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# SUPREME COURT RULES 1991

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# SUPREME COURT RULES

## ORDER 1 : CITATION

These rules may be cited as the Supreme Court Rules 1991 and shall come into effect on 1 January 1992.

## ORDER 2 : APPLICATION

### Rule 1.

Subject to rule 2 of this Order, these rules shall apply to all civil proceedings in the Court ~~except~~

- (i) insolvency,
- (ii) the winding up or administration of companies, and
- (iii) admiralty.

### Rule 2.

(1) These rules shall apply to divorce and related proceedings only in so far as there is no provision in the Divorce Rules.

(2) Where there is no provision in these rules the rules of procedure for the time being in England shall apply.

## ORDER 3 : INTERPRETATION

### Rule 1.

The Interpretation Act shall apply to these Rules.

### Rule 2. -

"The Act" means the Supreme Court Act.

"Court" means the Supreme Court of Tonga.

"Judge" means the Chief Justice and any other judge of the Supreme Court.

"Lawyer" means a Law Practitioner enrolled and holding a valid practising certificate under the Law Practitioners Act 1989.

"Kingdom" means the territory of the Kingdom of Tonga.

"Minor" means a person under the age of 21 years.

"Party" means any person who is a party to the action referred to and includes a plaintiff, defendant, and third or subsequent party.

"Patient" means a person who, by reason of mental disorder, is incapable of managing his property and affairs.

"Person" includes any individual, a body of persons capable of suing and being sued, and a body corporate.

"Registrar" means the Registrar of the Supreme Court and includes any grade of Registrar.

"Service Officer" means a police officer or officer of the Court authorised to effect service of documents.

#### ORDER 4 : NON-COMPLIANCE WITH RULES

##### Rule 1.

Where there has been a failure to comply with these rules in any respect.

- (i) that failure shall be treated as an irregularity and shall not nullify the proceedings or any judgment or order made therein;
- (ii) the Court may, on such terms as it thinks fit, set aside either wholly or in part any order made in the proceedings in which the irregularity occurred.

##### Rule 2.

An application to set aside for irregularity 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.

##### Rule 3.

An application under rule 2 shall be made by summons stating the order sought and the concise grounds therefor.

#### ORDER 5 : TIME

##### Rule 1.

The Court may, on such terms as it thinks just, order that the time within which a person is required to or authorised to do any act in any proceedings, whether before or after judgment, be extended or abridged.

##### Rule 2.

The time within which any person is required by the rules, or by any order of the Court, to serve, file, or amend any pleading may be extended by consent given in writing without an order of the Court.

**Rule 3.**

Unless otherwise ordered by the Court, when the time for doing any act expires on a day when the Court office is closed, the act shall be done in time if done on the next day on which that office is open.

**ORDER 6 : COMMENCEMENT OF PROCEEDINGS**

**Rule 1.**

All proceedings shall be commenced by writ, *ex. writ?*

- (i) enforcement under Order 26, or
- (ii) habeas corpus under Order 28.

**Rule 2.**

Every writ shall be in Form 1.

**Rule 3.**

A writ shall be endorsed with a brief statement of the nature of the claim made and the remedy sought, and shall state whether or not the plaintiff requires the action to be tried by a jury.

**Rule 4.**

(1) Where the plaintiff sues by a lawyer, a writ shall be endorsed with that lawyer's name and an address for service within the Kingdom.

(2) Where the plaintiff sues in person, a writ shall be endorsed with his name and an address for service within the Kingdom.

**Rule 5.**

A writ shall be issued by filing

- (a) the writ, and
- (b) a statement of claim (which may be endorsed on the writ itself).

together with as many copies as there are parties to be served.

**Rule 6.**

(1) Subject to paragraph (2), a writ shall become invalid unless served on every defendant within 12 months from the date on which it was issued.

(2) Where for good reason a writ has not been served on a defendant in accordance with paragraph (1) the Court may from time to time by order extend its validity for any period not exceeding 12 months; and before service the writ shall be endorsed with a note of that order.

## ORDER 7 : DISPUTE AS TO JURISDICTION

### Rule 1.

Subject to the provisions of this order, a party who takes any step in an action shall be deemed to have submitted to the jurisdiction of the Court.

### Rule 2.

A defendant who wishes to dispute the jurisdiction of the Court in an action may, within the time limited for service of a defence and before taking any other step in the action, apply to the Court for

- (a) an order setting aside the writ or service of the writ on him;
- (b) an order declaring that the writ has not been duly served on him;
- (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction;
- (d) the discharge of any order extending the validity of the writ for the purpose of service;
- (e) an order to preserve or release any of his property seized or threatened with seizure in the action;
- (f) a declaration that the Court has no jurisdiction over him in respect of the subject matter of the claim or the relief sought in the action; or
- (g) such other relief as may be appropriate.

### Rule 3.

An application under rule 2 shall be made by summons stating the relief sought and the concise grounds therefor, supported by an affidavit setting out the facts on which the application is based.

### Rule 4.

The summons and a copy of the affidavit in support shall be served on the plaintiff not less than 7 clear days before the hearing date.

### Rule 5.

At the hearing of the application the Court may:

- (a) determine the matter summarily;
- (b) direct that the matter be tried as a preliminary issue; or
- (c) give such other directions for its disposal as may be appropriate.

**Rule 6.**

A defendant who makes an application under rule 2 shall not be treated as having submitted to the jurisdiction of the Court by reason of having taken a step in the action.

**Rule 7.**

If the Court makes no order on the application or dismisses it, the time for service of the defence shall run from the date of such order.

**ORDER 8 : PLEADINGS**

**Rule 1.**

Every statement of claim shall state the material facts upon which the plaintiff relies, and the relief sought.

**Rule 2.**

(1) A defendant who wishes to defend a claim shall, within 28 days of service of the writ upon him, file a defence with as many copies as there are persons to be served.

(2) A defence shall state concisely the grounds of defence on which the defendant intends to rely, and whether the defendant requires the case to be tried by a jury.

(3) Subject to paragraph 4, a defendant shall be deemed to admit every material allegation of fact in the statement of claim which is not specifically denied.

(4) A defendant shall be deemed to deny any allegation that a party has suffered damage, and the alleged amount of such damage, unless specifically admitted.

(5) A defence of tender before action may not be pleaded unless and until the defendant has paid into Court (in accordance with Order 16) the amount alleged to have been tendered.

**Rule 3.**

(1) A defendant in any action who alleges that he has any claim or is entitled to any relief against a plaintiff in an action (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter by adding the counterclaim to his defence.

(2) A plaintiff who wishes to defend a counterclaim shall, within 28 days after service of the counterclaim on him, file a defence to the counterclaim, which may be incorporated with a reply to the defence.

(3) These rules shall apply to a counterclaim as if the counterclaim were a separate action in which the person making the counterclaim were plaintiff and the person against whom it is made were defendant.

(4) A counterclaim may be proceeded with notwithstanding that judgement is given for the plaintiff in the action, or that the action is stayed discontinued or dismissed.

(5) Where a defendant proves a counterclaim against the plaintiff's claim and there is a balance in favour of one party, the Court may give judgement for the balance.

Rule 4

(1) A party on whom a pleading is served may request the party whose pleading it is to give particulars of any allegation or other matter pleaded, and if that party fails to give such particulars within a reasonable time, the Court may on application by summons order that such particulars be given.

(2) A party giving particulars, whether or not pursuant to an order, shall file a copy.

(3) 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.

Rule 5.

(1) A party may not amend any of his pleadings without leave of the Court.

(2) Application for leave to amend a pleading shall be made on summons with a copy of the proposed amendment.

(3) If the Court grants leave to amend any pleading it may make such order as to costs and as to the further conduct of the action as it thinks just.

(4) A copy of every amended pleading shall be filed and served on all parties to the action.

Rule 6.

(1) The court may at any time order that any pleading or part thereof be struck out if

- (i) it discloses no reasonable cause of action or defence, as the case may be; or
- (ii) it is scandalous, frivolous or vexatious; or
- (iii) it is unclear, or may otherwise prejudice or delay the fair trial of the action; or
- (iv) it is otherwise an abuse of process of the Court;

and may order the action to be stayed or dismissed, or judgment to be entered accordingly.

(2) No evidence shall be heard on an application under paragraph (1)(i).

(3) (i) Subject to subparagraph (ii), the Court may, of its own motion, strike out an action

(a) if the writ has become invalid under Order 6 Rule 6, or

(b) the case has not been set down for trial within two years after service of the writ, or

(c) the action has been adjourned sine die and no step has been taken in the action within two years from the date when it was so adjourned.

(ii) No action shall be struck out under this rule unless the parties have been given not less than 28 days notice of the court's intention to do so.

## Rule 7.

The pleadings in an action are deemed to be closed

- (i) after 14 days from service of a reply and/or a defence to counterclaim, or
- (ii) if no such pleading is served, after 14 days from service of the defence,

whether or not any request or order for particulars has been made but not yet complied with at that time.

## ORDER 9 : PARTIES

## Rule 1.

No claim shall be defeated by reason of the misjoinder on non-joinder of any party.

## Rule 2.

Subject to Rules 4 and 5, the Court may at any stage in the proceedings, of its own motion or on application, and on such terms as it thinks just:

- (i) order any person who is not a proper or necessary party to be dismissed from the action;
- (ii) order any person to be added as a party
  - (a) if he ought to have been joined as a party; or
  - (b) if his presence is necessary or convenient to ensure that all related matters are finally determined.

## Rule 3.

An application to add or to dismiss a party shall be made on summons supported by an affidavit showing the grounds for such application.

## Rule 4.

No person shall be added as a plaintiff without his consent.

## Rule 5.

Unless the Court otherwise orders, no person shall be added or substituted as a party after the expiry of any relevant period of limitation.

## Rule 6.

(1) Where a person against whom an action has been brought has died, the action shall be treated as if it were brought against his estate.

(2) Where a person against whom an action would have lain has died but the cause of action survives, the action may be brought against his estate.

(3) (i) Where rules (1) or (2) hereof apply, and no grant of probate or administration has been made, the plaintiff shall apply to the court for some person to be appointed to represent the estate.

(ii) An application under this paragraph shall be made on summons supported by an affidavit which shall be carried on



## Rule 7.

(1) A patient or a minor may commence and prosecute proceedings by his next friend and may defend proceedings by his guardian ad litem.

(2) No step shall be taken in any proceedings by a patient or a minor until his next friend or guardian ad litem (as the case may be) has filed the following documents with the Court :

- (i) a written consent to act by the proposed next friend or guardian ad litem;
- (ii) a certificate by a lawyer representing the patient or minor
  - (a) that he knows or believes the person to whom the certificate relates to be a patient or minor (as the case may be), stating the grounds for such knowledge or belief, and
  - (b) that the person named in the certificate as next friend or guardian ad litem has no interest in the action in question adverse to that of the patient or minor, and that he is proper person to be next friend or guardian ad litem.

(3) Where a pleading has been served on a party who appears to be a patient or a minor, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply by summons to a judge for directions as to whether a guardian ad litem should be appointed to act for that person.

(4) If on the hearing of a summons issued under paragraph (3) of this rule, the Judge considers it necessary to protect the interests of the person served, he shall order some proper person to be appointed his guardian ad litem.

## ORDER 10 : THIRD PARTY PROCEEDINGS

### Rule 1.

Where a defendant who has filed a defence

- (i) claims against a person not already a party to the action any contribution or indemnity; or
- (ii) claims against such person relief which is substantially the same as that claimed by the plaintiff; or
- (iii) requires that any issue arising in the action be determined also as it affects such person;

he may apply for leave to issue a third party notice.

### Rule 2.

Application to issue a third party notice shall be made on summons supported by an affidavit

- (a) identifying the person against whom such proceedings are to be taken, and
- (b) stating the grounds of the application, and
- (c) exhibiting a copy of the proposed third party notice.

### Rule 3.

If the Court grants leave to issue a third party notice these rules shall apply as if the third party notice were a writ issued by the defendant and the third party were defendant to that writ.

### Rule 4.

Where a third or subsequent party who has filed a defence makes any such claim as is described in Rule 1 he may apply for leave to issue a further notice against a fourth or subsequent party, and the provisions of this Order shall apply with any necessary modifications as if he were a defendant.

## ORDER 11 : SERVICE OF DOCUMENTS.

### Rule 1.

(1) Every document filed in Court

(a) shall be endorsed with the address for service of the party on whose behalf it is served, and

(b) Unless filed in connection with an ex parte application, shall be served on every other party.

(2) Unless otherwise ordered by the Court, after a document has been filed (other than in ex parte proceedings) no further step shall be taken in the action until service of that document has been effected.

### Rule 2.

(1) Subject to rule 4, the party on whose behalf a document was filed shall ensure that it is served in accordance with this rule.

(2) Unless otherwise ordered by the Court, where a party is represented by a lawyer service of documents shall be effected by that lawyer or his agent.

(3) Where a party acts in person service of his documents shall be effected by a service officer, on payment of such fee as may be prescribed.

(4) Unless otherwise ordered by the Court, when a lawyer has notified the Court that he represents any party, service of any document on that party shall be effected by delivering a sealed copy thereof to his lawyer.

(5) Where a party acts in person service of any document on him shall be effected personally by delivering a sealed copy to him, or if he refuses or neglects to accept the same; by placing it down in his presence after informing him of the nature thereof.

### Rule 3.

The person serving any document shall, immediately after service, endorse the original document with details of the time, date, place and mode of service, and the server's means of knowledge of the identity of the person served. Such endorsement shall be evidence that such document was duly served as stated thereon.

### Rule 4.

(1) If it appears to the Registrar that it is impracticable to serve any document in accordance with rule 2, he may grant leave to substitute some other form of service which it appears to him is likely to bring that document to the notice of the person to be served.

(2) If it appears to a judge that it is impracticable to serve any party in accordance with rule 2, or it is otherwise necessary or expedient to dispense with service of any document on that party, he may make an order dispensing with such service.

(3) Application for an order under this rule shall be made ex parte supported by an affidavit showing what steps have already been taken to effect service and stating the grounds of the application. The applicant may be required to attend on the application.

## ORDER 12 : SERVICE OUT OF THE JURISDICTION

### Rule 1.

A writ may, with the leave of the Court, be served out of the jurisdiction if

- (i) the person to be served is domiciled within the jurisdiction;
- (ii) an injunction is sought ordering the defendant to do or not to do any act within the jurisdiction;
- (iii) the claim is brought against a person within the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (iv) the claim is brought in contract and
  - (a) the contract was made within the jurisdiction, or
  - (b) the contract was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
  - (c) the contract is governed by Tongan law, whether expressly or by implication, or

- (d) the contract gives jurisdiction to the Court, or
- (e) wherever the contract was made, the claim is brought in respect of a breach of contract committed within the jurisdiction;
- (v) the claim is brought in tort and the tortious act was committed, or the damage was sustained within the jurisdiction;
- (vi) the claim is brought to execute any trusts arising under a written instrument which trusts ought to be executed according to Tongan law, and the person to be served is a trustee;
- (vii) the claim relates to the administration of the estate of any person who died domiciled within the jurisdiction;
- (viii) the claim is brought to enforce any judgement.

#### Rule 2.

Application for leave under rule 1 shall be made ex parte to a judge with an affidavit stating

- (i) the grounds on which the application is made,
- (ii) that in the deponent's belief the applicant has a good cause of action, and
- (iii) the address at which it is desired to effect service on the defendant.

#### Rule 3.

Where leave is given under rule 1

- (i) the court shall fix the time allowed for the defendant to file a defence, and
- (ii) a copy of the order granting leave shall be served with the writ.

#### Rule 4.

Service of a writ pursuant to an order made under rule 1 shall be deemed effective if it is served.

- (i) personally, or
- (ii) in compliance with an order for substituted service, or
- (iii) in accordance with the law of the country in which service is effected.

## ORDER 13 : JUDGEMENT IN DEFAULT OF DEFENCE

### Rule 1.

When a defendant has failed to file a defence within the time limited

- (i) by Order 8, rule 2 or
- (ii) by any order made under Order 5 Rule 1, or
- (iii) by an agreement made under Order 5 Rule 2,

the plaintiff may, by application in writing, enter final judgment against that defendant.

### Rule 2.

(1) Where the writ is endorsed with a claim for liquidated damages only, the plaintiff may enter judgment for a sum not exceeding that claimed in the writ, and for costs.

(2) Where the writ is endorsed with a claim for unliquidated damages only the plaintiff may enter judgement for damages to be assessed, and for costs.

(3) Where the writ is endorsed with a claim relating to detention of goods the plaintiff may enter judgment.

- (i) for delivery of the goods to the plaintiff, and costs, or
- (ii) for the value of the goods to be assessed, and costs.

### Rule 3.

(1) A judgment entered under rule 1 may be set aside if the defendant satisfies the Court that

- (i) there was good reason for his failure to file a defence in time; and
- (ii) he has an arguable defence.

(2) Application under paragraph (1) shall be made by summons supported by an affidavit.

### Rule 4.

When judgment has been entered under this rule against one or more defendants the plaintiff may proceed with the action against other defendants, if any.

## ORDER 14 : SUMMARY JUDGMENT

### Rule 1.

This order applies to all actions except those

- (i) under the Companies Act;
- (ii) in insolvency;
- (iii) in admiralty;
- (iv) for judicial review;

**Rule 2.**

Where a writ and statement of claim have been served on a defendant who has filed a defence, the plaintiff may apply to the court for judgment against that defendant on the ground that:

- (i) he has no defence to any claim, or part of such claim, or
- (ii) he has no defence to such claim or to part of such claim save as to the amount of damages.

**Rule 3.**

An application under Rule 2 shall be made by summons supported by an affidavit

- (i) verifying the facts on which the claim, or the part thereof to which the application relates, is based; and
- (ii) stating that in the deponent's belief
  - (a) there is no defence to the claim, or that part of the claim as the case may be; or
  - (b) that there is no defence to the claim or that part of the claim, as the case may be, save as to the amount of damages; and
- (iii) which may, unless otherwise ordered by the Court, contain statements of information or belief provided that the sources and grounds thereof are stated.

**Rule 4.**

The summons and a copy of the affidavit in support (including any exhibits) shall be served on the defendant not less than 10 clear days before the date fixed for hearing of the application.

**Rule 5.**

- (1) A defendant may oppose an application made under this order by affidavit or, by leave of the Court, in some other manner.
- (2) A defendant's affidavit must state clearly what the defence is, and what facts are relied upon to support it.

(3) Unless otherwise ordered, a defendant's affidavit must be served on the plaintiff not less than 2 clear days before the hearing of the application.

#### Rule 6.

At the hearing of the application the Court may in exceptional circumstances take further evidence on oath, and may:

- (a) adjourn the hearing and give any directions as to the further conduct of the application;
- (b) enter judgment for the plaintiff for all or part of the subject matter of the application;
- (c) give the defendant leave to defend the claim or any part of it, either unconditionally or on such terms as it thinks just; or
- (d) dismiss the application.

#### Rule 7.

Where the Court enters judgment on a claim, it may stay execution of that judgment pending determination of any counterclaim.

#### Rule 8.

Where the Court gives leave to defend the claim or any part of it, it shall give directions as to the further conduct of the action.

### ORDER 15 : WITHDRAWAL AND DISCONTINUANCE

#### Rule 1.

(1) A party may not discontinue an action or counterclaim or withdraw any part of his claim against any other party without leave of the Court.

(2) An application for leave under this rule shall be made by summons to a judge, who may grant leave on such terms as to costs or otherwise as he thinks just.

#### Rule 2.

(1) A defendant to an action may at any time, without leave of the Court, withdraw his defence or any part of it by serving notice to that effect on the plaintiff.

(2) Where a defence is withdrawn in whole or in part a judge may, on the application by summons of the plaintiff, give such judgment and may such order for costs as may be appropriate.

## ORDER 16 : PAYMENT INTO COURT

## Rule 1.

In an action for debt or damages any defendant may at any time 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 causes of action are joined in the action, in satisfaction of any or all of those causes of action.

## Rule 2.

A payment into court may be increased at any time.

## Rule 3.

On making or increasing a payment into court the defendant must give notice to the Plaintiff and to any other defendant and to the Court in Form 2, stating :

- (a) ~~whether~~ the sum is paid in respect of
- (a) the whole claim, or
  - (b) one or more separate causes of action, if so, specifying the sum paid in respect of each such cause of action, and
- (ii) if it be the case, that the sum paid in is calculated after deduction of any sum counterclaimed, and stating in respect of that counterclaim the information required by subparagraph (i).

## Rule 4.

A notice of payment into court may not be withdrawn or amended without leave of the Court, which may be granted on such terms as it thinks just.

## Rule 5.

Where money is paid into court under this order the plaintiff may, within 21 days after receipt of the notice given under Rule 3, but in any case before the trial begins

- (i) accept the money paid into court in satisfaction of the whole claim, or
- (ii) where the money was paid in respect of only some of the causes of action in respect of which he claims, accept the sum in satisfaction of any such cause or causes of action specified in the notice.

by giving notice to the defendant and to the Court in Form 3.

## Rule 6.

On the plaintiff accepting any money paid into court

- (i) all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, shall be stayed against all defendants sued in respect of the same cause of action, and
- (ii) where the notice of payment stated that any sum counterclaimed had been taken into account, all proceedings in that counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.



#### Rule 7.

(1) A plaintiff who has accepted any sum paid into Court in accordance with Rule 5 shall be entitled

- (i) to have such sum paid out to him forthwith in satisfaction of the relevant cause or causes of action, and
- (ii) to recover his costs of the action up to the date of acceptance against the party who made the payment into court.

(2) If money paid into court is not accepted in accordance with Rule 5 the money shall not be paid out except in pursuance of an order of the Court, which order may be made on such terms as the Court may think just.

#### Rule 8.

Except in an action in which a defence of tender before action is pleaded, the trial Judge shall not be informed of such payment until all questions of liability and quantum have been decided.

#### Rule 9.

A plaintiff against whom a counterclaim is made and any other defendant to a counterclaim may pay money into court in accordance with Rule 1 and this order shall apply with any necessary modifications.

#### Rule 10.

Money paid into Court under this order shall be invested by the Registrar in an interest bearing account.

### ORDER 17 : SECURITY FOR COSTS

#### Rule 1.

Where on the application of a defendant to any proceeding it appears to the Court that :

- (i) the plaintiff is ordinarily resident out of the jurisdiction, or
  - (ii) the plaintiff may be unable to pay the costs of the defendant if ordered to do so, or
  - (iii) the plaintiff has not disclosed his true address to the Court,
- the Court may, if having regard to all the circumstances of the case it thinks just to do so, order that the action be stayed until the plaintiff gives security for the defendant's costs of the action in such sum and in such manner as the Court may determine.

#### Rule 2.

An order for security for costs may, upon application by summons, be revoked, decreased or increased at any time.

### ORDER 18 : DISCOVERY AND INSPECTION OF DOCUMENTS

#### Rule 1.

Every party to an action shall, within 14 days after close of pleadings make and serve on every opposite party a list of the documents which are or have been in his possession, custody or power relating to any issue between those parties.

## Rule 2.

On the application of any party required by Rule 1 to make discovery, or of its own motion on the summons for directions, the Court may

- (i) order that the parties or any of them shall make discovery of documents;
- (ii) order that the parties or any of them shall make discovery of only such documents as may be specified in the order, or
- (iii) if satisfied that discovery is not necessary, either for disposing fairly of the action or for saving costs, dispense with discovery by any part.

## Rule 3.

(1) Any party to whom discovery is required to be made under this order may, at any time before the summons for directions is heard, give notice to the party required to make such discovery requiring him to make an affidavit verifying his list of documents.

(2) Any party served with a notice under paragraph (1) shall within 14 days after receipt of the notice make and file an affidavit verifying his list of documents and serve a copy on the party requiring such affidavit.

## Rule 4.

(1) A list of documents shall be in Form 4, and shall list the documents in a convenient order, describing them shortly.

(2) If it is desired to claim that any document is privileged from production the claim must be made in the list stating concisely the grounds for such claim.

(3)\*An affidavit verifying a list of documents shall be in Form 5.

## Rule 5.

A party who has served a list of documents on any party shall allow that party to inspect the documents referred to in the list (other than those for which he claims privilege) and to take copies thereof.

## Rule 6.

If any party fails to comply with the requirements of this order the Court may order him to do so within a specified period, and in default may order that the claim be dismissed or the defence struck out, and that judgment be entered accordingly.

## Rule 7.

A party may be required to produce at the trial any document referred to in his list of documents.

## ORDER 19 : SUMMONS FOR DIRECTIONS

### Rule 1.

When a defence is filed the Registrar shall summon all parties to the action to attend before a judge in chambers for directions to be given for the future conduct of the action.

### Rule 2.

(1) Any party who wishes to make an application for any order which may be made under these rules shall, so far as reasonably practicable, do so at the hearing of the summons for directions.

(2) A party making an application under paragraph (1) shall do so by giving not less than 10 days notice of such application to every party against whom the application is made.

### Rule 3.

At the hearing of the summons for directions.

- (i) every party shall give to the Court all such information, and produce all such documents, as the Court may reasonably require;
- (ii) unless the Court for good reason otherwise orders all information and documents given or produced shall be disclosed to all other parties present;
- (iii) the Court may make any orders it thinks necessary for the just, economical and efficient disposal of the action;

### Rule 4.

The summons for directions may be adjourned from time to time but shall not be adjourned sine die.

## ORDER 20 : INTERROGATORIES

### Rule 1.

(1) The Court may on the application by summons of any party make an order :

- (i) giving him leave to serve on any other party, (or, in the case of a party which is a body of persons empowered to sue or be sued in its own name, on a person who is an officer or member of that body) interrogatories relating to any issue between the applicant and that other party and
- (ii) requiring that other party or person, as the case may be, to answer the interrogatories on affidavit within such period as the Court may specify.

(2) A copy of the proposed interrogatories shall be served with the summons.

(3) A person who objects to answering any interrogatory shall file an affidavit in answer stating the ground of his objection.

### Rule 2.

On the hearing of the application the Court shall give leave for only such interrogatories as it considers necessary for disposing fairly of the action or for saving costs.

### Rule 3.

An interrogatory which does not relate to any issue between the parties to the application shall not be allowed although the question might be admissible in cross-examination of a witness.

#### Rule 4.

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

#### Rule 5.

If a party against whom an order is made under Rule 1 fails to comply with it without good reason, the Court may :

- (i) order that person to be committed for contempt of court, or
- (ii) order that the claim be dismissed or, as the case may be, the defence be struck out and that judgment be entered accordingly.

#### Rule 6.

An order made under Rule 1 may, for good reason, be revoked or varied at any time before the trial of the action commences.

### ORDER 21 : ADMISSIONS

#### Rule 1.

Any party may at any time give notice, by his pleading or otherwise in writing, that he admits the truth of any matter pleaded by another party.

#### Rule 2.

(1) Any party may, not less than 1 month before trial, serve on any other party notice requiring him to admit, for the purpose of that action only, such facts as may be specified in the notice.

(2) If a party on whom such notice is served does not admit the facts within 14 days after service of the notice on him, the cost of proving those facts shall be borne by him unless the Court otherwise orders.

(3) Where admissions of fact have been made under this Order the Court may, upon the application by summons of any party, enter such judgment or order as he may be entitled to upon those admissions without waiting for any other issues between the parties to be determined.

#### Rule 3.

(1) Any party may, not less than 1 month before trial, serve on any other party notice requiring him to admit the authenticity of the documents specified in the notice.

- (2) (i) A party on whom such notice is served may within 14 days after service of it upon him notify the party by whom it was given in writing that he does not admit the authenticity of any document specified in it.
- (ii) A party who does not give notice paragraph (2)(i) shall be deemed to admit the authenticity of any document specified in the notice unless the Court otherwise orders.
- (iii) If a party gives notice under paragraph (2)(i) the costs of proving any document not admitted shall be borne by him unless the Court otherwise orders.

## ORDER 22 : INJUNCTIONS

## Rule 1.

(1) Any party may apply for an injunction at any time, whether before or after the trial of an action, and whether or not a claim for an injunction has been formally pleaded.

(2) Application for an injunction shall be made by summons, supported by an affidavit stating the relevant facts.

(3) Except in cases of urgency, the summons and a copy of the affidavit shall be served on the other party not less than 5 days before the hearing.

(4) In cases of urgency application may be made ex parte, and the Court may, upon the applicant giving an undertaking in damages make such order as it thinks just.

(5) (i) Subject to subparagraph (ii), an application for an injunction shall not be made before the issue of a writ;

(ii) if the application is one of extreme urgency, the Court may make an order upon the applicant undertaking to issue a writ within a specified time.

## Rule 2.

(1) On the application of any party the Court may make an order for the detention, custody or preservation of any property which is the subject matter of any action, or for the inspection of any such property held by a party.

(2) To give effect to any order made under paragraph (1) the Court may by order authorise any person to enter upon any land or building in the possession of any party.

(3) Where the right to a specified fund is disputed in an action, the Court may, on the application of any party, order that the fund be paid into Court.

(4) An application under this rule shall be made by summons supported by an affidavit, and the Court may make an order on such terms as it thinks just.

## Rule 3.

On the hearing of an application under this Order, the Court may also give directions as to the further conduct of the action.

## ORDER 23 : TRIAL

## Rule 1.

An action may be tried at any place at which sittings of the Court are authorised.

## Rule 2.

(1) Subject to paragraph (2), an action shall be tried by a judge alone.

(2) An action shall be tried by a judge sitting with a jury if any party notifies the Court that he so desires.

(3) If notice under paragraph (2) is given to the Court at any time after the trial date has been fixed the party giving such notice shall bear the costs of any adjournment occasioned thereby.

### Rule 3.

(1) The Court may order the separate trial of any question or issue arising in an action, whether of fact or law or mixed fact and law, and whether or not it was raised on the pleadings.

(2) On making a decision on any question or issue tried separately the Court may give final judgment in the action if that decision substantially disposes of the action or renders further trial unnecessary.

### Rule 4.

(1) (i) If neither party appears at the trial the action may be struck out.

(ii) If one party fails to appear at the trial the judge may deal with the action and any counterclaim in the absence of that party.

(iii) Any judgment or order made in the absence of a party may be set aside on the application of that party on such terms as the Court thinks just.

(iv) Application under subparagraph (iii) shall be made

(a) by summons supported by an affidavit, and

(b) not later than 14 days after the trial.

(2) The judge may adjourn a trial to such time and place, and upon such terms, as he thinks fit.

(3) The judge may give directions as to which party shall begin and the order of speeches.

(4) If the judge gives no directions under paragraph (3):

(i) the plaintiff shall begin and may make an opening speech.

(ii) if the defendant does not adduce evidence.

(a) the plaintiff may make a closing speech after the evidence on his behalf has been given, and

(b) the defendant shall then state his case.

(iii) if the defendant adduces evidence,

(a) after the evidence on behalf of the plaintiff has been given he may open his case;

(b) after the evidence on his behalf has been given he may make a closing speech; and

(c) the plaintiff may then make a speech in reply.

(iv) where a party who is entitled to make the final speech raises in that speech any new point of law or cites some authority not previously cited, the opposite party may make a further speech in reply but only as to that point of law or authority.

(5) The judge and any jury may inspect any place or thing with respect to which any question arises at the trial.

(6) (i) The Clerk of the Court

- (a) shall take charge of every exhibit;
  - (b) shall number each exhibit consecutively; and
  - (c) shall prepare and keep a list of those exhibits.
- (ii) Unless the Court otherwise orders, exhibits shall be retained in the Court office for the period within which any appeal may be lodged, and if an appeal is lodged until the conclusion of that appeal; and shall then be returned to the parties who produced them.
- (7) (i) The Clerk of the Court shall take charge of every audiotape recording the evidence given in a trial.
- (ii) Unless the Court otherwise orders, such audiotapes shall be retained in the Court office for a period of 60 days after completion of the trial, after which period the recording may be deleted.

#### ORDER 24 : EVIDENCE

##### Rule 1.

Subject to rule 2 and to any statute relating to evidence, any fact required to be proved at a trial shall be proved by oral evidence.

##### Rule 2.

(1) Subject to the provisions of this rule, the Court may permit the evidence of any witness to be given by affidavit.

(2) A party who wishes to adduce affidavit evidence shall, not less than 14 days before trial notify the opposite party in writing of his intention sending a copy of that affidavit.

(3) A party served with notice under paragraph (2) shall within 7 days after receipt of such notice notify the other party whether or not he consents to the affidavit being given in evidence and if he fails to do so shall be deemed to consent.

(4) A party who unreasonably fails to consent to the use of affidavit evidence may be ordered to bear the cost of attendance of the witness whose affidavit was sought to be used.

##### Rule 3.

(1) An affidavit sworn in an action shall bear the title and number of the action.

(2) An affidavit may be sworn by more than one person.

(3) An affidavit shall be expressed in the first person and, unless the Court otherwise directs, shall state the occupation and residence of the deponent; and if he is employed by a party that fact shall be stated.

(4) An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being so far as possible confined to one matter.

(5) An affidavit shall be signed by the deponent before a person authorised to take affidavits (not being the deponent's lawyer) who shall complete and sign the jurat.

(6) Where it appears to the person taking an affidavit that the deponent is illiterate or blind, he shall certify in the jurat that :

- (a) he has read over the affidavit to the deponent,
- (b) the deponent appeared to fully understand it, and
- (c) the deponent made his signature or mark in his presence.

(7) Any document to be used in conjunction with an affidavit shall be

- (a) identified in the affidavit by an exhibit letter or number, and
- (b) marked with that letter or number, and details of the deponent and the date of the affidavit, and
- (c) signed by the person taking the affidavit.

(8) (i) An affidavit for use at a trial shall contain only such facts as would be admissible if the deponent were to give oral evidence.

(ii) An affidavit for use in interlocutory proceedings may contain statements of information or belief provided that the source and grounds thereof are stated.

#### Rule 4.

(1) Expert evidence may be adduced without leave.

(2) Unless otherwise ordered by the Court,

(i) a party who wishes to adduce expert evidence shall, as soon as possible and in any event not less than one month before trial, serve a copy of his expert's report on every opposite party; and

(ii) unless a copy of his report has been served in accordance with subparagraph (i) an expert witness shall not be allowed to give evidence.

### ORDER 25 : JUDGMENTS AND ORDERS

#### Rule 1.

Every judgment or order made by the Court shall be drawn up by the Court and shall be sealed with the Court seal but not signed.

#### Rule 2.

Every judgment or order shall bear the name of the judge or registrar whom it was made.

#### Rule 3.

Unless otherwise ordered, a judgment or order shall take effect from the date on which it was made.

#### Rule 4.

A copy of every judgment or order shall be served by the party who obtained it on every party affected by it.

#### Rule 5.

Clerical 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 summons without an appeal.



## ORDER 16 : ENFORCEMENT OF JUDGMENTS AND ORDERS

### Rule 1.

(1) A judgment or order for the payment of money (other than an order for payment into Court) may be enforced by one or more of the following means :

- (a) writ of distress;
- (b) garnishee proceedings;
- (c) the appointment of a receiver;
- (d) charging order
- (e) if Rule 3 applies, an order of committal;

(2) A judgment or order for the payment of money into Court may be enforced by one or more of the following means :

- (a) the appointment of a receiver;
- (b) if Rule 3 applies, an order of committal;

### Rule 2.

A judgment or order for the delivery of goods may be enforced by one or more of the following means :

- (a) writ of delivery;
- (b) if Rule 3 applies, an order of committal;

### Rule 3.

(1) Where any person

- (i) is required by a judgment or order to do an act fails or refuses to do it within the time specified by the Court, or
- (ii) disobeys a judgment or order requiring him not to do an act,

the judgment or order may be enforced by one or more of the following means:

- (a) an order of committal against that person if an individual, or
- (b) where that person is a body of persons capable of suing and being sued, or a body corporate, an order for committal against any member or officer of that body.

(2) (i) Subject to subparagraph (ii), a judgment or order shall not be enforced under Rule 3 unless

- (a) a copy of the judgment or order has been served personally on the person to whom it is directed, and
- (b) if that person is required to do an act, the copy has been served in time to allow him to comply with it, and
- (c) the copy so served was endorsed with a notice that if that person disobeys the judgment or order he may be liable to committal or other execution to compel him to obey it.

(iii) Subparagraph (i) shall not apply if the Court is satisfied that the person against whom it is sought to enforce the judgment or order is aware of it by reason of his presence when it was made, or otherwise.

#### Rule 4.

(1) No enforcement proceedings shall be issued without leave of the Court if :

- (a) six years or more have elapsed since the date of the judgment or order;
- (b) any change has taken place, whether by death or otherwise, in the parties in whose favour or against whom the judgment or order was obtained;
- (c) it is sought to enforce a judgment against a deceased person by process against his assets in the hands of his executor or administrator; or
- (d) it is sought to enforce judgment against a partner in a firm against which judgment was entered.

(2) Application for leave under paragraph (1) may be made ex parte on summons supported by an affidavit setting out all relevant facts.

(3) Where the Court grants leave under this paragraph such leave shall lapse if proceedings are not taken within 1 year from its grant.

#### Rule 5.

(1) A writ of enforcement is valid for 1 year from the date of its issue.

(2) The court may for good reason extend the validity of a writ of enforcement from time to time for any period not exceeding 1 year from the date of its expiry.

#### Rule 6.

Unless otherwise ordered by the Court,

- (a) a writ of enforcement shall not be executed before any similar writ issued on an earlier date has been satisfied.
- (b) where a writ of enforcement has been extended under rule 5, it shall be deemed to have been issued on the date when it was extended.

#### Rule 7.

(1) A writ of distress shall be in Form 6.

(2) Subject to paragraph (3), a writ of distress shall be executed in the same manner as is prescribed in the Magistrates' Courts Act for the execution of distress warrants.

(3) On the application of the judgment debtor or the judgment creditor, the Court may

- (a) direct that any property seized pursuant to a writ of distress be sold in some manner other than by public auction, and
  - (b) give directions as to the safe custody of such property pending sale.
- (4) (i) Subject to subparagraph (ii) the Court may, on application by any person against whom a writ of distress has been or may be issued, stay execution on such conditions and for such period as it may think just.

- (ii) The Court shall not stay execution under subparagraph (i) unless satisfied
  - (a) that there are special circumstances which make it inexpedient to enforce payment, or
  - (b) that the applicant is unable to pay the full sum due.
- (iii) An application under subparagraph (i) may be made
  - (a) orally, when the judgment or order is made, or
  - (b) by summons supported by an affidavit setting out the special circumstances, or, if the applicant states that he is unable to pay in full, his full financial circumstances.
- (iv) An order made under subparagraph (i) may be varied or revoked on application by any party.

#### Rule 8.

- (1) A writ of delivery shall be in Form 7.
- (2) A writ of delivery may include provision for enforcing payment of any money payable (whether alternatively to or in addition to delivery of property) by the same person under the same judgment or order.
- (3) The officer charged with execution of a writ of delivery shall
  - (a) seize the property ordered to be delivered and convey it to a convenient place where it may be collected;
  - (b) immediately after such seizure, give notice in Form 8 to the Court and the person who issued the warrant where and when it may be collected; and
  - (c) if the property has not been collected within 14 days after such notice, seek the direction of the Court as to whether the property should be released to the person from whom it was seized.

#### Rule 9.

- (1) Where
  - (a) a judgment creditor has obtained a judgment or order for the payment by a judgment debtor (not being a payment into Court) of a sum of money exceeding \$500, and
  - (b) some other person within the jurisdiction (in this rule referred to as "the Garnishee") owes money to the judgment debtor,the Court may order the Garnishee to pay to the judgment creditor any sum (not exceeding the amount owed by the Garnishee to the judgment debtor) in full or part satisfaction of the judgment debt and costs.
- (2) An application for an order under paragraph (1) shall be made *ex parte* supported by an affidavit:
  - (a) stating the name and last known address of the judgment debtor,
  - (b) identifying the judgment or order to be enforced and stating the amount unpaid,

- (c) stating that the Garnishee (naming him) is believed to be within the jurisdiction and to owe money to the judgment debtor, showing the grounds for such belief, and
  - (d) where the Garnishee is a financial institution having more than one branch, stating at which branch the account is believed to be held.
- (3)
- (i) An application under paragraph (2) shall be referred to a judge who may make an order to show cause why the Garnishee should not pay the sum claimed and specifying a time and place for further consideration of the matter.
  - (ii) An order to show cause shall be in Form 9.
  - (iii) Unless the Court otherwise directs, the order to show cause shall be served on the Garnishee and the judgment debtor not less than 7 days before the day appointed for further consideration of the matter.
  - (iv) An order to show cause shall bind the debt specified in the hands of the Garnishee as from the service of the order on him.
- (4) A garnishee who admits that he owes the judgement debtor the amount specified or any lesser amount may pay that amount into Court.
- (5) On further consideration of the matter
- (a) if the Garnishee does not attend or the Court is otherwise satisfied that he owes the judgement debtor the amount specified, the Court may make an order absolute in Form 10.
  - (b) if the Garnishee disputes that he owes the judgement debtor the amount claimed the Court may determine the matter summarily or order that it be tried and give any necessary directions therefor.
  - (c) if it appears to the Court that some other person claims to be entitled to the debt sought to be attached the Court may order that person to attend and give particulars of his claim, and may determine the matter summarily or order that it be tried and give any necessary directions therefor.
- (6) Any payment made by a garnishee in compliance with an order absolute under this Order shall be a valid discharge of his liability to the judgment debtor to the extent of amount paid, even if the garnishee order or the judgement or order on which it is founded is subsequently set aside or reversed.

#### Rule 10.

(1) Application for the appointment of an receiver to enforce a judgment or order shall be made by summons supported by an affidavit.

- (a) stating the name and last known address of the judgement debtor,
- (b) identifying the judgment or order to be enforced and stating the amount unpaid,
- (c) identifying the property in respect of which the receiver is sought to be appointed, and
- (d) naming the proposed receiver.

(2) Unless the Court otherwise orders, the summons shall be served on the judgment debtor not less than 7 days before the hearing date.

(3) An order for the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.

(4) Within 7 days of the making of an order appointing a receiver a copy of the order shall be served by the party obtaining it on the judgment debtor and on the receiver.

(5) The receiver shall be allowed such remuneration as the Court may determine.

(6) A receiver shall

(a) promptly pay into Court all surplus moneys received by him under the order, and

(b) submit such accounts at such intervals as the Court may direct.

(7) A receiver may at any time request the Court for directions by written request stating the matters upon which directions are required.

#### Rule 11.

(1) The power to make a charging order under section 1 of the (English) Charging Orders Act 1979 shall be exercised in accordance with this rule.

(2) (i) An application for an order under paragraph (1) shall be made *ex parte* supported by an affidavit

(a) stating the name and last known address of the judgment debtor;

(b) identifying the judgment or order to be enforced and stating the amount unpaid;

(c) giving full particulars of the subject matter of the intended charge; and

(d) verifying that the interest to be charged is owned beneficially by the judgment debtor.

(ii) An application may be made for a single charging order in respect of more than one judgment or order against the debtor.

(3) (i) An application under paragraph (2) shall be referred to a judge who may make an order to show cause why the interest of the judgment debtor should not be charged to secure the amount unpaid, and specifying a time and place for further consideration of the matter.

(ii) An order to show cause shall be in Form 11.

(iii) Unless the Court otherwise directs, the order to show cause shall be served on

(a) the judgment debtor,

(b) the subject matter of the charge is land, the Minister of Lands, and

(c) any other person who would be affected by the order,

not less than 7 days before the day appointed for further consideration of the matter.

(4) (i) On further consideration of the matter

- (a) the judgment creditor and the judgment debtor (if he attends) shall be heard;
- (b) the Minister of Lands shall be entitled to be heard;
- (c) with leave of the court, any other person affected by the order may be heard;

and the Court shall then either make the order absolute, with or without modifications, or shall discharge it.

(ii) A charging order absolute shall be in Form 12.

(iii) Any order made shall be served on every person required to be served under paragraph 3 (iii)

(5) On the application by summons of the judgment debtor or any other person interested in the property charged, the Court may at any time discharge or vary the order on such terms as it thinks just.

(6) Application for the enforcement of a charging order shall be made by summons supported by an affidavit, which shall be served on every party required to be served under paragraph 3 (iii).

#### Rule 12

(1) The power of the Supreme Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where the contempt is committed in the face of the Court, the Court may make an immediate order of committal.

(3) Where the contempt consists of disobedience to an order of the Court or breach of an undertaking to the Court,

(i) application for leave to apply for an order of committal shall be made ex parte by summons supported by an affidavit stating

- (a) details of the order or undertaking;
- (b) the name and address of the person sought to be committed;
- (c) the grounds upon which his committal is sought.

(ii) If the Court grants leave to apply a summons shall be issued which the applicant shall serve upon the person sought to be committed, together with a copy of his affidavit under ~~sub~~ paragraph (i), not later than 7 clear days before the hearing date.

(iii) the Court may dispense with service of the summons under ~~sub~~ paragraph (ii) if it thinks it just to do so.

(iv) (a) Unless the Court otherwise orders the hearing of an application for an order of committal shall be in open court;

(b) if the hearing is held in private and an order of committal is made, the Court shall state in open court the name of the person committed, the general nature of the contempt, and the period of committal.

- (v) The court making an order of committal may direct that enforcement of that order be suspended for such period and on such terms as it may specify.
- (vi) Nothing in this rule shall affect the power of the Court or Court of Appeal to make an order of committal of its own motion.

## ORDER 27 : JUDICIAL REVIEW

### Rule 1

This order applies to any action against an inferior court, tribunal or public body (including an individual charged with public duties) in which the relief claimed includes an order of mandamus, prohibition or certiorari, or a declaration or injunction (in this order referred to as "judicial review")

### Rule 2

(1) No application shall be made for judicial review unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending that period.

(3) An application for leave shall be made ex parte by filing

- (a) a summons stating concisely the relief claimed and the grounds therefor;
- (b) a copy of the proposed writ and statement of claim, and
- (c) an affidavit verifying the facts relied on.

(4) The Court may grant the application without a hearing, but shall not refuse it without hearing the applicant.

(5) The Court shall not grant leave unless satisfied that the applicant has a sufficient interest in the matter to which the application relates.

(6) If the Court grants leave,

- (a) it may do so subject to such terms as to costs and to giving security as it thinks fit; and
- (b) it may grant such interim relief as appears necessary and just.

## ORDER 28 : HABEAS CORPUS

### Rule 1.

This order applies to an application for an order for the release of any person from unlawful or unjustifiable restraint or detention (in this order referred to as "a writ of habeas corpus").

### Rule 2.

- (1) (i) Application for a writ of habeas corpus may be made at any time on any day ex parte to a judge supported by an affidavit by the person restrained showing that it is made at his instance and setting out details of the restraint.

(ii) Where the person restrained is unable to make the affidavit required by subparagraph (i) it may be made by some person on his behalf and the affidavit shall state the reason why the person restrained is unable to do so.

(iii) An application for a writ of habeas corpus shall have precedence over all other proceedings before the Court.

#### Rule 3

The judge to whom the application is made may:

- (a) order that a writ of habeas corpus be issued forthwith; or
- (b) direct that notice of motion be served on any necessary party.

#### Rule 4.

Unless otherwise ordered by the Court, a notice of motion together with copies of all affidavits filed shall be served not less than 2 clear days before the hearing date.

#### Rule 5.

Where the Court orders that a writ of habeas corpus be issued it shall give directions as to the time date and place when the writ is returnable.

#### Rule 6.

A writ of habeas corpus shall be in Form 13.

#### Rule 7.

A writ of habeas corpus shall be served personally on every person to whom it is directed:

Provided that if it is not possible to serve such a writ personally, or if it is directed to the Superintendent of Prisons or some other public official, it may be served by leaving it with his servant or agent at the place where the person concerned is restrained or confined.

#### Rule 8.

Any person served with a writ of habeas corpus shall make a return to the writ by endorsing on or annexing to it a statement showing:

- (a) whether the person concerned is restrained or detained under his control; and if so
- (b) the justification therefor.

#### Rule 9.

At the hearing on the return to the writ:

- (a) the return shall be read;
- (b) counsel for the person restrained shall be heard and any affidavits filed on his behalf shall be read;
- (c) counsel for the person exercising such restraint shall be heard and any affidavits filed on his behalf shall be read;
- (d) counsel for the person restrained may reply;

and the Court shall then pronounce whether such restraint or detention is lawful and may make such consequential orders as it thinks fit.



## ORDER 29 : COSTS

### Rule 1.

This Order applies whenever the Court is authorised to determine the amount of costs payable by any person.

### Rule 2.

If the Court makes any order for costs at the conclusion of any trial or hearing in chambers it shall if possible forthwith assess the amount of costs payable under such order.

### Rule 3.

(1) Where the Court is unable to assess costs under rule 2 such costs shall be taxed in accordance with this rule.

(2) The party entitled to costs shall within 28 days after the date of the order for costs lodge with the Court a bill of costs showing brief details of, and the sums claimed in respect of:

- (a) the amount of time spent in preparation of pleadings and general preparation for trial;
- (b) the amount of time spent in court;
- (c) counsel's fees; and
- (d) any other disbursements.

(3) The party lodging the bill of costs shall cause a copy to be served on the paying party.

(4) (i) If the paying party wishes to dispute any sum claimed in the bill of costs, he shall within 14 days after service upon him of the copy bill notify the Court that he wishes to be heard.

(ii) If no notice is given under subparagraph (i) within the time limited the Registrar shall tax the bill of costs, without attendance of the parties and shall notify the parties of the sum allowed.

(iii) If notice is given under subparagraph (i) the Registrar shall fix a time date and place when the bill will be taxed and shall give not less than 14 days notice thereof to the parties.

(iv) On the appointment for taxation the Registrar

- (a) shall take into account any representations made orally or in writing;
- (b) may summon witnesses and examine them on oath; and
- (c) may make such other inquiries he thinks necessary.

(v) The Registrar may adjourn an appointment for taxation from time to time and may reserve his decision.

(5) If any party so requests the bill of costs shall be taxed by a judge, in which case the provisions of the previous paragraph shall apply with any necessary modifications.

(6) (i) A party who is dissatisfied with the decision of the Registrar on taxation may appeal to a judge.

- (ii) An appeal under this paragraph shall be made by lodging concise written grounds of appeal within 14 days after the Registrar's decision.
  - (iii) On the hearing of the appeal the judge may exercise any of the powers set out in paragraphs (4)(iv) and (4)(v)
- (7) (i) A party who is dissatisfied with the decision of a judge on taxation may apply to that judge to review his decision.
- (ii) An application under this paragraph shall be made by lodging concise written objections within 14 days after the judge's decision.
  - (iii) The opposite party may within 14 days after service of objections lodge concise written answers.
  - (iv) On the hearing of the review the judge may receive further evidence and may exercise all the powers available to him on the original taxation.
- (8) Upon completion of taxation, or of any appeal or review, the Court shall issue a certificate of taxation in Form 14.

#### Rule 4.

- (1) (i) This paragraph applies to costs payable by one party to another under an order in civil proceedings.
- (ii) There shall be allowed all such costs, charges and expenses as are reasonably necessary or proper for the attainment of justice or for maintaining or defending the rights of any party.
  - (iii) Unless there are exceptional circumstances there shall not be allowed:
    - (a) any costs in respect of work done prematurely and not subsequently proving of use;
    - (b) any costs incurred or increased as a result of negligence, mistake, or over-caution;
    - (c) any unusual expense.
- (2) (i) This paragraph applies to costs payable by a client to a lawyer.
- (ii) There shall be allowed all such costs, charges and expenses as were incurred with the express or implied approval of the client.
  - (iii) Unless there are exceptional circumstances there shall not be allowed :
    - (a) any costs incurred or increased as a result of negligence, mistake, or overcaution :
    - (b) any unusual expense, unless the lawyer obtained the express approval of his client to such expense before it was incurred.

**ORDER 30 : REPEAL AND TRANSITIONAL**

**Rule 1.**

The Supreme Court Rules and the Supreme Court Taxation of Costs Rules are repealed.

**Rule 2.**

Notwithstanding the repeal of the Supreme Court Rules and the Supreme Court Taxation of Costs Rules, any act which was properly done in accordance with those Rules before they were repealed and which can be validly done under these Rules, is deemed to have been done under those Rules.