule 2 of that Order.

#### **INTERVENER IN PROBATE SUIT (O.49, r.4)**

4. (1) A person not a party to a probate suit may apply to the Court for leave to intervene in a probate suit.

(2) An application under this rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate suit shall not be entitled to be heard in the suit unless he enters an appearance therein.

(4) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, the filing of an affidavit of testamentary scripts or other matters as it thinks necessary.

#### **CITATION TO SEE PROCEEDINGS (O.49, r.5)**

5. (1) On the application of the plaintiff, or of any other party who has pleaded in a probate suit, a citation may be issued against any person not a party to the suit who has an adverse interest to the applicant notifying him that if he does not enter an appearance in the suit judgment may be given therein without further notice to him.

(2) Where a person on whom a citation under this rule is served fails to enter an appearance in the suit, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the suit without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

#### **ENTRY OF APPEARANCE (O.49, r.6)**

Rules 1 and 2 of Order 10 shall apply to the entry of appearance by a person authorised to intervene in a probate suit, and by a person cited under Rule 5, as if -

(a) that person were a defendant; and

(b) the parties to the suit in the case of an intervener, or the party at whose instance the citation was issued in the case of a person cited, were the plaintiff.

#### **CITATION TO BRING IN GRANT (O.49, r.7)**

7. In a suit for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave

at the registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

#### **CITATIONS (O.49, r.8)**

8. (1) A citation under Rule 5 or Rule 7 must be issued out of the registry and must be settled by the Registrar before it is issued.

(2) Before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:

Provided that the Registrar may in special circumstances allow the affidavit to be sworn by that person's barrister and solicitor or pleader.

(3) Issue of a citation take place upon its being sealed by an officer of the registry.

(4) Without prejudice to Rule 4 of Order 42, a citation under Rule 5 or Rule 7 must be served personally on the person cited.

(5) Service out of Nauru of a citation under Rule 5 or Rule 7 is permissible but, in the case of a citation under Rule 7, only with the leave of the Registrar.

(6) Paragraphs (1) and (2) of Rule 3 of Order 9 shall apply in relation to an application for the grant of leave under the last preceding paragraph as they apply in relation to an application for the grant of leave under Rule 1 or Rule 2 of that Order.

(7) An order granting leave to serve a citation under Rule 7 out of Nauru must limit a time within which the person to be served with the citation must comply with it.

(8) Rules 4, 5 and 6 of Order 9 shall apply in relation to a citation under Rule 7 as they apply in relation to notice of a writ of summons.

#### **AFFIDAVIT OF TESTAMENTARY SCRIPTS (O.43, r.9)**

9. (1) Unless the Registrar otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate suit must swear an affidavit -

(a) describing any testamentary script of the deceased person, whose estate is the subject of the suit, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and

(b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person;

and any such script which is in the possession or under the control of the deponent must be annexed to his affidavit.

(2) An affidavit required by this rule, together with any testamentary script annexed thereto, must be filed within 14 days after the entry of appearance by a defendant to the suit or, if no defendant enters an appearance therein and the Registrar does not otherwise direct, before the suit is set down for trial.

(3) Where any testamentary script required by this rule to be filed or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be filed and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Registrar, a party to a probate suit shall not be allowed to inspect an affidavit filed under this rule by any other party to the suit, or any testamentary script annexed thereto, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy of a will which is alleged to have been lost or destroyed.

#### **DEFAULT OF APPEARANCE (O.49, r.10)**

10. (1) Order 11 shall not apply in relation to a probate suit.

(2) Where any of several defendants to a probate suit fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ of summon, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the suit as if that defendant had entered an appearance.

#### **SERVICE OF STATEMENT OF CLAIM (O.49, r.11)**

11. The plaintiff in a probate suit must, unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ of summons, serve a statement of claim on every defendant who enters an appearance in the suit and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 14 days after the filing by him of an affidavit under Rule 9, whichever is the later.

#### **COUNTERCLAIM (O.49, r.12)**

12. Notwithstanding anything in paragraph (1) of Rule 2 of Order 12, a defendant to a probate suit who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate off the will, or letters of administration of the estate, of the deceased person which is the subject of the suit must add to his defence a counterclaim in respect of that matter.

#### **CONTENTS OF PLEADINGS (O.49, r.13)**

13. (1) Where the plaintiff in a probate suit disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate suit in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Rule 7 of Order 15 any party who pleads that at the time when a will, the subject of the suit, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say -

(a) that the will was not duly executed;

(b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and

(c) that the execution of the will was obtained by undue influence or fraud, shall be made by that party unless that other plea is also pleaded.

#### **DEEALUT OF PLEADINGS (O.49, r.14)**

14. Order 16 shall not apply in relation to a probate suit.

#### **DISCONTINUANCE (O.49, r.15)**

15. (1) Order 18 shall not apply in relation to a probate suit.

(2) At any stage of the proceedings in a probate suit the Court may, on the application of the plaintiff or of any party to the suit who has entered an appearance therein, order the suit to be discontinued on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the suit be made to the person entitled thereto.

(3) An application for an order under this rule may be made by summons or by notice of motion.

#### **APPLICATION FOR ORDER TO BRING IN WILL, ETC. (O:49, r.16)**

16. An application in a probate suit for an order under section 26 of the Court of Probate Act, 1857, of England in its application to Nauru requiring a person to bring into the registry a will or other testamentary paper or to attend in court for examination may be made to the Registrar by summons, and the summons must be served on the person against whom the order is required.

#### **ADMINISTRATION PENDENTE LITE (O.19, r.17)**

17. (1) An application under section 163 of the Supreme Court of Judicature (Consolidation) Act 1925 of England in its application to Nauru for the grant of administration may be made to the Registrar by summons.



(2) An administrator to whom a grant is made under the said section 163 must at the time when he brings proceedings for taxation of his costs, or at such other time as the Registrar may direct, produce at the registry an account, verified by affidavit, of the moneys and other property received or paid or otherwise dealt with by him in his capacity as such an administrator.

(3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and Rules 2 and 15 of Order 40 shall, with the necessary modifications, apply in relation to proceedings for the examination of the account as they apply in relation to proceedings for taxation of the administrator's costs.

(4) Except where the remuneration of the administrator has been fixed by a judge, the Registrar shall, on the completion of the examination of the administrator's account and taxation of his costs, assess and provide for the administrator's remuneration in accordance with the said section 163.

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## **ORDER 50**

### **PROCEEDINGS BY AND AGAINST THE REPUBLIC (No rules made yet under this Order)**

## **ORDER 51**

### **PROCEEDINGS TRANSFERRED BETWEEN COURTS**

#### **APPLICATION AND INTERPRETATION (O.51, r.1)**

1. (1) This Order applies to proceedings transferred from the District Court to the Supreme Court under section 38 of the Courts Act 1972 or from the Supreme Court to the District Court under section 39 of the said Act.

(2) In this Order, "the proper officer" means -

(a) in the Supreme Court, the Registrar; and

(b) in the District Court, the Clerk.

#### **DUTIES OF THE PROPER OFFICERS (O.51, r.2)**

2. (1) Upon an order being made for the transfer of any proceedings from one Court to another Court, the proper officer of the Court from which the proceedings are transferred shall transmit, or cause to be transmitted, to the proper officer of the other Court -

(a) where the whole suit has been transferred, all the documents filed in his Court relating to the suit; and

(b) where only the proceeding relating to a counterclaim or set-off have been transferred, a copy of the counterclaim or set-off, as the case may be, of any subsequent pleadings in the suit and of the order for transfer,

and shall enter in the cause book of his Court details of the order for transfer.

(2) Upon receipt of the documents or copies transmitted to him under the last preceding paragraph, the proper officer of the Court into which the proceedings have been transferred shall -

(a) open, or cause to be opened, a case file in respect of those proceedings;

(b) enter, or cause to be entered, in the cause book of his Court the details of the proceedings;

(c) assign a number, or cause a number to be assigned, to the entry and mark the case-file, or cause it to be marked, with that number;

(d) notify all the parties to the proceedings and the proper officer of the Court, from which the proceedings were transferred of that number;

(e) issue a summons to all the parties to the proceedings requiring them to attend -

(i) in the Supreme Court, before the Registrar; or

(ii) in the District Court before the resident magistrate, for directions.

### **DIRECTIONS (O.51, r.3)**

3. Upon the hearing of the summons for directions, the Registrar or the resident magistrate, as the case may be, shall give such directions as appear to him to be appropriate as to the steps to be taken in the proceedings and the parties by whom they are to be taken.

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## **ORDER 52**

### **DISABILITY**

#### **INTERPRETATION (O.52, r.1)**

1. In this Order -

"the Ordinance" means the Mentally-disordered Persons Ordinance 1963-1967;

"patient" means a person who, by reason of mental disorder, is incapable of managing and administering his property and affairs;

"person under disability" means a person who is an infant or a patient.

**PERSON UNDER DISABILITY MUST SUE, ETC., BY NEXT FRIEND OR GUARDIAN AD LITEM (O.52, r.2)**

2. (1) A person under disability shall not bring, or make a claim in, any proceedings except by his next friend and shall not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

**NEXT FRIEND OR GUARDIAN AD LITEM TO BE APPROVED BY COURT (O.52, r.3)**

3. (1) Except where the next friend or guardian ad litem of a party to any suit is the committee of the patient's estate appointed under section 12 of the Ordinance or has been appointed guardian ad litem by the Court, he shall, within 7 days of issuing the writ of summons or originating summons or entering an appearance in the suit, apply ex parte by summons -

(a) in the Supreme Court, to the Registrar; and

(b) in the District Court, the resident magistrate,

for approval of his acting in the suit as next friend or guardian ad litem.

(2) The Registrar or the resident magistrate, as the case may be, may, if he thinks fit, adjourn the hearing of the summons and require the attendance of the person under the disability or the service of the summons on any other person.

(3) In deciding whether or not to grant approval to any person to act as next friend or guardian ad litem, the Registrar or the resident magistrate, as the case may be, shall have regard to all facts relevant to the suitability of the applicant so to act and in particular to the wishes of the person under the disability, if they can be ascertained, and to whether the interest of the applicant in the subject-matter of the suit conflict in any way with the interests of the person under the disability but may, for good reason, grant approval notwithstanding that such person does not wish the applicant so to act or that there is a conflict of interests.

(4) Where the next friend or guardian ad litem fails to make application in accordance with paragraph (1), no further step shall be taken in the proceedings, unless the Court otherwise orders, until a next friend or guardian ad litem of the person under disability has been appointed by the Court and the person so failing shall be personally liable to pay costs of any application for such an appointment to be made.

(5) Notwithstanding the provisions of paragraph (1), in proceedings commenced by originating summons the application for approval to act as next friend or guardian ad litem shall be made at the hearing of the summons.

**CONSENT OF NEXT FRIEND OR GUARDIAN AD LITEM (O.52, r.4)**

4. (1) The name of a person shall not be used in any proceedings as next friend or guardian litem of any person under disability unless he has consented so to act either in writing or verbally to the Court, or -

(a) in proceedings in the Supreme Court, to a judge or the Registrar, and

(b) in proceedings in the District Court, to the resident magistrate.

(2) Where the consent is given in writing, it shall be filed in the registry of the Court in which the proceedings are being taken.

**APPOINTMENT OF GUARDIAN AD LITEM WHERE PERSON UNDER DISABILITY DOES NOT APPEAR (O.52, r.5)**

5. (1) Where -

(a) in a suit against a person under disability begun by writ of summons no appearance is entered in the suit for that person; or

(b) the defendant to a suit serves a defence and counterclaim on a person under disability who is not already a party to the suit, and no appearance is entered for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited, as respects that person, for appearing and before proceeding further with the suit or counter-claim.

(2) Where a party to a suit has served on a person under disability who is not already a party to the suit a third party notice within the meaning of Order 13 and no appearance is entered for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited, as respects that person, for appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by originating summons that person does not appear by a guardian ad litem at the hearing of the summons the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(4) At any stage in proceedings under any judgment or order, notice of where has been served on a person under disability, the Court may, if no appearance is for that person, appoint a guardian ad litem of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraph (1) or paragraph (2) must be supported by evidence proving -

(a) that the person to whom the application relates is a person under disability;

(b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;

(c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and

(d) subject to the next following paragraph, that notice of the application was, after the expiration of the time limited for appearing and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or paragraph (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) or paragraph (4) must be supported by evidence proving the matters referred to in sub-paragraphs (a) and (b) of paragraph (5).

#### **APPLICATION TO DISCHARGE OR VARY CERTAIN ORDERS (O.52, r.6)**

6. An application to the Court on behalf of a person under disability served with an order made ex parte under Rule 8 of Order 12 for the discharge or variation of the order must be made -

(a) if a next friend or guardian ad litem is acting for that person in the suit in which the order is made within 14 days after the service of the order on that person;

(b) if there is no next friend or guardian ad litem acting for that person in that suit, within 14 days after the appointment of such a friend or guardian to act for him.

#### **ADMISSION NOT TO BE IMPLIED FROM PLEADING OF PERSON UNDER DISABILITY (O.52, r.7)**

7. Notwithstanding anything in paragraph (1) of Rule 13 of Order 15, a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

#### **DISCOVERY AND INTERROGATORIES (O.52, r.8)**

8. Orders 21 and 23 shall apply to a person under disability and to his next friend or guardian ad litem.

#### **COMPROMISE, ETC., BY PERSON UNDER DISABILITY (O.52, r.9)**

9. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

## **APPROVAL OF SETTLEMENT (O.52, r.10)**

10. (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability, whether alone or in conjunction with any other person, are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, no pleadings shall be required and immediately following the entry of appearance by all defendants application maybe made by summons for the settlement to be approved and by the summons application may also be made for -

(a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under Rule 11; or

(b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Acts, 1846 to 1959, of England in their application to Nauru the originating summons must include the particulars mentioned in section 4 of the Fatal Accidents Act, 1846, of England.

(3) In this rule "settlement" includes a compromise.

## **CONTROL OF MONEY RECOVERED BY PERSON UNDER DISABILITY (O.52, r.11)**

11. (1) Where in any proceedings -

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or

(b) money paid into court is accepted by or on behalf of a party who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Supreme Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court, to the person under disability, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's barrister and solicitor or pleader in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the Supreme Court to be invested or otherwise dealt with there, the money, including any interest thereon, shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Supreme Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894 of England in its application to Nauru as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

**PROCEEDINGS UNDER FATAL ACCIDENTS ACTS OF ENGLAND (APPLIED):  
APPORTIONMENT BY COURT (O.52, r.12)**

12. (1) Where a single sum of money is paid into court under Rule 1 of Order 19 in satisfaction of causes of action arising under the Fatal Accidents Acts, 1846 to 1959, and the Law Reform (Miscellaneous Provisions) Act, 1934, of England in their application to Nauru and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under Rule 11, if that rule applies, or when authorising its payment out of court.

(2) Where, in a suit in which a claim under the Fatal Accidents Acts, 1846 to 1959, of England in their application to Nauru is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under Rule 1 of Order 19 is accepted in satisfaction of the cause of action under the said Acts, then the sum shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid being the part apportioned by the court under the last preceding paragraph to the cause of action under the said Acts.

**SERVICE OF CERTAIN DOCUMENTS ON PERSON UNDER DISABILITY (O.52, r. 13)**

13. (1) Where in any proceedings a document is required to be served personally on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to paragraph (3) of Rule 12 of Order 21 and paragraph (3) of Rule 6 of Order 23, the document must be served -

(a) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a patient in respect of whose estate a committee has been appointed under section 12 of the Ordinance, on his committee or, if no committee has been appointed, on the person with whom he resides or in whose care he is; and must be served in the manner required by these rules with respect to the document in question.

(3) Notwithstanding anything in the last preceding paragraph, the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a witness summons to any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

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## **ORDER 53**

### **PARTNERS**

#### **SUITS BY AND AGAINST FIRMS WITHIN NAURU (O.53, r.1)**

1. Subject to the express provisions of any written law to the contrary, any two or more persons claiming to be entitled or alleged to be liable, as partners in respect of a cause of action and carrying on business within Nauru may sue, or be sued in the name of the firm, if any, of which they were partners at the time when the cause of action accrued.

#### **DISCLOSURE OF PARTNERS' NAMES (O.53, r.2)**

2. (1) Subject to the express provisions of any written law to the contrary, any defendant to a suit brought by partners in the name of a firm may serve on the plaintiffs or their barrister and solicitor or pleader a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their barrister and solicitor or pleader to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the suit be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ of summons or originating summons.

(3) Paragraph (1) shall have effect in relation to a suit brought against partners in the name of a firm as it has effect in relation to a suit brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

#### **SERVICE OF WRIT (O.53, r.3)**

3. (1) Where by virtue of Rule 1 partners are sued in the name of a firm, the writ of summons may, except in the case mentioned in the next following paragraph be served -

(a) on any one or more of the partners; or



(b) at the principal place of business of the partnership within Nauru, on any person having at the time of service the control or management of the partnership business there;

and, where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of Nauru.

(2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before a suit against the firm is begun, the writ by which the suit is begun must be served on every person within Nauru sought to be made liable in the suit.

(3) Every person on whom a writ is served under paragraph (1) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

#### **ENTRY OF APPEARANCE IN SUIT AGAINST FIRM (O.53, r.4)**

4. (1) Subject to the express provisions of any written law to the contrary, where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the suit shall nevertheless continue in the name of the firm.

(2) Where in a suit against a firm the writ by which the suit is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the suit and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with the last preceding paragraph, then –

(a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;

(b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in a suit in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that

defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in a suit against a firm the writ by which the suit is begun is served on a person as a person having the control or management or the partnership business, that person may not enter an appearance in the suit unless he is a member of the firm sued.

#### **ENFORCING JUDGMENT OR ORDER AGAINST FIRM (O.53, r.5)**

5. (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to Rule 6, issue against any property of the firm within Nauru.

(2) Where a judgment is given or an order made against a firm, execution to enforce the judgment or order may, subject to Rule 6 and to the next following paragraph, issue against any person who -

(a) entered an appearance in the suit as a partner;

(b) having been served as a partner with the writ of summons, failed to enter an appearance in the suit;

(c) admitted in his pleading that he was a partner; or

(d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of Nauru when the writ of summons was issued unless he -

(a) entered an appearance in the suit as a partner;

(b) was served within Nauru with the writ as-a partner; or

(c) was, with the leave of the Court given under Order 9, served out of Nauru with the writ or notice of the writ as a partner;

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of Nauru when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under the last preceding paragraph is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability,

the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in a suit may be tried and determined.

**ENFORCING JUDGMENT OR ORDER IN SUITS BETWEEN PARTNERS (O.53, r.6)**

6. (1) Execution to enforce a judgment or order given or made in -

(a) a suit by or against a firm in the name of the firm against or by a member of the firm; or

(b) a suit by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

**ATTACHMENT OF DEBTS OWED BY FIRM (O.53, r.7)**

7. (1) A garnishee order nisi may be made under Rule 11 of Order 36 in relation to debts due or accruing due from a firm carrying on business within Nauru notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) A garnishee order nisi issued under the said Rule 11 relating to such debts as aforesaid must be served on a member of the firm within Nauru or on some other person having the control or management of the partnership business.

(3) Where a garnishee order nisi made under the said Rule 11 of Order 36 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

**APPLICATION TO A PERSON CARRYING ON BUSINESS IN ANOTHER NAME (O.53, r.8)**

8. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and Rules 2 to 7 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

**APPLICATIONS FOR ORDERS CHARGING PARTNER'S INTEREST IN PARTNERSHIP PROPERTY, ETC. (O.53, r.9)**

9. (1) Every application to the Court by a decree-holder in respect of a partner for an order under section 26 of the Partnership Ordinance 1912 of the Territory of Papua in its application to Nauru, which authorises the Courts to make certain orders on the application of a decree-holder of a partner, including an order charging the partner's interest in the partnership property, and every application to the Court by a partner of the judgment-debtor made in consequence of the first-mentioned application must be made by summons.

(2) The Registrar may exercise the powers conferred on a judge by the said section 26.

(3) Every summons issued by a decree-holder under this rule, and every order made on such a summons, must be served on the judgment-debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment-debtor and the purser of the company.

(4) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served -

(a) on the decree-holder;

(b) on the judgment-debtor; and

(c) on such of the other partners of the judgment-debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) A summons or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

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## **ORDER 54**

### **DEFAMATION SUITS**

#### **APPLICATION (O.54, r.1)**

1. These Rules apply to suits for libel or slander subject to the following rules of this Order.

#### **INDORSEMENT OF CLAIM IN LIBEL SUIT (O.54, r.2)**

2. Before a writ of summons in a suit for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the suit is brought to enable them to be identified.

#### **OBLIGATION TO GIVE PARTICULARS (O.54, r.3)**

3. (1) Where in a suit for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in a suit for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect; he must give particulars stating which of the words

complained of he alleges are statements of fact of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in a suit for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

#### **PROVISIONS AS TO PAYMENT INTO COURT (O.54, r.4)**

4. (1) Where in a suit for libel or slander against several defendants sued jointly the plaintiff, in accordance with paragraph (1) of Rule 3 of Order 19, accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then notwithstanding anything in paragraph (4) of that rule, the suit shall be stayed as against that defendant only, but -

(a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the suit by way of damages shall not exceed the amount, if any, by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the suit has been stayed; and

(b) the plaintiff shall not be entitled to his costs of the suit against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the suit against the other defendant.

(2) Where in a suit for libel a party pleads the defence for which section 2 of the Libel Act, 1843, of England in its application to Nauru provides, Rule 7 of Order 19 shall not apply in relation to that pleading.

#### **STATEMENT IN OPEN COURT (O.54, r.5)**

5. (1) Where a party accepts money paid into Court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in chambers by summons for leave to make in open Court a statement in terms approved by the judge.

(2) Where a party to a suit for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the suit be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

#### **INTERROGATORIES NOT ALLOWED IN CERTAIN CASES (O.54, r.6)**

6. In a suit for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

**EVIDENCE IN MITIGATION OF DAMAGES (O.54, r.7)**

7. In a suit for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

**FULFILMENT OF OFFER OF AMENDS UNDER SECTION 4 OF THE DEFAMATION ACT, 1952, OF ENGLAND (APPLIED) (O.54, r.8)**

8. (1) An application to the Supreme Court under section 4 of the Defamation Act, 1952, of England in its application to Nauru to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of a suit for libel or slander in respect of the publication to which the offer relates, be made by an originating summons; only a judge may determine such question.

(2) No appearance need be entered to an originating summons by which such an application is made.

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**ORDER 55**

**MONEY LENDERS' SUITS**

**APPLICATION AND INTERPRETATION (O.55, r.1)**

(1) These Rules apply to a moneylender's suit subject to the following rules of this Order.

(2) In this Order -

"money lender" has the meaning assigned to it by section 6 of the Moneylenders Act, 1900, of England in its application to Nauru;

"moneylender's suit" means a suit for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to money so lent, being a suit brought by the lender or an assignee.

**INDORSEMENT OF WRIT OF SUMMONS (O.55, r.2)**

2. Before a writ of summons beginning a moneylender's suit is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.

**PARTICULARS TO BE INCLUDED IN STATEMENT OF CLAIM (O.55, r.3)**

3. Every statement of claim in a moneylender's suit, whether indorsed on the writ or not, must state –

- (a) the date on which the loan was made;
- (b) the amount actually lent to the borrower;
- (c) the rate per cent per annum of interest charged;
- (d) the date when the contract for repayment was made;
- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower;
- (f) the date when a copy of the note or memorandum was delivered or sent to the borrower;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

**JUDGMENT IN DEFAULT OF APPEARANCE OR OF DEFENCE (O.55, r.4)**

4. (1) in a moneylender's suit judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons, and the summons must, notwithstanding anything in Rule 9 of Order 42, be served on the defendant.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

(4) On the hearing of such an application, whether the defendant appears or not, the Court may exercise the powers of the Court under subsection (1) of section 1 of the Moneylenders Act, 1900, of England as extended by section 10 of the Moneylenders Act, 1927, of England in their application to Nauru.

## **ADMINISTRATION AND SIMILAR SUIT**

### **INTERPRETATION (O.56, r.1)**

1. In this Order "administration suit" means a suit for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

### **DETERMINATION OF QUESTIONS, ETC., WITHOUT ADMINISTRATION (O.56, r.2)**

2. (1) A suit may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration suit and a claim need not be made in the suit for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of the last preceding paragraph, a suit may be brought for the determination of any of the following questions -

(a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;

(b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;

(c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), a suit may be brought for any of the following reliefs -

(a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;

(b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;

(c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;

(d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;

(e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.



### **PARTIES (O.56, r.3)**

3. (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration suit or such a suit as is referred to in Rule 2 relates must be parties to the suit, and where the suit is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in paragraph (2) of Rule 5 of Order 12, and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such a suit as is mentioned in the last preceding paragraph relates need not be parties to the suit; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the suit, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in a suit for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the suit, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

### **JUDGMENTS AND ORDERS IN ADMINISTRATION SUITS (O.56, r.4)**

(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration suit is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may –

(a) order that proceedings in the suit be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;

(b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the suit relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

### **CONDUCT OF SALE OF TRUST PROPERTY (O.56, r.5)**

5. Where in an administration suit an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

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**ORDER 57**

**SUITS FOR SPECIFIC PERFORMANCE, ETC.:**

**SUMMARY JUDGMENT**

**APPLICATION BY PLAINTIFF FOR SUMMARY JUDGMENT (O.57, r.1)**

1. (1) In any suit begun by writ of summons indorsed with a claim -

(a) for specific performance of an agreement, whether in writing or not, for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages;

(b) for rescission of such an agreement; or

(c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the suit, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the suit.

**MANNER IN WHICH APPLICATION UNDER RULE 1 MUST BE MADE (O.57, r.2)**

2. (1) An application under Rule 1 must be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the suit.

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

**JUDGMENT FOR PLAINTIFF (O.57, r.3)**

3. Unless on the hearing of an application under Rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the suit, the Court may give judgment for the plaintiff in the suit.

**LEAVE TO DEFEND (O.57, r.4)**

4. (1) A defendant may show cause against an application under Rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the suit either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity –

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

#### **DIRECTIONS (O.57, r.5)**

5. Where the Court orders that a defendant have leave to defend the suit, the Court shall give directions as to the further conduct of the suit.

#### **COSTS (O.57, r.6)**

6. If the plaintiff makes an application under Rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 40, and, in particular, to Rule 5 thereof, the Court may dismiss the application with costs and require the costs to be paid by his forthwith.

#### **SETTING ASIDE JUDGMENT (O.57, r.7)**

7. Any judgment given against a defendant who does not appear at the hearing of an application under Rule 1 may be set aside or varied by the Court on such terms as it thinks just.

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### **ORDER 58**

#### **DEBENTURES HOLDERS' SUITS: RECEIVER'S REGISTER**

##### **RECEIVER'S REGISTER (O.58, r.1)**

1. Every receiver appointed by a Court in a suit to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register or transfers of, and other transmissions of title to, such debentures or stock, in this Order referred to as "the receiver's register".

##### **REGISTRATION OF TRANSFERS (O.58, r. 2)**

2. (1) Where a receiver is required by Rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post, airmail if available, to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating –

(a) that an application for the registration of the transfer has been made; and

(b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post, airmail if available, reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the suit and to the order appointing him receiver.

#### **APPLICATION FOR RECTIFICATION OF RECEIVER'S REGISTER (O.58, r.3)**

3. (1) Any person aggrieved by any thing done or omission made by a receiver under Rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the suit in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the suit by the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

#### **RECEIVER'S REGISTER EVIDENCE OF TRANSFERS, ETC. (O.58, r.4)**

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the suit in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any

distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the suit certifying the holders of the debentures or debenture stock certificates.

#### **PROOF OF TITLE OF HOLDER OF BEARER DEBENTURE, ETC. (O.58, r.5)**

5. (1) This rule applies in relation to a suit to enforce bearer debentures or to enforce debenture stock in respect of which the corporation has issued debenture bearer certificates.

(2) Notwithstanding that judgment has been given in the suit and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in the last preceding paragraph, the title of any person claiming to be such a holder shall, in the absence of notice of any defect in the title, be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person, giving his name and address, who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the judge, the barrister and solicitor or pleader of the plaintiff in the suit must cause to be indorsed thereon a notice stating -

(a) that the person whose name and address is specified in the notice, being the person named as the holder of the debenture or certificate in the certificate of identification produced under the last preceding paragraph, has been recorded in the chambers of the judge as the holder of the debenture or debenture stock certificate, as the case may be;

(b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with the last preceding paragraph; and

(c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The barrister and solicitor or pleader of the plaintiff in the suit must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

#### **REQUIREMENTS IN CONNECTION WITH PAYMENTS (O.58, r.6)**

6. (1) Where in a suit to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Registrar shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which the next following paragraph provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the barrister and solicitor or pleader of the plaintiff in the suit or to such other person as the Court may direct, and that barrister and solicitor, pleader or person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Registrar.

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## **ORDER 59**

### **MORTGAGE SUITS**

#### **APPLICATION AND INTERPRETATION (O.59, r.1)**

1. (1) This Order applies to any suit by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being a suit in which there is a claim for any of the following reliefs, namely -

- (a) payment of moneys secured by the mortgage;
- (b) sale of the mortgaged property;
- (c) foreclosure;
- (d) delivery of possession, whether before or after foreclosure or without foreclosure, to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;
- (e) redemption;
- (f) reconveyance of the property or its release from the security;
- (g) delivery of possession by the mortgagee.

(2) In this Order "mortgage" includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) A suit to which this Order applies is referred to in this Order as a mortgage suit.

(4) These Rules apply to mortgage suits subject to the following provisions of this Order.

#### **JUDGMENT IN DEFAULT (O.59, r.2)**

2. (1) Notwithstanding anything in Order 11 or Order 16, in a mortgage suit judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Rule 9 of Order 42, be served on the defendant.

(3) Not less than 4 clear days before the day fixed for the first hearing of the summons the plaintiff must cause the summons and a copy of the affidavit in support of the summons to be served on the defendant.

(4) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief, if any, claimed by the writ as the plaintiff intends to apply for at the hearing.

(5) Where the hearing is adjourned, then, subject to any directions given by the Court, notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, must be served on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (4).

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (3) or paragraph (5).

(7) Where a summons for leave under this rule is issued in a mortgage suit in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, the affidavit in support of the summons must -

(a) exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons;

(b) where the plaintiff claims delivery of possession, show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of -

(i) the amount of the advance;

(ii) the amount of the repayments;

(iii) the amount of any interest or instalments in arrear at the date of issue of the writ and at the date of the affidavit; and

(iv) the amount remaining due under the mortgage;

(c) where the plaintiff claims delivery of possession, give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property;

(d) if the mortgage creates a tenancy other than a tenancy at will between mortgagor and mortgagee, show how and when the tenancy was determined and if by service of notice when the notice was duly served;

(e) where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particular mentioned in sub-paragraph (b); and

(f) where the plaintiff's claim includes a claim for interest to judgment, state the amount of a day's interest.

### **FORECLOSURE IN REDEMPTION SUIT (O.59, r.3)**

3. Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage suit for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

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### **ORDER 60**

### **CHILDREN**

(No rules made under this Order yet)

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### **ORDER 61**

### **BILLS OF SALE ACTS OF ENGLAND (APPLIED)**

### **RECTIFICATION OF REGISTER (O.61, r.1)**

1. (1) Every application to the Supreme Court under section 14 of the Bills of Sale Act, 1878, of England in its application to Nauru for an order -

(a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration; or

(b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by affidavit ex parte to the Registrar.

(2) Every application for such an order as is described in the last preceding paragraph shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.



## **ENTRY OF SATISFACTION (O.61, r.2)**

(1) Every application under section 15 of the Bills of Sale Act, 1878, of England in its application to Nauru to the Registrar for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must -

(a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made ex parte;

(b) in all other cases, be made by originating summons.

(2) An ex parte application under sub-paragraph (a) of the last preceding paragraph must be supported by -

(a) particulars of the consent referred to in that sub-paragraph; and

(b) an affidavit by a witness who attested the consent verifying the signature on it.

(3) An originating summons under sub-paragraph (b) of paragraph (1) must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt, if any, for which the bill of sale was made has been satisfied or discharged.

(4) No appearance need be entered to an originating summons under sub-paragraph (b) of paragraph (1).

## **RESTRAINING REMOVAL OR SALE OF GOODS SEIZED (O.61, r.3)**

3. An application to the Supreme Court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, of England in its application to Nauru must be made by originating summons, to which no appearance need be entered.

## **SEARCH OF REGISTER (O.61, r.4)**

4. The Registrar of the Supreme Court shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

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## **ORDER 62**

### **LIMITATION ACT 1963 OF ENGLAND (APPLIED)**

#### **EXERCISE OF JURISDICTION (O.62, r.1)**

1. (1) Subject to the next following paragraph, the jurisdiction of the Courts to grant leave for the purposes of section 1 of the Limitation Act 1963 of England in its application to Nauru shall be exercised -

(a) in the Supreme Court, by a judge in chambers; and

(b) in the District Court, by the resident magistrate in chambers.

(2) The last preceding paragraph shall not apply in relation to an application for the grant of leave for the purposes of the said section 1 made during the trial of the relevant suit.

(3) In this Order "relevant suit" has the same meaning as "relevant action" in section 2 of the Limitation Act, 1963, of England in its application to Nauru.

#### **APPLICATION FOR LEAVE (O.62, r.2)**

2. (1) An application for the grant of leave for the purposes of the said section 1 made before the trial of the relevant suit must be made by ex parte summons which shall, if the application is made before the commencement of the relevant suit, be an ex parte originating summons.

(2) The summons by which any such application is made must specify the cause of action to which the application relates and must be supported by an affidavit to which in the case of an application made before the commencement of the relevant suit, the statement of claim proposed to be served in that suit must be exhibited.

(3) The requirement in subsection (1) of section 2 of the Limitation Act, 1963 of England in its application to Nauru that an application for the leave of the Court for the purposes of section 1 thereof shall be made ex parte shall not apply if the application is made during the trial of the relevant suit.

#### **COPY OF ORDER GRANTING LEAVE TO BE SERVED (O.62, r.3)**

3. Where the judge or resident magistrate makes an order granting leave for the purposes of the said section 1 on an application made before the trial of the relevant suit, a copy of the order must be served -

(a) if the application was made before the commencement of that suit with the writ of summons by which that suit was begun; and

(b) if the application was made after the commencement of that suit, on each defendant to that suit, whether or not he has entered an appearance therein.

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### **APPENDIX A**

#### **FORMS**

1. Writ of summons (O.5, r.1)

2. Originating summons (O.6, r.1)

3. Originating summons in a suit under section 14 (O.6, r.2)

4. Notice of motion (O.7, r.2)
5. Interlocutory summons (O.7, r.2)
6. Notice of payment into court (O.5, r.3) (O.19, r.1)
7. Memorandum of appearance (O.10, r.2)
8. Memorandum of appearance of third party/added defendant (O.10, r.2)
9. Notice to be endorsed on counterclaim (O.12, r.3)
10. Notice of Counterclaim (O.12, r.4)
11. Summons to added party (O.12, r.9)
12. Third party notice (O.13, r.1)
13. Third party notice (O.13, r.1)
14. Notice to a third party in a suit under section 14 (O.13, r.7)
15. Writ of summons in a suit of interpleader (O.14, r.2)
16. Notice of acceptance of money paid into court (O.19, r.3)
17. List of documents (O.21, r.3)
18. Affidavit on discovery (O.21, r.3)
19. Request for hearing date (O.29, r.2)
20. Notice of hearing date (O.29, r.6)
21. Witness summons (O.32, r.14)
22. Commission to take a deposition (O.33, r.1)
23. Order for letter of request (O.33, r.2)
24. Commission to person outside Nauru (O.33, r.2)
25. Letter of request (O.33, r.3)
26. Decree (O.35, r.1)
27. Default judgment (O.35, r.2)
28. Writ of attachment or seizure and sale (O.36, r.5)

29. Writ of delivery (O.36, r.5)
30. Summons to judgment-debtor to attend and be examined (O.36, r.5)
31. Warrant for the arrest of a judgment-debtor (O.35, r.5)
32. Warrant for the arrest and detention of a judgment-debtor (O.36, r.5)
33. Writ for act ordered by Court to be done by an authorised person (O.36, r.5)
34. Notice to show cause why salary or wages should not be attached (O.36, r.10)
35. Notice to employer of attachment of salary or wages (O.36, r.10)
36. Garnishee order nisi (O.36, r.11)
37. Writ of summons in suit for an order of mandamus, etc. (O.38, r. 3)
38. Notice of taxation of costs (O.40, r.2)
39. Writ of summons commencing an Admiralty action in rem (O.48, r.3)
40. Warrant of arrest in Admiralty action in rem (O.48, r.5)
41. Request for issue of warrant (O.48, r.5)
42. Request for caveat against arrest (O.48, r.6)
43. Request for service of writ of summons by Director of Police (O.48, r.8)
44. Release of arrested property (O.48, r.13)
45. Request for release of arrested property (O.48, r.13)
46. Request for caveat against release and payment (O.48, r.14)
47. Request for withdrawal of caveat (O.48, r.15)
48. Bail bond in Admiralty action in rem (O.48, r. 16)
49. Request for commission for appraisalment and sale (O.48, r.23)
50. Commission for appraisalment and sale (O.48, r.23)
51. Notice to person who may be entitled to debt sought to be attached (O.36, r.11)

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**RULES OF COURT**

*(O.5, r.1)*

**WRIT OF SUMMONS**

In the (Supreme Court)  
(District Court)

Civil Suit No.

Between

**A.B., plaintiff**

and

**C.D., defendant**

OR In the matter of

To C.D. of (a)

A.B. of (b)

claims as follows - (either set out claim briefly or set out the Statement of Claim in full here) and claims also the costs of this suit.

If you dispute the plaintiff's claim, wholly or in part, you are required within 14 days of service of this writ on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of this Court at the Court House at Yaren a properly completed memorandum of appearance in Form No. CIV/7. The memorandum may be lodged by personal delivery or be sent by post. It may be sent or delivered by you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

If you do not intend to be represented by a barrister and solicitor or pleader and you attend with this writ at the office of this Court at the Court House at Yaren on any day, other than a Saturday, Sunday or public holiday, between 8.45 a.m. and 11.00 a.m. or between 2.00 p.m. and 4.00 p.m. within 14 days of service of this writ on you, inclusive of the day of service, a member of the staff of this Court will assist you to prepare the memorandum of appearance.

**PLEASE NOTE THAT, IF NO APPEARANCE IS ENTERED BY YOU OR ON YOUR BEHALF WITHIN THE TIME ALLOWED, I.E. 14 DAYS, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT ANY FURTHER NOTICE TO YOU.**

+If the amount claimed and \$ ..... in respect of costs are paid to the plaintiff or his barrister and solicitor or to the Registrar\*/Clerk of the Court, with notice to the plaintiff or his barrister and solicitor\*/pleader, within 14 days after service of this writ on you, inclusive of the day of service, further proceedings will be stayed.

Issued this ..... day of ..... 19... by the plaintiff\*/E.F., barrister and solicitor\*/pleader for the plaintiff.

The plaintiff's address for service in this suit is (c)

- (a) address of defendant
- (b) address of plaintiff
- (c) address within Nauru
- + delete if claim is not for a debt or liquidated demand only
- \* delete whichever is not applicable.

FORM NO. CIV/2

**RULES OF COURT**

*(O.6, r.1)*

**ORIGINATING SUMMONS**

Civil Cause No.

In the Supreme Court

A.B., applicant

Let the applicant be heard by a judge\*/the Registrar in chambers at the Court House at Yaren on ..... 19..... at a.m./p.m. on this application for (state nature of application).

Issued this ..... day of ..... 19..... by the plaintiff\* E.F., barrister and solicitor\*/pleader for the plaintiff.

The plaintiff's address for service in this matter is (a).

- (a) address of plaintiff
- \* delete whichever is not applicable

FORM NO. CIV/3

**RULES OF COURT**

*(O.6, r.2)*

**ORIGINATING SUMMONS IN A SUIT UNDER SECTION 14**

Civil Suit No.

**In the District Court**

Between

**A.B., plaintiff**

and

**C.D., defendant**

To C.D. of (a)

A.B. of (b)

claims from you \$ ..... in respect of (state nature of claim) and claims the costs of this suit.

If you dispute the plaintiff's claim, wholly or in part, you are hereby required to attend before the District Court at the Court House at Yaren at ..... a.m./p.m. on the ..... day of ..... 19..... for the hearing of this suit.

**PLEASE NOTE THAT, IF YOU DO NOT ATTEND AS REQUIRED, THE SUIT WILL BE HEARD AND DETERMINED IN YOUR ABSENCE.**

If you have any claim against the plaintiff which is not yet the subject of any suit in any Court but which you wish to bring before a Court at this stage so that it is dealt with at the same time as the plaintiff's claim against you, you must serve on the plaintiff a notice of your claim in Form No. CIV/10 not later than the ..... day of ..... 19.... (c). The form can be obtained from the Court at the Court House at Yaren and the Clerk will, on request, explain how it should be completed.

(a) address of defendant

(b) address of plaintiff

(c) two days before date for attendance shown in this summons

\* delete whichever is not applicable

Issued this ..... day of ..... 19..... by the plaintiff\*/E.F., barrister and solicitor\*/pleader for the plaintiff.

If you do not dispute the claim you should pay to the Clerk of this Court the amount claimed and \$ ..... in respect of costs, a total of \$....., on or before (c) .....; otherwise you will be liable to pay a larger amount in respect of costs.

\_\_\_\_\_

FORM NO. CIV/4

**RULES OF COURT**

*(0.7, r.2)*

**NOTICE OF MOTION**

(Heading as in writ of summons)

TAKE NOTICE that the ..... Court will be moved on the ..... day of ..... 19..... by \*/on behalf of the plaintiff \*/defendant for an order that (State order sought) and that the costs of and incidental to this application be paid by .....

Dated the ..... day of ..... 19.... .

To: .....

(Signed)

\*delete whichever is not applicable.

\_\_\_\_\_

FORM NO. CIV/5

**RULES OF COURT**

*(0.7, r.2)*

**INTERLOCUTORY SUMMONS**

(Heading as in writ of summons)

Let all parties attend before a judge\*/a magistrate\*/the Registrar in chambers at the Court House at Yaren on the ..... day of ..... 19..... for the hearing of an application made by\*/on behalf of the plaintiff\*/defendant for an order that (state order sought) and that the costs of and incidental to this application be paid by .....

Dated the ..... day of ..... 19.... .

To: .....

(Signed)

\* delete whichever is not applicable.

\_\_\_\_\_

FORM NO. CIV/6

**RULES OF COURT**

*(0.5, r.3)*



*(O.19, r.1)*

**NOTICE OF PAYMENT INTO COURT**

(heading in a suit)

TAKE NOTICE THAT –

The defendant ..... has paid \$ ..... into court.

The said \$ ..... is in satisfaction of the cause of action \*/all the causes of action in respect of which the plaintiff claims \*/ and after taking into account and satisfying the above-named defendant's cause of action for ..... in respect of which he counterclaims.

or

The said \$ ..... is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, ..... \*/and after taking into account (as above)

or

Of the said \$ ....., \$ ..... is in satisfaction of the plaintiff's cause(s) of action for .....\*/and after taking into account (as above) and \$ ..... is in satisfaction of the plaintiff's cause(s) of action for ..... \*/and after taking into account (as above).

Dated the ..... day of ..... 19.....

\*delete if inapplicable.

FORM NO. CIV/7

**RULES OF COURT**

*(O.10, r.2)*

**MEMORANDUM OF APPEARANCE**

(Heading as in writ of summons)

Please enter an appearance \*to the counterclaim for (a) ..... \*sued as (state representative capacity if any) whose address is (b) .....

Signed (c)

- (a) name of party entering appearance
- (b) address in Nauru for service

(c) signature of barrister and solicitor or pleader if party entering appearance represented; otherwise signature of the party

\*delete if not applicable.

N.B. Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read them carefully. The form may have to be returned if any of the information required is omitted or given incorrectly. The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his barrister and solicitor or pleader may have to pay the costs of applying to set it aside.

(Back)

### **ADDITIONAL NOTES**

1. The defendant must give his or her full name and a female defendant must add her description, such as spinster, married woman, widow or divorced (a).
2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of .....".
3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as .....".
4. Where the defendant is corporation, or an infant or other person under disability the appearance must be entered by a barrister and solicitor or pleader.
5. If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by instalments or otherwise must be made direct to the plaintiff or his barrister and solicitor or pleader and not to the Court.
6. Where the defendant is unable to give the number of the suit or any other information required to identify it, the writ served on the defendant should be produced for the Court's inspection when the appearance is entered.
7. Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this form.
8. These notes deal only with the more usual cases. In cases of any difficulty it is advisable to attend at the Court office for the purpose of entering an appearance.
  - (a) Where a defendant in an Admiralty action in rem is proceeded against as the owner of the property, appearance may be entered by him as "The owner of the ship ....." or as may be, describing the res.

**RULES OF COURT**

*(O.10, r.2)*

**MEMORANDUM OF APPEARANCE OF THIRD PARTY/ADDED DEFENDANT**

(Heading as in Form No. CIV/11 or CIV/12 as appropriate)

Please enter an appearance for (a) ..... who has been served with an order dated the ..... day of 19..... making him a defendant to the suit\*/to the third party notice issued in this suit on the ..... day of ..... 19..... by the defendant (b) ..... and served on the (a) ..... on the ..... day of ..... 19..... .

Signed (c)

- (a) name of added defendant or third party
- (b) name of defendant who issued the third party note
- (c) signature of barrister and solicitor or pleader if added defendant or third party is represented; otherwise signature of added defendant or third party.

(Continuation as in Form No. CIV/7 with necessary modifications)

FORM NO. CIV/9

**RULES OF COURT**

*(O.12, r.3)*

**NOTICE ON CONTERCLAIM AGAINST ADDED PARTY**

To A.B.

If you intend to defend this counterclaim, you are required within 14 days, of service of this defence and counterclaim on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of the Court at the Court House at Yaren a properly completed memorandum in Form No. CIV/8; otherwise judgment may be given against you without further notice. The memorandum may be lodged by personal delivery or sent by post. It may be sent or delivered by you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

If you do not intend to be represented by a barrister and solicitor or pleader and you attend with this counterclaim at the office of the Court at the Court House at Yaren on any day, other than a Saturday, Sunday or public holiday, between 8.45 a.m. and 11.00 a.m. or between 2.00 p.m. and 4.00 p.m. within 14 days of service of this counter-claim on you,

inclusive of the day of service, a member of the staff of the Court will assist you to prepare the memorandum of appearance.

PLEASE NOTE THAT, IF NO APPEARANCE IS ENTERED BY YOU OR ON YOUR BEHALF WITHIN THE TIME ALLOWED, I.E. 14 DAYS, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT ANY FURTHER NOTICE TO YOU.

---

FORM NO. CIV/10

**RULES OF COURT**

*(O.12, r.4)*

**NOTICE OF COUNTERCLAIM**

(Heading as in originating summons, Form No. CIV/3)

To A.B.

Take notice that the defendant in this suit O.D. counterclaims against the plaintiff A.B. as follows –

(state nature of claim)

Dated the ..... day of ....., 19..... .

(Signed)

---

FORM NO. CIV/11

**RULES OF COURT**

*(O.12, r.9)*

**SUMMONS TO ADDED PARTY**

In the District Court

Civil Suit No.

Between A.B. plaintiff

and

C.D. and G.H. defendants

To G.H. of (a)

By order of this Court you have been added\*/substituted as a defendant in this suit. The claim made against you by the plaintiff A.B. is set out in the originating summons (Form No. CIV/3) annexed hereto.

If you dispute the plaintiff's claim you are required to attend before this Court at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m./p.m.

PLEASE NOTE THAT, IF YOU DO NOT ATTEND AS REQUIRED, THE SUIT WILL BE HEARD AND DETERMINED IN YOUR ABSENCE.

If you have any claim against the plaintiff which is not yet the subject of any suit in any Court but which you wish to bring before a Court at this stage so that it is dealt with at the same time as the plaintiff's claim against you, you must serve on the plaintiff a notice of your claim in Form No. CIV/10 not later than the ..... day of ..... 19..... (c) The form can be obtained from the Court at the Court House at Yaren and the Clerk of the Court will, on request, explain how it should be completed.

- (a) address of defendant
  - (b) address of plaintiff
  - (c) two days before date of attendance shown in this summons
- \*delete whichever is not applicable

Issued this ..... day of ..... 19..... by the plaintiff \*/E.F., barrister and solicitor\*/pleader for the plaintiff.

If you do not dispute the claim you should pay to the Clerk of this Court the amount claimed and \$ ....., in respect of costs, a total of \$ ....., on or before (c) .....; otherwise you will be liable to pay a larger amount in respect of costs.

FORM NO. CIV/12

**RULES OF COURT**

*(O.13, r.1)*

**THIRD PARTY NOTICE**

In the (Supreme Court  
(District Court

Civil Suit No.

Between A. B. plaintiff

and

C.D. defendant

and

I.J. third party

\*Issued pursuant to the order of ..... dated the ..... day of .....  
19..... .

To I.J. of (a)

Take notice that this suit has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state the nature of the plaintiff's claim) as appears from the writ of summons a copy whereof is served herewith \*/ together with a copy of the statement of claim.

The defendant claims against you (here state the nature of the claim against the third party, as for instance to be indemnified against the plaintiff's claim and the costs of this suit or contribution to the extent of one half of the plaintiff's claim or the following relief or remedy namely ..... ) on the grounds that (state the grounds of the claim).

If you dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you are required within 14 days of service of this notice on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of this Court at the Court House at Yaren a properly completed memorandum of appearance in Form No. CIV/8; otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to (state the relief or remedy sought) and will be bound by any judgment or decision given in the suit and the judgment may be enforced against you in accordance with the law. The memorandum may be lodged by personal delivery or be sent by post. It may be sent or delivered by you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

If you do not intend to be represented by a barrister and solicitor or pleader and you attend with this notice at the office of this Court at the Court House at Yaren on any day, other than a Saturday, Sunday or public holiday, between 8.45 a.m. and 11.00 a.m. or between 2.00 p.m. and 4.00 p.m. within 14 days of service of this notice on you, inclusive of the day of service, a member of the staff of this Court will assist you to prepare the memorandum of appearance.

**PLEASE NOTE THAT, IF NO APPEARANCE IS ENTERED BY YOU OR ON YOUR BEHALF WITHIN THE TIME ALLOWED, I.E. 14 DAYS, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT ANY FURTHER NOTICE TO YOU.**

Dated the ..... day of ..... 19..... .

(signed)

(a) address of third party

\* delete if not applicable

**RULES OF COURT**

*(O.13. r.1)*

**THIRD PARTY NOTICE**

(Heading as in Form No. CIV/12)

Issued pursuant to the order of ..... dated the ..... day of ..... 19..... .

To I. J. of (a)

Take notice that this suit has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state the nature of the plaintiff's claim) as appears from the writ of summons a copy whereof is served herewith\*/together with a copy of the statement of claim.

The defendant requires that the following question or issue, viz. (here state the question or issue required to be determined) should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

If you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, you are required within 14 days of service of this notice on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of this Court at the Court House at Yaren a properly completed memorandum of appearance in Form No. CIV/8; otherwise you will be bound by any judgment or decision given in the suit in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with the law. The memorandum may be lodged by personal delivery or sent by post. It may be sent or delivered by, you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

If you do not intend to be represented by a barrister and solicitor or pleader and you attend with this notice at the office of this Court at the Court House at Yaren on any day, other than Saturday, Sunday or public holiday, between 8.45 a.m. and 11.00 a.m. or between 2.00 p.m. and 4.00 p.m. within 14 days of the service of this notice on you, inclusive of the day of service, a member of the staff of this Court will assist you to prepare the memorandum of appearance.

PLEASE NOTE THAT, IF NO APPEARANCE IS ENTERED BY YOU OR ON YOUR BEHALF WITHIN THE TIME ALLOWED, I.E. 14 DAYS, JUDGEMENT MAY BE GIVEN AGAINST YOU WITHOUT ANY FURTHER NOTICE TO YOU.

Dated the ..... day of ..... 19..... .

(Signed)

(a) address of third party  
\* delete if not applicable

FORM NO. CIV/14

**RULES OF COURT**

*(O.13, r.7)*

**NOTICE TO A THIRD PARTY IN A SUIT UNDER SECTION 14**

In the District Court

Civil Suit No.

Between A.B. plaintiff

and

C.D. defendant

and

I.J. third party

Issued pursuant to the order of the District Court made on the ..... day of  
..... 19..... .

To I.J. of (a)

Take notice that this suit has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (here state the nature of the plaintiff's claim) as appears from the originating summons a copy whereof is served herewith.

If you dispute the defendant's liability to the plaintiff or your liability to the defendant, you are hereby required to attend before the District Court at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m./p.m. for the hearing of the suit.

**PLEASE NOTE THAT, IF YOU DO NOT ATTEND AS REQUIRED, THE SUIT WILL BE HEARD AND YOUR LIABILITY DETERMINED IN YOUR ABSENCE.**

If you do not dispute the claim you should pay to the Clerk of this Court the amount claimed and \$ ..... in respect of costs, a total of \$ ....., on or before (b) .....; otherwise you will be liable to pay a larger amount in respect of costs.



If you have any claim against the plaintiff which is not yet the subject of any suit in any Court but which you wish to bring before a Court at this stage so that it is dealt with at the same time as the plaintiff's claim against you, you must serve on the plaintiff a notice of your claim in Form No. CIV/10 not later than the ..... day of ..... 19.....

(b). The form can be obtained from this Court at the Court House at Yaren and the Clerk of the Court will, on request, explain how it should be completed.

Dated the ..... day of ..... 19.....

(Signed)

(a) address of third party

(b) two days before date for attendance shown in this summons

FORM NO. CIV/15

## **RULES OF COURT**

*(O.14, r.2)*

### **WRIT OF SUMMONS IN SUIT OF INTERPLEADER**

In the (Supreme Court  
(District Court

Civil Suit No.

In the matter of an interpleader application by K.L.

To M.N. of (a)

and

O P.of (b)

The applicant K.L. is in possession of (state property in dispute) which is claimed by you \*and O.P./M.N.: \*he seized the said property in execution of process issued at the instance of O.P\*/ yourself against the property of Q.R.; he claims no interest in the said property other than to the extent of his proper charges and costs;

If you wish to be heard in this suit, you are required within 14 days of service of this writ on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of this Court at the Court House at Yaren a properly completed memorandum of appearance. The memorandum may be lodged by personal delivery or sent by post. It may be sent or delivered by you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

If you do not intend to be represented by a barrister and solicitor or pleader and you attend with this writ on you at the office of this Court at the Court House at Yaren on any day, other than a Saturday, Sunday or public holiday, between 8.45 a.m. and 11.00 a.m. or between 2.00 p.m. and 4.00 p.m. within 14 days of service of this writ on you, inclusive of the day of service, a member of the staff of this Court will assist you to prepare the memorandum of appearance.

PLEASE NOTE THAT, IF NO APPEARANCE IS ENTERED BY YOU OR ON YOUR BEHALF WITHIN THE TIME ALLOWED, I.E.14 DAYS, THIS SUIT MAY BE HEARD AND DECIDED WITHOUT ANY FURTHER NOTICE TO YOU.

Issued this ..... day of ..... 19..... by the applicant K.L. \*/ E.F. barrister and solicitor \*/pleader for the applicant.

- (a) address of first claimant
- (b) address of second claimant
- \* delete whichever is not applicable

FORM NO. CIV/16

**RULES OF COURT**

*(0.19, r.3)*

**NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT**

(Heading as in suit)

Take notice that the plaintiff accepts the sum of \$ ..... paid in by the defendant C.D. in satisfaction of the cause(s) of action in respect of which it was paid in and in respect of which the plaintiff claims \*/against that defendant \*/and abandons the other causes of action in respect of which he claims in this suit.

Dated the ..... day of ..... 19..... .

(Signed)

\* delete if not applicable

FORM NO. CIV/17

**RULES OF COURT**

*(0.21, r.3)*

**LIST OF DOCUMENTS**

(Heading as in suit)

The following is a list of the documents relating to the matters in question in this suit which are or have been in the possession, custody or power of the abovenamed plaintiff A.B.\*/defendant C.D. and which is served in compliance with the order herein dated the ..... day of ..... 19..... .

1. The plaintiff\*/defendant has in his possession, custody or power the documents relating to the matters in question in this suit enumerated in Schedule 1 hereto.
2. The plaintiff\*/ defendant objects to produce the documents enumerated in Part 2 of the said Schedule 1 on the ground that (stating the ground of objection).
3. The plaintiff\*/ defendant has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this suit enumerated in Schedule 2 hereto.
4. Of the documents in the said Schedule 2, those numbered ..... in that schedule were last in the plaintiff's\*/ defendant's possession, custody or power on (stating when) and the remainder on (stating when).

(Here state what has become of the said documents and in whose possession they now are.)

5. Neither the plaintiff\*/defendant, nor his barrister and solicitor \*/pleader nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this suit, other than the documents enumerated in Schedules 1 and 2 hereto.

## **SCHEDULE 1**

### **PART 1**

(Here enumerate in a convenient order the documents (or bundles of documents, if of the same, nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.)

### **PART 2**

(Here enumerate as aforesaid the documents in the possession custody or power of the party in question which he objects to produce.)

## **SCHEDULE 2**

(Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question).

Dated the ..... day of ..... 19..... .

**Notice to inspect**

Take notice that the documents in the above list, other than those listed in Part 2 of Schedule 1 and in Schedule 2, may be inspected at the office of the barrister and solicitor \*/ pleader of the abovenamed plaintiff \*/defendant (insert address) (or as may be) on the ..... day of ..... 19....., between the hours of ..... and .....

(Signed)

To the defendant C.D.\*/the plaintiff A.B. and his barrister and solicitor\*/pleader.

Served the ..... day of ..... 19....., by ..... of ..... for plaintiff\*/ defendant.

\* delete whichever is inapplicable

FORM NO. CIV/18

**RULES OF COURT**

*(O.21, r.3)*

**AFFIDAVIT ON DISCOVERY**

(Heading as in suit)

I, the above-named plaintiff A.B.\*/defendant C.D., make oath and say as follows:-

1. The statements made by me in paragraphs 1, 3 and 4 of the list of document now produced and shown to me marked ..... are true.
2. The statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

This affidavit is filed on behalf of the plaintiff\*/defendant.

\* delete whichever is not applicable

FORM NO. CIV/19

**RULES OF COURT**

*(O.29, r.2)*

**REQUEST FOR HEARING DATE**

(Heading as in suit)

The pleadings in this suit having closed on the ..... day of ..... 19....., \*and the Court having given a direction dated the ..... day of ..... 19..... that (state nature of direction relating to setting-down of suit), I hereby request that a hearing date be assigned forthwith.

Dated the ..... day of ..... 19.....

Signed (a)

(a) signature of the barrister and solicitor or pleader of the party making the request, or of the party personally if not represented.

\*delete if not applicable.

\_\_\_\_\_

FORM NO. CIV/20

**RULES OF COURT**

*(O.29, r.6)*

**NOTICE OF HEARING DATE**

(Heading as in suit)

To all parties

Take notice that this suit will be heard by the Court at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m./ p.m. or as soon thereafter as he business of the Court permits.

Dated the ..... day of ..... 19.....

Registrar\*/Clerk of the Court.

\* delete whichever is, no, applicable.

\_\_\_\_\_

FORM NO. CIV/21

**RULES OF COURT**

*(O.32, r.14)*

**WITNESS SUMMONS**

(Heading as in suit)

To S.T. of (a)

You are hereby commanded in the name of the Republic to attend in person before this Court at the Court House at Yaren at ..... a.m. +/- p.m. on the ..... day of ..... 19....., and to continue thereafter so to attend from day to day until released by this Court from such obligation, to give evidence of all that you know in respect of this suit \*and to bring with you and to produce at the said time and place (specify documents, etc. to be brought).

This summons is issued at the instance of (b) .....

Dated the ..... day of ..... 19..... .

Register+/Clerk of the Court.

- (a) address of witness
- (b) state name of party
- \*delete if not applicable
- +delete whichever is not applicable

FORM NO.CIV/22

**RULES OF COURT**

*(O.33, r.1)*

**COMMISSION TO TAKE A DEPOSITION**

(Heading as in suit)

To the Registrar (or as the case may be)

You are hereby commissioned by this Court to examine a witness S.T. on behalf of the plaintiff\* /defendant in this suit viva voce on oath or affirmation at such place and time as you may notify in writing to the parties, +such notice being given not less than ..... days before such date; and it is ordered that the depositions taken at the examination be filed in the office of this Court, and that office copies thereof may be read and given in evidence on the trial of this suit, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the barrister and solicitor, pleader or agent of the party using the same, as to his belief, and that the costs of this application +and of the examination be costs in the cause (or as may be).

Dated the ..... day of ..... 19..... .

\*delete whichever is not applicable  
+ delete if not applicable

FORM NO. CIV/24

**RULES OF COURT**

*(O.33, r 2)*

**ORDER FOR LETTER OF REQUEST**

(Heading as in suit)

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

S.T. of .....  
U.V. of .....

And it is ordered that the depositions taken pursuant thereto when received be filed in the office of this Court and that office copies thereof may be read and given in evidence on the trial of this suit, saving all just exceptions, without any further proof of the absence of the said witnesses than the affidavit of the barrister and solicitor, pleader or agent of the party using the same as to his belief.

And it ordered that \*the trial of this suit be stayed until the said depositions have been filed and that the costs of and incidental to the application for this order and the said letter of request and examination be costs in the cause or as ordered.

Dated the ..... day of ..... 19..... .

Judge

\*delete if not applicable

FORM NO.CIV/24

**RULES OF COURT**

*(O.33, r.2)*

**COMMISSION TO PERSON OUTSIDE NAURU**

(Heading as in suit)

The consular representative of the Republic at ..... \*/Mr. .... of ..... is hereby commissioned by this Court to examine a witness S.T. on behalf of the plaintiff\*/defendant in this suit viva voce on oath or affirmation at (place) ..... in ..... (country). The Commissioner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the Nauruan procedure. The plaintiff's\*/defendant's barrister and solicitor\*/pleader shall give to the defendant's\*/plaintiff's barrister and solicitor\*/pleader ..... days' notice in writing of the date on which they propose to send out this order to the commissioner for execution, and that ..... days after the service of such notice the barristers and solicitors\*/pleaders for the plaintiff and defendant respectively do exchange the names of their agents at (place of examination) to whom notice relating to the examination of the said witness may be sent. And that ..... days, exclusive of Sunday, before the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party, unless such notice be dispensed with. And that the depositions when taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be sent by the commissioner, under seal, to the Registrar of the Supreme Court at the Court House at Yaren on or before the ..... day of ..... next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this suit, saving all just exceptions. And that the trial of this suit be stayed until the filing of such depositions. And that the costs of and incidental to the application for this order and such examination be costs in the cause.

Dated the ..... day of ..... 19..... .

\*delete whichever is not applicable.

FORM NO. CIV/25

**RULES OF COURT**

*(O.33, r.3)*

**LETTER OF REQUEST**

To the competent judicial authority of ..... in the ..... of .....

Whereas a suit is now pending in the Supreme Court of Nauru, in which ..... is plaintiff and ..... is defendant and in which ..... the plaintiff claims .....

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties that the



following persons should be examined as witnesses upon oath touching such matters, namely ..... of ..... and ..... of ..... and it appears that such witnesses are resident within your jurisdiction.

Now I ..... the Registrar of the Supreme Court of Nauru hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses, and such other witnesses as the agents of the said plaintiff and defendant shall humbly appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined viva voce\*/upon the interrogatories which accompany this letter of request touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend the examination.

And I further request that you will permit the agents of both the plaintiff and the defendant or such of them as shall be present to examine \*upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto such witnesses as may, after due notice in writing, be produced on their behalf, and the other party to cross-examine the said witnesses \*upon cross-interrogatories and viva voce and the party producing the witness for examination to re-examine him viva voce.

And I further request that you will be pleased to cause the evidence of the said witnesses\*/the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination or re-examination to be reduced into writing and all books, letters, papers and documents produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with \*the interrogatories and cross-interrogatories and a notice of the charges and expenses payable in respect of the execution of this request through the consular representative of Nauru from whom the same was received \*/the Secretary for Foreign Affairs of Nauru for transmission to the Supreme Court.

And I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated the ..... day of ..... 19..... .

Registrar

\*delete if not applicable.

FORM NO.CIV/26

**RULES OR COURT**

*(O.35, r.1)*

**DECREE**

(Title as in suit)

It is decreed in this suit that the plaintiff A.E do recover from the defendant C.D. the sum of \$..... together, with \$..... for costs and the said defendant C.D. is hereby ordered to pay the sum of \$..... forthwith.

Dated the ..... day of ..... 19..... .

Registrar\*/Clerk of the Court

\* delete whichever is not applicable.

FORM NO.CIV/27

**RULES OF COURT**

*(O.35, r.2)*

**DEFAULT JUDGEMENT**

(Heading as in suit)

No appearance having been entered\*/ no defence\* /no defence to the counterclaim\* having been served by the defendant\*/plaintiff herein, it is this day adjudged that the defendant\*/plaintiff pay the plaintiff \*/defendant \$ ..... and \$ ..... costs\*/pay the plaintiff\*/defendant damages to be assessed\*/ (as may be appropriate to the nature of the of the claim) and costs.

Dated the ..... day of ..... 19..... .

\*delete whichever is not applicable.

FORM NO.CIV/28

**RULES OF COURT**

*(O.36, r.5)*

**WRIT OF ATTACHMENT OR SEIZURE AND SALE**

(Heading as in suit)

To the Director of Police

Whereas in the abovenamed suit it was on the ..... day of ..... 19 ..... adjudged\*/ ordered that the defendant C.D. do pay the plaintiff A.B. \$ ..... and \$ ..... costs\*/ costs to be taxed, which costs have been taxed and allowed at \$ .....

as appears by the certificate of the taxing officer dated the ..... day of  
..... 19..... .

You are hereby required of the goods, chattels and other property of C.D. in Nauru authorised by law to be attached\*/ seized in execution to cause to be made the sums of \$ ..... and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$8 per centum per annum from the ..... day of ..... 19 ..... until payment together with your costs of levying and all other legal, incidental expenses and immediately after execution of this writ to pay into the registry of this Court in pursuance of the said judgment\*/ order the amount levied in respect of the said sums and interest.

And you are also hereby required to indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to A.B.

Dated the ..... day of ..... 19..... .

Register\*/ Resident Magistrate

This writ was issued on the application of ..... of ....., barrister and solicitor\* /pleader for .....\*/ this writ was issued by A.B. the plaintiff in person who resides at .....

The defendant resides (or as the case may be) at ..... in Nauru.

\* delete whichever is not applicable.

FORM NO.CIV/29

**RULES OF COURT**  
*(O.36, r.5)*

**WRIT OF DELIVERY**

**(Heading as in suit)**

To the Director of Police

Whereas in the abovenamed suit it was on the ..... day of ..... 19 ..... adjudged\*/ ordered that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely (describe the goods delivery of which has been adjudged or ordered) or to pay him \$..... being the assessed value of the said goods,\*/ and \$..... damages and \$..... costs\*/costs to be taxed, which costs have been taxed and allowed at \$..... as appears by the certificate of the taxing officer dated the ..... day of ..... 19..... .

You are hereby required to cause the said goods to be delivered to A.B. and, if possession of the said goods cannot be obtained by you, to cause to be made of the goods, chattels and

other property of C.D. in Nauru authorised by law to be seized in execution \$..... the assessed value of the said goods and pay it into the registry of this Court.

And you are also hereby required of the said property of C.D. in Nauru to cause to be made the sums of \$..... for \*damages and costs and \$..... for costs of execution and also interest on \$..... at the rate of \$8 per cent, per annum from the ..... day of ..... 19..... until payment together with your costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay into the registry of this Court the amount levied in respect of the said sums and interest.

And you are also hereby required to indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to A.B.

Dated the ..... day of ..... 19..... .

Register\*/Resident Magistrate

This writ was issued on the application of ..... of .....\*/barrister and solicitor\*/pleader for .....\*/this writ was issued by A.B, the plaintiff in person who resides at .....

The defendant resides (or as the case may be) at ..... in Nauru.

\*delete whichever is not applicable

FORM NO.CIV/30

## **RULES OF COURT**

*(0.36, r.5)*

### **SUMMONS TO JUDGMENT-DEBTOR TO ATTEND AND BE EXAMINED**

(Heading as in suit)

To C.D. of (a)

Whereas in the abovenamed suit it was adjudged\*/ ordered that you do pay to the plaintiff A.B. \$..... and \$..... for costs and whereas the said judgment\*/ order has not been satisfied and \$..... remains unpaid;

You are hereby commanded to attend before this Court at the Court House at Yaren on the ..... day of ..... 19..... at a.m.\*/p.m., and to remain in such attendance until your departure is authorised by the Court, and to be examined on oath or affirmation as to your property and your means of satisfying and discharging the said judgment\*/ order.

PLEASE NOTE THAT, IF YOU FAIL TO ATTEND AND BE EXAMINED AS REQUIRED BY THIS SUMMONS, THE COURT MAY REGARD SUCH FAILURE AS EVIDENCE THAT YOU HAVE SUFFICIENT MEANS TO SATISFY AND DISCHARGE THE SAID JUDGMENT \*/ORDER AND MAY ORDER THAT THE SAID JUDGMENT\*/ORDER BE ENFORCED BY YOUR ARREST AND DETENTION IN PRISON.

Dated the ..... day of ..... 19..... .

Registrar\*/Resident Magistrate

(a) address of judgment-debtor

\* delete whichever is not applicable.

FORM NO.CIV/31

**RULES OF COURT**

*(O.36, r.5)*

**WARRANT OF ARREST OF A JUDGMENT-DEBTOR**

(Heading as in suit)

To all police officer

Whereas in the abovenamed suit it was adjudged\*/ ordered that the defendant C.D. should pay to the plaintiff A.B. \$ ..... and \$ ..... for costs and whereas the said judgement\*/ order has not been satisfied and \$ ..... remains unpaid;

And whereas the decree-holder has given evidence on oath\*/affirmation that the judgment-debtor C.D. is about to leave Nauru and that the enforcement of the said judgment\*/ order is likely to be frustrated thereby;

You are hereby required to arrest the said judgment-debtor C.D. and to bring him before this Court at the Court House at Yaren to be examined as to his property and his means satisfying and discharging the judgment\*/ order.

Dated the ..... day of ..... 19.....

Judge\*/Register\*/Resident Magistrate

The judgment-debtor C.D. lives at .....

\* delete whichever is not applicable.

FORM NO.CIV/32

**RULES OF COURT**

*(O.36, r.5)*

**WARRANT FOR THE ARREST AND DETENTION OF A JUDGMENT-DEBTOR**

(Heading as in suit)

To all police officers and to the Superintendent, Nauru Prison

Whereas (recital as first recital in Form No. CIV/31):

And whereas the Court has found that the judgment-debtor .C.D.-

*\*has\*/has had sufficient means to satisfy and discharge the judgment \*/order and refuses or neglects\*/ has refused or neglected to satisfy and discharge it;*

*\*is about to leave Nauru without satisfying and discharging the judgment\* order and the enforcement of the judgment\*/ order is likely to be frustrated if he does so;*

*\*obtained credit or contracted under false pretences, by means of fraud or by breach of trust the liability in respect of which the judgment has been given against him;*

*\*has made, or caused to be made, a gift, delivery or transfer of certain property \*/has charged, removed or concealed certain property with intent to defraud one or more of his creditors;*

You, the said police officers, are hereby required forthwith to arrest the said judgment-debtor C.D. and to convey him without delay to the Nauru Prison and there to deliver him to the Superintendent of the Nauru Prison for safe keeping;

And you, the said Superintendent of the Nauru Prison, are hereby required to detain the said judgment-debtor C.D. in the Nauru Prison for a period of .....

Provided that you are to release the said C.D. from the prison before the expiration of that period –

(a) the amount of \$ ..... is paid to you by him or on his behalf for the satisfaction and discharge of the judgment \*/order;

(b) ordered to do so by a judge or the Registrar of this Court\*/ the resident magistrate; or

(c) the decree-holder fails to pay the subsistence allowance payable in respect of the detention of the said C.D.

Dated the ..... day of ..... 19..... .

Registrar\*/ Resident Magistrate

The judgment-debtor C.D. lives at .....

\*delete whichever is not required

FORM NO. CIV/33

**RULES OF COURT**

*(O.36, r.5)*

**WRIT FOR ACT ORDERED BY COURT TO BE DONE BY AN AUTHORISED PERSON**

(Heading as in suit)

To .....

Whereas in the abovenamed suit it was ordered that (state order made) .....

And whereas the said order has not been complied with;

You are hereby authorised and required to (state act to be done) for and on behalf of the person(s) named in said order and for the said purpose you shall have and are hereby authorised to exercise all the capacity and powers of the said persons in that regard.

Dated the ..... day of ..... 19..... .

Judge\*/ Registrar\*/ Resident Magistrate

\*delete whichever is not applicable.

FORM NO. CIV/34

**RULES OF COURT**

*(O.36, r.10)*

**NOTICE TO SHOW CAUSE WHY SALARY OR WAGES SHOULD NOT BE ATTACHED**

(Heading as in suit)

To C.D. of (a)

Whereas in the abovenamed suit (as in first recital in Form No. CIV/30);

And whereas an application has been made to the Court for an order attaching a part of your salary in the hands of your employers and for its payment into the Court for the benefit of the decree-holder until the judgment\*/ order is satisfied;

And whereas leave has been granted by the Court for the issue of this notice:

TAKE NOTICE that, if you wish to show cause why an order for the attachment of your salary and its payment into Court should not be made or to be heard as to the amount which should be ordered to be attached, you must attend before a judge\*/ the Registrar \*/ the resident magistrate in his chambers at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m./ p.m.

PLEASE NOTE THAT, IF YOU DO NOT ATTEND AT THE TIME AND PLACE STATED IN THIS NOTICE, AN ORDER MAY BE MADE FOR PART OF YOUR SALARY OR WAGES TO BE ATTACHED, I.E. NOT PAID TO YOU, AND PAID INTO COURT FOR THE BENEFIT OF THE DECREE-HOLDER WITHOUT ANY FURTHER NOTICE TO YOU OR YOUR BEING HEARD IN THE MATTER.

\*It is alleged that you are employed by .....  
\*and that your salary or wages amount to ..... per ..... . PLEASE NOTE that, if you do not attend at the time and place stated in this notice, YOU WILL BE TAKEN TO ADMIT THAT THESE PARTICULARS ARE CORRECT.

This notice is issued at the instance of the decree-holder A.B.

Dated the ..... day of ..... 19..... .

Registrar\*/ Clerk of the Court

\*delete where not applicable.

FORM NO. CIV/35

**RULES OF COURT**

*(O.36, r.10)*

**NOTICE TO EMPLOYER OF ATTACHMENT OF SALARY OR WAGES**

(Heading as in suit)

TO:

This Court has ordered that the salary\*/ wages of your employee C.D. be attached and paid into court to satisfy the amount of the judgment debt not yet satisfied. That amount, including all costs to date, is \$..... .



You are hereby required to withhold from the salary\*/ wages of C.D. on each and every pay day subsequent to the first pay day following the service of this notice on you an amount calculated at the rate of \$..... per week\*/ month and to pay that amount forthwith to the Registrar\*/ Clerk of the Court of the Supreme Court\*/ District Court, until the amount of \$..... has been so paid.

PLEASE NOTE THAT, IF YOU FAIL TO COMPLY WITH THE REOUIREMENTS OF THIS NOTICE, YOU WILL BE PERSONALLY LIABLE TO THE DECREE-HOLDER FOR ANY AMOUNT NOT WITHHELD AND PAID INTO COURT.

If C.D. leaves you employment before the full amount of the unsatisfied judgment debt has been paid into court, you must immediately notify the Registrar\*/ Clerk of the Court in writing.

This notice was issued at the instance of the decree-holder, A.B.

Dated the ..... day of ..... 19..... .

Registrar\*/ Resident Magistrate

\*deleted whichever is not applicable.

FORM NO. CIV/36

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**RULES OF COURT**

*(0.36, r.11)*

**GARNISHEE ORDER NISI**

(Heading as in suit)

To W.X. and C.D.

Whereas it is alleged that W.X. (herein called "the garnishee") is indebted to the judgment-debtor C.D. in the abovenamed suit;

IT IS ORDERED by the Court that all debts due and accruing due from the garnishee to the said C.D. are attached to answer a judgment recovered\*/ order made in this Court against the said C.D. for \$ ..... and \$ ..... costs, together with the costs of the proceedings for the attachment of the said debts, that is to say that you are hereby prohibited, for so long as this order remains undischarged, from paying the said debts to the said C.D. or to any other person on his behalf;

AND IT IS ORDERED that you attend before a judge\*/ the resident magistrate in chambers at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m.\*/ p.m. on an application by the decree-holder for an order that the garnishee should pay into the registry of this Court for payment to him all debts due and accruing due

from the said garnishee to the said C.D., or so much thereof as may be sufficient to satisfy the judgment\*/ order and the costs of the proceedings for the attachment of said debts.

Registrar\*/ Clerk of the Court

\* delete if not applicable.

FORM NO. CIV/37

**RULES OF COURT**

*(O.38, r.3)*

**WRIT OF SUMMONS IN SUIT FOR AN ORDER OF MANDAMUS, ETC.**

In the Supreme Court

Civil Suit No.

In the matter of an application for an order of mandamus (other prerogative order) by A.B directed to C.D.

To C.D. of (a) .....  
A.B. of (b) ....., having been granted leave on the ..... day of ..... 19..... to commence these proceedings, seeks that an order of mandamus (or other prerogative order) be made directing that (state terms of order sought).

The grounds on which the order is sought are (state the grounds).

If you wish to be heard by the Court in this matter, you are required within 8 days of the service of this writ on you, inclusive of the day of service, to enter an appearance in this suit by lodging at the office of this Court at the Court House at Yaren a properly completed memorandum of appearance in Form No. CIV/7. The memorandum may be lodged by personal delivery or be sent by post. It may be sent or delivered by you or by a barrister and solicitor or pleader on your behalf. It must be accompanied by a copy of the memorandum; that copy will be stamped and returned to you.

Issued this ..... day of ..... 19..... by the plaintiff\*/ E.F., barrister and solicitor\*/ pleader for the plaintiff.

The plaintiff's address for service in this suit is (c)

- (a) address of defendant
- (b) address of plaintiff
- (c) address within Nauru

\*delete whichever is not applicable.

**RULES OF COURT**

*(O.40, r.2)*

**NOTICE OF TAXATION OF COSTS**

(Heading as in suit)

TO C.D.

Take notice that an appointment has been given for the plaintiff's\*/ defendant's bill of cost annexed hereto to be taxed by the Registrar\*/ resident magistrate in his chambers at the Court House at Yaren on the ..... day of ..... 19..... at ..... a.m.\*/ p.m. If you wish to dispute any item in the bill or the amount thereof you must attend at that time and place. Otherwise the amount of the plaintiff's \*/defendant's costs may be decided without your being heard in the matter.

Dated the ..... day of ..... 19..... .

(Signed) (a)

(a) signature of the barrister and solicitor or pleader of the party whose costs are to be taxed  
\*delete whichever is not applicable



**RULES OF COURT**

*(O.48, r.3)*

**WRIT OF SUMMONS COMMENCING AN ADMIRALTY ACTION IN REM**

In the Supreme Court

Admiralty Suit No.

Admiralty action in rem between:

\* The ship "X" (or as may be, describing the res)

\* The owners of the ship "Y" (or as may be) Plaintiffs

and

The owners of the ship "X" (or as may be, describing the res) Defendants

To the owners of and other persons interested in the ship ..... of the port of ..... \*/cargo, etc., (or as may be)

You are required within 14 days after the service of this writ, inclusive of the day of service, to cause an appearance to be entered for you in a suit by .....; and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the Court.

Note: - This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

**DIRECTIONS FOR ENTERING APPEARANCE**

The defendants may enter an appearance in person or by a barrister and solicitor or pleader either (1) by handing in the appropriate forms, duly completed, at the office of the Supreme Court at the Court House at Yaren or (2) by sending them to that office by post.

Indorsements to be made on writ before issue

Indorsement of claim

The plaintiffs' claim is for .....

(if the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the indorsement of claim.)

Indorsement as to barrister and solicitor or pleader and address

This writ was issued this ..... day of ..... 19..... by ..... of ..... barrister and solicitor or pleader for the said plaintiffs whose address is .....

\*/This writ was issued this ..... day of ..... 19..... by the said plaintiffs who reside at ..... and (if the plaintiffs do not reside within the jurisdiction) whose address for service is .....

Indorsement as to service

This writ was served by me at ..... on..... On the day of ..... 19..... by (stating manner of service).

(Signed)  
(Address)

\* delete where not applicable.

\_\_\_\_\_

**RULES OF COURT**

*(O.48, r.5)*

**WARRANT OF ARREST IN ADMIRALTY ACTION IN REM**

(Heading as in suit)

To the Director of Police

You are hereby required to arrest the ship ..... of the port of .....\* and the cargo now or lately laden therein, together with the freight due for the transportation thereof, \*/and the freight due for the transportation of the cargo now or lately laden therein, and to keep the same under safe arrest until you shall receive further orders from this Court.

The plaintiffs' claim is for (copy from the writ)

Dated the ..... day of ..... 19..... .

Registrar

Taken out by ..... barrister and solicitor\*/ pleader for the plaintiff.

Indorsement by Director of Police as to service

\* delete where not applicable.

\_\_\_\_\_

**RULES OF COURT**

*(O.48, r.5)*

**REQUEST FOR ISSUE OF WARRANT**

(Heading as in suit)

I ..... of ..... barrister and solicitor\*/ pleader for the plaintiffs request a warrant to arrest (description of property, giving name if a ship).

Dated the ..... day of ..... 19..... .

(Signed)

\* delete whichever is not applicable.

**RULES OF COURT**

*(O.48, r.6)*

**REQUEST FOR CAVEAT AGAINST ARREST**

(Description of property, giving name if a ship)

I ..... of ..... barrister and solicitor\*/ pleader for ..... of ..... request a caveat against the arrest of (description of property, giving name if a ship) and hereby undertake to enter an appearance in any suit that may be begun in the Supreme Court against the said ..... and, within 3 days after receiving notice that such a suit has been begun to give bail in the suit in a sum not exceeding \$ ..... or to pay that sum into court. We consent that the writ of summons and any other document in the suit may be left for us at .....

Dated the ..... day of ..... 19..... .

(Signed)

\* delete; whichever is not applicable

**RULES OF COURT**

*(O.48, r.8)*

**REQUEST FOR SERVICE OF WRIT OF SUMMONS BY DIRECTOR OF POLICE**

(Heading as in suit)

I ..... of ..... barrister and solicitor\*/ pleader for the plaintiffs request that the writ of summons left herewith be duly served on ..... by the Director of Police.

Dated the ..... day of ..... 19..... .

(Signed)

\* delete whichever is not applicable.

**RULES OF COURT**

*(O.48, r.13)*

**RELEASE OF ARRESTED PROPERTY**

(Heading as in suit)

To the Director of Police

Whereas in this suit you were required to arrest the ..... and to keep the same under safe arrest until you should receive further orders from this Court. You are now required to release the said ..... from the arrest effected by virtue of the warrant of this Court in this suit.

Registrar

Taken out by ..... \*barrister and solicitor\*/ pleader for the .....

Indorsement of Director of Police

On ..... the ..... day of ..... 19....., the ..... was released from arrest pursuant to this instrument.

(Signed)

Director of Police

\* delete whichever is not applicable.

\_\_\_\_\_

**RULES OF COURT**

*(O.48, r.13)*

**REQUEST FOR RELEASE OF ARRESTED PROPERTY**

(Heading as in suit)

I ..... of ..... \*barrister and solicitor\*/ pleader for the plaintiff\*/ defendant in this suit against (description of property, giving name if a ship) now under arrest by virtue of a warrant issued out of the Supreme Court request the issue of a release with respect to the said .....

Dated the ..... day of ..... 19..... .

(Signed)

\* delete whichever is not applicable.

FORM NO. CIV/46

**RULES OF COURT**

*(O.48, r.14)*

**REQUEST FOR CAVEAT AGAINST RELEASE AND PAYMENT**

(Description of property, giving name if a ship)

I ..... of ..... \*barrister and solicitor\*/ pleader for of request a caveat against the issue of a release with respect to (description of property, giving name if a ship) now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of court of the proceeds of sale.

Dated the ..... day of ..... 19..... .

(Signed)

\* delete whichever is not applicable.

FORM NO. CIV/47

**RULES OF COURT**

*(O.48, r.15)*

**REQUEST FOR WITHDRAWAL OF CAVEAT**

(Description of property; giving name if a ship)

I ..... of ..... \*barrister and solicitor\*/ pleader for ..... of ..... request that the caveat (state nature of caveat) entered on the ..... day of ..... 19..... on behalf of ..... be withdrawn.

Dated the ..... day of ..... 19..... .

(Signed)

\* delete whichever is not applicable.



**RULES OF COURT**

*(O.48, r.16)*

**BAIL BOND IN ADMIRALTY ACTION IN REM**

(Heading as in suit)

Whereas this Admiralty action in rem against the above-mention property is pending in the Supreme Court and the parties to the said suit are the above-mentioned plaintiffs and defendants:

Now, therefore, we, X.Y. of ..... and Y.Z. of ..... hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above-mentioned defendants (or plaintiffs, in the case of the counterclaim), do not pay what may be adjudged against them in this suit, with costs, or do not pay any sum due to be paid by the them in consequence of any admission of liability therein or under any agreement by which this suit is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of ..... dollars whichever is the less.

(Signed)

This bail bond was signed by the said X.Y. and Y.Z., the sureties, the day of ..... 19..... .

Before me

A Commissioner for Oaths

**RULES OF COURT**

*(O.48, r.23)*

**REQUEST FOR COMMISSION FOR APPRAISEMENT AND SALE**

(Heading as in suit)

I ..... of ..... \*barrister and solicitor\*/ pleader for the plaintiffs\*/ defendants request a commission for the appraisement and sale of (description of

property, giving name if a ships) which was ordered by the Court on the ..... day of ..... 19..... .

Dated the ..... day of ..... 19..... .

\* delete whichever is not applicable.

FORM NO. CIV/50

**RULES OF COURT**

*(O.48, r.23)*

**COMMISSION FOR APPRAISEMENT AND SALE**

(Heading as in suit)

To the Director of Police

Whereas in this suit the Court has ordered (description of property, giving name if a ship) to be appraised and sold;

YOU are hereby authorised and rewired to choose one or more experienced persons and to swear him or them to appraise the said ..... according to the true value thereof, and such value having been certified in writing by him or them to cause the said ..... to be sold by private treaty\*/ public auction for the highest price that can be obtained for it, but not for less than the appraised value unless the Court your application allows it to be sold for less.

And we further command you, immediately upon the sale being completed, to pay the proceeds thereof into Court and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Taken out by ..... barrister and solicitor\*/ pleader for the ..... on ..... the ..... day of ..... 19..... .

Registrar

\* delete whichever is not applicable.

FORM NO. CIV/51

**RULES OF COURT**

*(O.36, r.11)*

**NOTICE TO PERSON WHO MAY BE ENTITLED TO DEBT SOUGHT TO BE ATTACHED**

In the (Supreme Court  
(District Court

Civil Suit No.

(Heading as in suit)

To M.N.

It is alleged by A.B. the decree-holder in the above suit, that W.X. is indebted to C.D., the judgment-debtor in that suit, as follows –

(State briefly the nature of the debt)

An order has been made upon the application of A.B. attaching the debt in the hands of W.X.; A.B., is now seeking an order that W.X. should pay it to him in discharge of his obligation in respect of it to C.D.

However, it appears that possibly you may be entitled to receive the whole or a part of that debt from W.X. instead of C.D. If you wish to oppose A.B.'s application for an order that the debt be paid to him by W.X., you are required to attend before this Court at ..... a.m.\*/p.m. .... on the ..... day of ..... 19..... at the Court House at Yaren to state the nature and particulars of your claim that the debt is owed by W.X. to you, wholly or in part.

PLEASE NOTE THAT, IF YOU DO NOT ATTEND AT THE TIME AND PLACE STATED ABOVE, AN ORDER MAY BE MADE ON A.B.'S APPLICATION WITHOUT YOUR BEING HEARD IN THE MATTER.

If you attend to state your claim, you should bring with you any documentary evidence in your possession which may support your claim.

Registrar\*/ Resident Magistrate

\*delete whichever is not applicable.

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**APPENDIX B**

*(O.40, r.4)*

**COSTS IN CERTAIN SUITS**

**COSTS WHERE PAYMENT OF LIQUIDATED DEMAND IS MADE BEFORE APPEARANCE AND BEFORE JUDGMENT**

## **A. BASIC COSTS**

### Supreme Court

If the amount recovered is -	
less than \$200	\$20
not less than \$200 but less than \$1,000	\$25
not less than \$1,000	\$30

### District Court

If the amount recovered is -	
less than \$50	\$5
not less than \$50 but less than \$200	\$10
not less than \$200	\$20

## **B. ADDITIONAL COSTS**

### Supreme Court and District Court

1. Where there is more than one defendant, in respect of each additional defendant served	\$1
2. Where substituted- service is ordered and effected in respect of each defendant served	\$8
3. Where service outside Nauru is ordered and effected	\$25

## **PART 2**

### **COSTS WHERE FINAL JUDGMENT IS ENTERED IN DEFAULT OF APPEARANCE OF DEFENCE FOR A DEBT OR LIQUIDATED AMOUNT ONLY**

## **A. BASIC COSTS**

### Supreme Court

If the amount recovered is -	
less than \$200	\$25
not less than \$200 but less than \$1,000	\$30
not less than \$1,000	\$40

### District Court

If the amount recovered is -	
less than \$50	\$10
not less than \$50 but less than \$200	\$15
not less than \$200	\$25

## **B. ADDITIONAL COSTS**

### Supreme Court and District Court

Items 1, 2 and 3 as Items 1, 2 and 3 in Part 1B

4. In a moneylender's case, on application for leave to enter judgment \$5

## **PART 3**

### **GARNISHEE PROCEEDINGS**

#### **A. DECREE-HOLDER'S COSTS**

### Supreme Court and District Court

Where the decree-holder recovers from the garnishee:-

(1) less than \$10	No Costs
(2) from \$10 to \$20 inclusive	\$5
(3) over \$20	\$15
(4) where the garnishee fails to attend hearing and an affidavit of service is required (extra)	\$5

#### **B. GARNISHEE'S COSTS**

### Supreme Court and District Court

In cases with no affidavit	\$5
In cases with affidavit	\$10

## **PART 4**

### **MISCELLANEOUS FIXED COSTS**

### Supreme Court and District Court, where appropriate

1. Costs of judgment on discontinuance or on acceptance of money paid into court	\$4
2. Costs of registering a foreign judgment	\$20
3. Removal of judgment from District Court	\$5
4. Costs on application for writ of possession and for each additional person served	\$1

5. Costs of applying to enforce judgement \$5

6. Costs of issuing execution \$5

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