Tonga

SUPREME COURT RULES

Chapter 3.16.05

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SUPREME COURT RULES

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SUPREME COURT RULES[1]

Made under section 6 of the Supreme Court Act

Commencement [1st January, 2007]

PRELIMINARY PROVISIONS

ORDER 1 : CITATION

0.1 Rule 1. Title and commencement

These rules may be cited as the Supreme Court Rules and shall come into effect on 1 January 2007.

ORDER 2: APPLICATION OF THESE RULES

0.2 Rule 1. Civil proceedings

Subject to rules 2 and 3 these rules shall apply to all civil proceedings in the Court except in so far as they may be inconsistent with any statutory provisions.

0.2 Rule 2. Divorce Rules

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

0.2 Rule 3. English Rules

Where there is no provision in these rules the rules of procedure under the former Rules of the Supreme Court (RSC) in England (the "White Book") shall continue to

apply notwithstanding the substantial and ongoing replacement of those rules by the Civil Procedure Rules 1998 (CPR).

0.2 Rule 4. Where there is no appropriate provision

If it appears in any given situation that no appropriate provision exists either in these rules or the English Rules referred to in rule 3, then the procedure to be followed shall be that prescribed by the Judge and in exercising any powers under this rule the Judge may be guided by any provision in the English Civil Procedure Rules 1998 (CPR).

0.2 Rule 5. Construction

In the event of any difference in meaning between the English text and the Tongan text of these rules, the meaning of the English text shall prevail.

0.2 Rule 6. Delegation

The Lord Chief Justice may from time to time delegate to the Registrar such functions and duties under these rules as the Lord Chief Justice deems appropriate.

ORDER 3: INTERPRETATION

0.3 Rule 1. Interpretation Act

The Interpretation Act shall apply to these Rules.

0.3 Rule 2. Meanings

"**action**" means any civil proceeding commenced by writ;

"**application**" means an application under Order 13 to the Court for a Court order whether in the course of an existing proceeding or as an originating application;

"**application notice**" means a document in Form 6 by which an applicant applies under Order 13 rule 1 to seek a Court order;

"**directions hearing**" means a hearing convened by the Court pursuant to Order 19;

"**directions notice**" means a notice as prescribed in Form 4;

"**document**" includes a pleading and includes any document filed in connection with an application;

"**file**" means to file in the appropriate office of the Court;

"**incapacitated person**" means a person suffering from a mental disorder or mental illness under the Mental Health Act to such an extent as to be incapable of managing his or her property and affairs;

"**Judge**" means the Lord Chief Justice or any other Judge of the Supreme Court;

"**lawyer**" means a law practitioner enrolled and holding a valid practising certificate under the Law Practitioners Act;

"**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 proceeding referred to and includes a plaintiff, defendant, and third or subsequent party;

"**person**" includes any individual, a body of persons capable of suing and being sued, and a body corporate;

"**pleading**" includes a statement of claim, a statement of defence, a reply and a counterclaim;

"**proceeding(s)**" includes any action, application or other legal matter involving the exercise of the civil jurisdiction of the Court;

"**Registrar**" means the Chief Registrar or Registrar of the Supreme Court and includes any grade of Registrar;

"**service officer**" means a police Court officer, a bailiff, or an officer of the Court authorised to effect service of documents;

"**writ**", unless the context otherwise requires, means a writ of summons.

ORDER 4: NON-COMPLIANCE WITH RULES

0.4 Rule 1. Treated as an irregularity

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

(a) that failure shall be treated as an irregularity and shall not nullify the proceedings or any judgment or order made therein;

(b) 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.

0.4 Rule 2. Setting aside irregularity

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.

0.4 Rule 3. Grounds to be stated

An application notice under rule 2 shall state the order sought and the concise grounds therefore.

ORDER 5 : TIME

0.5 Rule 1. Time may be extended or abridged

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.

0.5 Rule 2. Non-contentious requests

If an extension or abridgement of time is likely to be non-contentious then the Court may act on a memorandum from counsel or a request in writing made through the Registrar but in all other cases a request under this Order must be made by application notice.

0.5 Rule 3. Time may be varied by consent

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 or abridged by consent given in writing without an order of the Court.

0.5 Rule 4. Time expiring when Court closed

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.

COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 6: COMMENCEMENT OF ACTION

0.6 Rule 1. Action commenced by filing writ and statement of claim

(1) An action shall be commenced by the filing of a writ of summons in Form 1 with a statement of claim attached in Form 2.

(2) As many copies of the writ and statement of claim are to be filed as there are parties to be served.

0.6 Rule 2. Whether jury required

A writ shall state whether or not the plaintiff requires the action to be tried by a jury.

0.6 Rule 3. Address for service

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

(2) Where the plaintiff sues in person, the statement of claim shall be endorsed with that person's name and an address for service within the Kingdom.

(3) The address for service is to include any telephone and facsimile numbers along with any e-mail address.

0.6 Rule 4. Service within 12 months

(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 such order must be served along with the writ.

ORDER 7: DISPUTE AS TO JURISDICTION

0.7 Rule 1. Step taken means submission to jurisdiction

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.

0.7 Rule 2. Challenge to jurisdiction

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;

(b) an order declaring that the writ has not been duly served;

(c) the discharge of any order extending the validity of the writ 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 property seized or threatened with seizure in the action;

(f) a declaration that the Court has no jurisdiction 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.

0.7 Rule 3. Grounds for relief to be stated

An application notice under rule 2 shall state the relief sought and the concise grounds therefore, supported by an affidavit setting out the facts on which the application is based.

0.7 Rule 4. Service of application

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

0.7 Rule 5. Hearing of application

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.

0.7 Rule 6. Application not a step in the action

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.

0.7 Rule 7. Time for service of defence

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

0.8 Rule 1. Headings

(1) All documents presented for filing in a proceeding shall bear the case number, the proper heading of the proceeding and a description of the document.

(2) The heading of every statement of claim and of every counterclaim shall, where the relief claimed relates to a statute or an estate, show the short title of the Act or the name of the estate.

0.8 Rule 2. Statement of claim

Every statement of claim shall be in Form 2 and shall state —

(a) the full name and the place of residence and occupation of every plaintiff and defendant, so far as they are known to the party presenting the document for filing;

(b) the material facts upon which the plaintiff relies giving such particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances as may suffice to inform the Court and the party or parties against whom relief is sought of the plaintiff's cause of action;

(c) the relief or remedy sought and shall state specifically any claim for interest;

(d) an address for service in terms of Order 6 rule 3.

0.8 Rule 3. Statement of defence

(1) A defendant who wishes to defend a claim shall, within 28 days of service of the writ, 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 23) the amount alleged to have been tendered.

0.8 Rule 4. Counterclaim

(1) A defendant in any action who claims to be entitled to any relief against a plaintiff in the action (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter by adding counterclaim to the statement of defence.

(2) A plaintiff who wishes to defend a counterclaim shall, within 28 days after service of the counterclaim, 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 judgment 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 judgment for the balance.

0.8 Rule 5. Notice to other defendant

(1) Where in any action a defendant —

(a) claims against another defendant who is already a party to the action any contribution or indemnity or any relief or remedy relating to or connected to the original subject matter of the action; or

(b) requires that any question or issue relating to the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also between either or both of them and another defendant,

then the defendant may, without leave, issue and serve on that other defendant a notice in Form 3.

(2) The notice to the other defendant shall contain a statement of the nature and grounds of the claim or, as the case may be, of the question or issue required to be determined.

0.8 Rule 6. Further particulars

(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 order that such particulars be given.

(2) Where particulars are given, whether pursuant to a request or order of the Court, they shall be filed and served as a formal document and not in the form of a letter.

(3) The request or order shall be incorporated with the particulars, with each item of the particulars following immediately after the corresponding item of request or order.

(4) 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.

0.8 Rule 7. Amendments

(1) A party may, without leave of the Court, amend any pleading once only at any time before the pleadings are deemed to be closed.

(2) A party may not without leave of the Court amend any pleadings after pleadings are deemed to be closed.

(3) An application for leave to amend a pleading shall be made by application notice which shall have attached a copy of the proposed amendment.

(4) Upon any amendment or application to amend, the original format shall be retained and the amendment shall be in red or underlined in red. If the amendment is a deletion, the passage to be deleted shall be marked through with a single red line. If a passage is to be substituted or added, it shall be inserted at the appropriate place in red or underlined in red.

(5) Where it is necessary, as the result of an amendment, to amend the statement of defence or reply, the pleading shall be amended as described in paragraph (4).

(6) In any case where further amendment is necessary, such further amendments shall be in green, then blue, then yellow.

(7) 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.

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

0.8 Rule 8. Striking out pleading

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

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it is unclear, or may otherwise prejudice or delay the fair trial of the action; or

(d) 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)(a).

(3) Subject to paragraph (4), the Court may, of its own motion, strike out an action —

(a) if the writ has become invalid under Order 6 rule 4(1);

(b) the case has not been set down for trial within 2 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 2 years from the date when it was so adjourned.

(4) 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.

0.8 Rule 9. When pleadings deemed closed

The pleadings in an action are deemed to be closed —

(a) after 14 days from service of a reply and/or a defence to counter-claim, or

(b) 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

0.9 Rule 1. Misjoinder and non-joinder

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

0.9 Rule 2. Dismissing and adding parties

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 —

(a) order any person who is not a proper or necessary party to be dismissed from the action;

(b) order any person to be added as a party if that person ought to have been joined as a party or if the person's presence is necessary or convenient to ensure that all related matters are finally determined.

0.9 Rule 3. Application to add or dismiss

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

0.9 Rule 4. Consent needed to add plaintiff

No person shall be added as a plaintiff without that person's consent.

0.9 Rule 5. Effect of limitation period

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

0.9 Rule 6. Action against estate

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

(3) Where paragraphs (1) or (2) 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.

(4) An application under paragraph (3) shall be made by application notice supported by an affidavit both of which shall be served on the person proposed to be appointed.

0.9 Rule 7. Minors and incapacitated persons

(1) An incapacitated person or a minor may commence and prosecute proceedings by a next friend and may defend proceedings by a guardian ad item.

(2) No step shall be taken in any proceedings by an incapacitated person or a minor until the next friend or *guardian ad litem* (as the case may be) has filed with the Court a written consent to act by the proposed next friend or *guardian ad litem* together with a certificate by a lawyer representing the incapacitated person or minor certifying that —

(a) the person to whom the certificate relates is an incapacitated person or minor (as the case may be), and 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 incapacitated person or minor, and is a proper person to be next friend or *guardian ad litem*.

(3) Where a pleading has been served on a party who appears to be an incapacitated person or a minor, the party at whose instance the document was served shall, before taking any further step in the proceedings, make

application to the Court by application notice for directions as to whether a guardian and item should be appointed to act for that person.

(4) If on the hearing of an application under paragraph (3), the Court considers it necessary to protect the interests of the person served, it shall order some proper person to be appointed *guardian ad litem*.

0.9 Rule 8. Limitation of parties and representation

In all proceedings the number of persons named or joined as parties shall be limited as far as is practicable to those whose presence before the Court is necessary for a due and just determination of the issue or issues arising out of the proceeding or whom it is thought to bind by any judgment given therein.

ORDER 10: THIRD PARTY PROCEEDINGS

0.10 Rule 1. Leave required to serve third party notice

Where a defendant who has filed a defence —

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

(b) claims against such person relief which is substantially the same as that claimed by the plaintiff; or

(c) requires that any issue arising in the action be determined also as it affects such person,

that defendant may apply for leave to issue a third party notice.

0.10 Rule 2. Application for third party notice

Application for leave to issue a third party notice shall be made by application notice supported by an affidavit —

(a) identifying the person against whom such proceedings are to be taken;

(b) stating the grounds of the application, and

(c) exhibiting a copy of the proposed third party notice.

0.10 Rule 3. Effect of third party notice

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.

0.10 Rule 4. Fourth or subsequent party notice

Where a third or subsequent party who has filed a defence makes any such claim as is described in rule 1 that person 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 the person issuing the notice were a defendant.

ORDER 11 : SERVICE OF DOCUMENTS

0.11 Rule 1. Requirements for documents

(1) Every document filed in Court shall —

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

(b) unless filed in connection with an *ex parte* application, shall be served on every other party as provided for in these rules.

(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.

0.11 Rule 2. Directions notice

(1) Any court document to be served on a recipient in person shall have attached, stapled to the front of the document so it can be clearly seen, a directions notice in Form 4 of the Schedule printed in both the Tongan and English languages.

(2) The directions notice shall be printed in upper case with a font size of not less than 12 points.

0.11 Rule 3. Responsibility for service

(1) Subject to rule 6, 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 that party's documents shall be effected by that lawyer or the lawyer's agent.

(3) Where a party acts in person service of that party's 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 the lawyer represents any party, service of any document on that party shall be effected by delivering a sealed copy thereof to his or her lawyer.

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

0.11 Rule 4. Certificate of service

(1) A person serving any document shall, within 14 days of service, complete and file a certificate of service in Form 5 setting out details of the time, date, place and mode of service and the server's means of knowledge of the identity of the person served.

(2) The server's name and address shall be printed clearly or typed in the space provided for on the certificate of service.

(3) The certificate of service shall make express reference to any directions notice required to be served under rule 2.

0.11 Rule 5. Service by the Court

(1) Service by the Court on a lawyer representing a party shall be effected by the Court clerk placing the document in the lawyer's correspondence rack at the Court office and endorsing on the file cover the notation:

"Placed in correspondence rack number ……at ……. AM/PM on (insert date)"

(2) The Court clerk shall initial the notation and thereafter such endorsement shall be evidence of due service.

0.11 Rule 6. Substituted service

(1) If it appears to the Court that it is impracticable to serve any document in accordance with rule 3, it may grant leave to substitute some other form of service which appears likely to bring that document to the notice of the person to be served.

(2) If it appears to the Court that it is impracticable to serve any party in accordance with rule 3, or it is otherwise necessary or expedient to dispense with service of any document on that party, the Court 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.

(4) Application for an order for substituted service on a person domiciled outside the jurisdiction may be made only after leave has been granted under Order 12, rule 1 allowing for service on the person out of the jurisdiction.

(5) An application for leave to serve outside the jurisdiction and for an order for substituted service may be incorporated in the same application notice.

ORDER 12 : SERVICE OUT OF THE JURISDICTION

0.12 Rule 1. When permitted

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

(a) the person to be served is domiciled within that other jurisdiction;

(b) an injunction is sought ordering the defendant to do or not to do any act within the jurisdiction;

(c) the claim is brought against a person within the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

(d) the claim is brought in contract and —

(i) the contract was made within the jurisdiction;

(ii) 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;

(iii) the contract is governed by Tongan law, whether expressly or by implication;

(iv) the contract gives jurisdiction to the Court, or

(v) wherever the contract was made, the claim is brought in respect of a breach of contract committed within the jurisdiction;

(e) the claim is brought in tort and the tortious act was committed, or the damage was sustained, within the jurisdiction;

(f) 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;

(g) the claim relates to the administration of the estate of any person who died domiciled within the jurisdiction,

(h) the claim is brought to enforce any judgment.

0.12 Rule 2. Application for leave

Application for leave under rule 1 shall be made ex parte by application notice with an affidavit stating —

(a) the grounds on which the application is made;

(b) that in the deponent's belief the applicant has a good cause of action, and

(c) the address at which it is desired to effect service on the defendant.

0.12 Rule 3. Where leave given

Where leave is given under rule 1 —

(a) the Court shall fix the time allowed for the defendant to file a defence, and

(b) a copy of the order granting leave shall be served with the writ.

0.12 Rule 4. When service deemed effective

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

(a) personally;

(b) in compliance with an order for substituted service, or

(c) in accordance with the law of the country in which service is affected.

ORDER 13 : APPLICATIONS FOR COURT ORDERS

0.13 Rule 1. Form of application

(1) Subject to paragraph (2), an application shall be made to the Court by filing an application notice in Form 6.

(2) An application may be made to the Court informally without filing an application notice —

(a) if there is exceptional urgency;

(b) where a Court order, rule or practice direction permits, or

(c) with the permission of the Court.

(3) Unless provided otherwise in these rules, the parties to an application may be described in the application notice as applicant(s) and respondent(s) notwithstanding their description in the substantive proceedings.

(4) The parties to an application relating to the enforcement of a judgment or order may, where appropriate, be described as judgment creditor(s) and judgment debtor(s).

0.13 Rule 2. Contents of application notice

(1) An application notice shall —

(a) describe the order the applicant is seeking;

(b) state briefly, but adequately, the grounds for seeking the order;

(c) identify any statutory provision, rule or principle of law relied upon;

(d) where the applicant is not already a party to proceedings, include an address for service;

(e) either request a hearing or request that the application be dealt with without a hearing, and

(f) comply with any other requirements of these rules.

(2) An application notice shall be accompanied by an affidavit(s) sworn and filed in support. The application notice may refer to grounds appearing from a supporting affidavit.

(3) Where an application is made against one party only and there are other parties to the proceedings, only the party against whom the order is sought should be named as respondent in the application notice but a copy of the application should be served by the applicant on the other parties for information purposes.

(4) An application notice shall have attached a draft of the order sought.

0.13 Rule 3. Applications to be referred to a Judge

(1) Every application notice filed in Court shall be referred to a Judge who shall determine how the application shall be dealt with.

(2) The Court may deal with an application without a hearing in the circumstances provided for by rule 4.

(3) In all other cases the Court shall hear the application.

(4) The Court may require an *ex parte* application to be heard.

0.13 Rule 4. Applications which may be dealt with without a hearing

(1) The Court may deal with an application without a hearing if —

(a) the parties agree as to the terms of the order sought;

(b) the application only affects the party applying, or is in respect of a matter of routine;

(c) the parties agree that the Court should dispose of the application without a hearing;

(d) any enactment, rule or practice direction permits, or

(e) the Court considers it appropriate in the interests of justice to dispense with a hearing.

(2) Unless the Court otherwise directs, an application under this rule shall be treated as an *ex parte* application and it shall not be necessary to serve the application notice on the respondent.

0.13 Rule 5. Service of applications requiring a hearing

(1) If the application requires a hearing and it relates to an existing proceeding then, as soon as practicable after the filing of the application or, in the case of an *ex parte* application, after the issuance of a Court order directing the application to be heard, the applicant shall serve a copy of the application notice and supporting documentation (including the Court order if applicable) on each respondent.

(2) After the filing by the applicant of the certificate(s) of service, the Court shall convene a directions hearing to determine the future conduct of the application.

(3) If the application to be heard does not relate to an existing proceeding then, upon the filing of the application notice, the Court shall issue an order giving directions regarding service and/or the future conduct the proceeding or convening a directions hearing.

(4) Upon the issuance by the Court of an order under paragraph (3) the applicant shall effect service in accordance with the directions contained in that order.

0.13 Rule 6. Court's powers

(1) Where a directions hearing is convened under rule 5 and the applicant or any respondent fails to attend, the Court may proceed in that party's absence or the Court may, on oral application or its own motion, adjourn the hearing.

(2) Upon consideration of an application, the Court may make any other order to which the applicant may be entitled notwithstanding that such order has not been specifically applied for. Such order may be made in addition to or in lieu of the order sought by the applicant.

(3) The Court may in any order made under this rule give such directions as it thinks just in relation to the application or future conduct of the proceedings.

0.13 Rule 7. Setting aside Court order

(1) A person who was not served with a copy of an application notice before an order was made under this Order, but claims to have been adversely affected thereby, may apply to have the order set aside or varied.

(2) An application under this rule must be made by application notice within seven days after the date on which the order came to the applicant's attention.

(3) The Court may set aside or vary any order on such terms as it thinks just.

0.13 Rule 8. Costs on applications

(1) In making any order in respect of an application, the Court may make such order as to costs as it thinks just.

(2) If an order makes no mention as to costs then costs in respect of the application will be deemed to be costs in the cause.

ORDER 14 : JUDGMENT IN DEFAULT OF DEFENCE

0.14 Rule 1. Application may be made ex parte

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

(a) by Order 8, rule 3;

(b) by any order made under Order 5, rule 1; or

(c) by an agreement made under Order 5, rule 3,

the plaintiff may, by *ex parte* application, enter final judgment against that defendant.

0.14 Rule 2. Supporting documentation

(1) An application under rule 1 shall be made by application notice supported by an affidavit deposing to —

(a) the date and, where relevant, the circumstances of service of the writ on each defendant against whom judgment is sought;

(b) the fact that no defence has been filed;

(c) any sum paid towards the debt claimed since the writ was filed;

(d) the sum claimed in any case of liquidated damages;

(e) the order sought in any case of unliquidated damages.

(2) The application notice is to be supported by a draft judgment in default in Form 7, modified as necessary.

(3) The application should not include any claim for costs but the supporting bill of costs should be lodged with the Court and served on the party in default in accordance with Order 46, rule 4.

0.14 Rule 3. Entry of judgment

(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 judgment 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 —

(a) for delivery of the goods to the plaintiff, and costs, or

(b) for the value of the goods to be assessed, and costs.

0.14 Rule 4. Setting aside judgment

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

(a) there was good reason for the failure to file a defence in time;

(b) there is an arguable defence; and

(c) the plaintiff will not suffer irreparable injury if the judgment is set aside.

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

0.14 Rule 5. Other defendants

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

ORDER 15 : SUMMARY JUDGMENT

0.15 Rule 1. When summary judgment available

This order applies to all actions except those —

(a) under the Companies Act;

(b) in admiralty,

(c) for judicial review.

0.15 Rule 2. Grounds for application

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 —

(a) the defendant has no defence to the claim, or any part of such claim, or

(b) the defendant has no defence to the claim or any part of such claim save as to the amount of damages.

0.15 Rule 3. Supporting affidavit

(1) An application notice under rule 2 shall be supported by an affidavit —

(a) verifying the facts on which the claim, or the part thereof to which the application relates, is based, and

(b) stating that in the deponent's belief —

(i) there is no defence to the claim, or that part of the claim as the case may be, or

(ii) 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.

(2) An affidavit under paragraph (1) may, unless otherwise ordered by the Court, contain statements of information or belief provided that the sources and grounds thereof are stated.

0.15 Rule 4. Application to be on notice

The application notice 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 the hearing of the application.

0.15 Rule 5. Opposition to application

(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.

0.15 Rule 6. Court's powers

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.

0.15 Rule 7. Counterclaim

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

0.15 Rule 8. Court to give directions

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 16: WITHDRAWAL AND DISCONTINUANCE

0.16 Rule 1. Leave required

(1) A party may not discontinue or withdraw any part of a proceeding against any other party without leave of the Court.

(2) An application for leave under this rule shall be made by application notice and the Court may grant leave on such terms as to costs or otherwise as it thinks just.

0.16 Rule 2. Defence may be withdrawn without leave

(1) A defendant to an action may at any time, without leave of the Court, withdraw a 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 of the plaintiff, give such judgment and make such order for costs as may be appropriate.

ORDER 17: SECURITY FOR COSTS

0.17 Rule 1. When order can be made

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

(a) the plaintiff is ordinarily resident out of the jurisdiction;

(b) the plaintiff may be unable to pay the costs of the defendant if ordered to do so; or

(c) the plaintiff has not disclosed his true address to the Court,

the Court may, if after having regard to all the circumstances of the case it thinks just to do so, order that all the action be stayed until the plaintiff gives security for the defendant's costs of the proceeding in such sum and in such manner as the Court may determine.

0.17 Rule 2. Order may be varied or revoked

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

ORDER 18 : DISCOVERY AND INSPECTION OF DOCUMENTS

0.18 Rule 1. Request for documents

(1) Every party to an action may, after the close of pleadings, make a request in writing to any one or more opposite parties to supply a list of the documents which are or have been in that other party's possession, custody or power relating to any issue between those parties.

(2) The party served with such a request shall, within 21 days of service, file and serve a complete list of such documentation.

0.18 Rule 2. List of documents

(1) A list of documents shall be in Form 8, 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.

0.18 Rule 3. Affidavit verifying documents

(1) Any party who has made a request under rule 1 may, at any time before the pre-trial conference in the proceeding, give notice to the party required to make such discovery requiring that party to make an affidavit verifying that party's 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 that party's list of documents and serve a copy on the party requiring such affidavit.

(3) An affidavit verifying a list of documents shall be in Form 9.

0.18 Rule 4. Order for discovery

(1) On the application of any party required by rule 1 to make discovery, or of its own motion, the Court may —

(a) order that the parties or any of them shall make discovery of documents;

(b) order that the parties or any of them shall make discovery of only such documents as may be specified in the order, or

(c) if satisfied that discovery is not necessary, either for disposing fairly of the action or for saving costs, dispense with discovery by any party.

(2) Discovery shall be made under this rule by filing and serving within the time period stipulated in the Court order a list of documents verified by affidavit as provided for in Forms 8 and 9.

(3) In the event of a party having to make application for an order for discovery under this rule because of the other party's failure to adequately comply with the provisions of rules 1 or 3, the Court may order the defaulting party to pay the costs of the application for discovery, in any event, in a fixed amount or on such other basis as the Court deems appropriate.

0.18 Rule 5. Inspection

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 privilege is claimed) and to take copies thereof.

0.18 Rule 6. Non-compliance

Notwithstanding the provisions of rule 4(3) if any party fails to comply with the requirements of this Order the Court may order the defaulting party to so comply 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.

0.18 Rule 7. Production of documents

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

0.18 Rule 8. Non-party discovery

(1) The Court may in any case it deems appropriate and on such terms as it deems just make an order requiring a person who is not a party to the proceeding to make discovery of any relevant document(s),

(2) Application for an order under this rule shall be made by application notice supported by an affidavit describing the nature and relevance of the document(s) and the basis for the deponent's belief that the document(s) is in the custody or power of the person against whom the order is sought.

(3) Any order made under this rule shall make provision for the person against whom the order is sought to be reimbursed by the applicant for all costs and disbursements incurred in complying with the order.

ORDER 19: DIRECTIONS HEARINGS

0.19 Rule 1. To be convened upon filing of defence

(1) When a defence is filed the Court shall require all parties to the action to attend before a Judge in Chambers for directions to be given for the future conduct of the action.

(2) A directions hearing may be convened by order or by a notice of directions hearing in Form 10.

0.19 Rule 2. Further directions hearings

(1) A directions hearing under this order may be convened at any other time the Court deems appropriate.

(2) An overseas lawyer acting for a party shall attend a directions hearing in person or arrange for a local lawyer to attend as agent.

(3) Any party who wishes to make an application for any order which may be made under these rules shall, so far as reasonably practicable, have the application dealt with at a directions hearing.

(4) A party making an application under paragraph (3) shall do so by filing an application notice and the Court shall thereupon convene a directions hearing.

0.19 Rule 3. Attendance at directions hearing

If a lawyer, receiving notice, fails to attend a directions hearing at the appointed time then the Court may make orders, including any order as to costs, *in absentia*.

0.19 Rule 4. Procedure at directions hearing

At a directions hearing —

(a) every party shall give to the Court all such information, and produce all such documents, as the Court may reasonably require;

(b) unless the Court for good reason otherwise orders, all information and documents given or produced shall be disclosed to all other parties present;

(c) the Court may make any orders it thinks necessary for the just, economical and efficient disposal of the application or action.

0.19 Rule 5. Hearing not to be adjourned sine die

A directions hearing may be adjourned from time to time but shall not be adjourned *sine die*.

ORDER 20: INTERROGATORIES

0.20 Rule 1. Leave required to issue interrogatories

(1) The Court may on the application of any party make an order —

(a) granting 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

(b) 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 application notice.

0.20 Rule 2. Objection to answering interrogatories

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

0.20 Rule 3. Restriction on interrogatories

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.

0.20 Rule 4. When interrogatories not permitted

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.

0.20 Rule 5. Inadequate answers

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

0.20 Rule 6. Non-compliance with order for interrogatories

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

(a) order that person to be committed for contempt of Court, or

(b) order that the claim be dismissed or, as the case may be, the defence be struck out and that judgment be entered accordingly.

0.20 Rule 7. Order may be varied or revoked

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

0.21 Rule 1. Admitting truth of pleading

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

0.21 Rule 2. Notice to admit

(1) Any party may, not less than 1 month before trial, serve on any other party notice requiring that party 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, the cost of proving those facts shall be borne by the party unless the Court otherwise orders.

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

0.21 Rule 3. Admission as to documents

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

(2) A party on whom such notice is served may within 14 days after service notify the party by whom it was given in writing that the authenticity of any document specified in it is not admitted.

(3) A party who does not give notice under paragraph (2) shall be deemed to admit the authenticity of any document specified in the notice unless the Court otherwise orders.

(4) If a party gives notice under paragraph (2) the costs of proving any document not admitted shall be borne by the party giving notice unless the Court otherwise orders.

ORDER 22 : INJUNCTIONS

0.22 Rule 1. Form of application

(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 application notice supported by an affidavit stating the relevant facts.

(3) Except in cases of urgency or where the application relates to a Mareva injunction, a copy of the application and supporting affidavit shall be served on the other party not less than 5 days before the hearing.

(4) In cases of urgency or where the application relates to a Mareva injunction, 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) The undertaking in damages required of an applicant under paragraph (4) shall be given by the applicant in writing and shall be filed at the same time as the application for the injunction.

Such an undertaking may be a separate document or it may be incorporated into the affidavit of the applicant (if one is sworn by the applicant, and if that is appropriate in the particular circumstances).

(6) Subject to paragraph (7), an application for an injunction shall not be made before the issue of a writ.

(7) 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.

(8) The undertaking to issue a writ within a specified time may be given in writing, in advance, by the applicant's lawyer by placing such an undertaking at the foot of the application for injunction and signing it.

0.22 Rule 2. Ancillary orders

(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) The Court, upon being satisfied as to the existence within the jurisdiction of property as described in paragraph (1) may issue a disclosure order to the injunction requiring a party to disclose to the applicant the precise form and whereabouts of such property.

(3) 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.

(4) 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.

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

0.22 Rule 3. Further directions

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 : PAYMENT INTO COURT

0.23 Rule 1. Time for making payment

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.

0.23 Rule 2. Payment may be increased

A payment into Court may be increased at any time.

0.23 Rule 3. Notice of payment

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 11, stating —

(a) whether the sum is paid in respect of —

(i) the whole claim, or

(ii) one or more separate causes of action and, if so, specifying the sum paid in respect of each such cause of action, and

(b) 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 (a).

0.23 Rule 4. Payment cannot be withdrawn without leave

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

0.23 Rule 5. Acceptance of payment

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 —

(a) accept the money paid into Court in satisfaction of the whole claim, or

(b) where the money was paid in respect of only some of the causes of action in respect of which the plaintiff 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 12.

0.23 Rule 6. Consequences of acceptance

On the plaintiff accepting any money paid into Court —

(a) 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

(b) 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.

0.23 Rule 7. Plaintiff's entitlement upon acceptance

A plaintiff who has accepted any sum paid into Court in accordance with rule 5 shall be entitled —

(a) to have such sum paid out forthwith in satisfaction of the relevant cause or causes of action, and

(b) to recover costs of the action up to the date of acceptance against the party who made the payment into Court.

0.23 Rule 8. Consequences of non-acceptance

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 thinks just.

0.23 Rule 9. Trial Judge not to be informed of payment

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.

0.23 Rule 10. Counterclaim

A plaintiff against whom a counterclaim is made and any other defendant who is the subject of a notice to other defendant may pay money into Court in accordance with rule 1 and this order shall apply with any necessary modifications.

0.23 Rule 11. Registrar to invest payment

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

ORDER 24: OFFER "WITHOUT PREJUDICE SAVE AS TO COSTS"

0.24 Rule 1. Form of offer

A party to a proceeding may at any time make to any other party to the proceeding a written offer that —

(a) is expressed to be without prejudice save as to costs, and

(b) relates to any issue in that proceeding.

0.24 Rule 2. Offer not to be communicated to Court

The fact that such an offer has been made must not be communicated to the Court until the question of costs falls to be decided.

0.24 Rule 3. Court to determine relevance of offer in relation to costs

The effect (if any) that the making of such an offer has on the question of costs is at the discretion of the Court.

HEARINGS AND TRIALS

ORDER 25 : TRIAL

0.25 Rule 1. Venue

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

0.25 Rule 2. Pre-trial conference

(1) The Court shall upon the informal request in writing of the plaintiff made to the Registrar at an appropriate stage during the proceeding, or of its own

motion, convene a pre-trial conference and give such directions as it considers appropriate for the conduct of the trial.

(2) A pre-trial conference shall take the form of a directions hearing and shall be convened by order or notice of direction.

(3) In the event of undue delay on the plaintiff's part in requesting a pre-trial conference under paragraph (1), another party to the proceeding may invite the Court to convene such a conference and the Court may act if it considers that the invitation is appropriately made.

0.25 Rule 3. Form of trial

(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 so requests.

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

0.25 Rule 4. Separate trials

(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.

0.25 Rule 5. Failure to appear at trial

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

(2) 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.

(3) 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.

(4) Application under paragraph (3) shall be made by application notice supported by affidavit and filed not later than 14 days after the trial.

0.25 Rule 6. Adjournment

The Court may adjourn a trial to such time and place, and upon such terms, as it thinks fit.

0.25 Rule 7. Procedure at trial

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

(2) If the Judge gives no directions under paragraph (1) —

(a) the plaintiff shall begin and may make an opening speech;

(b) if the defendant does not adduce evidence then after all the evidence has been given for the plaintiff, the defendant shall state the case for the defendant and the plaintiff may make a speech in reply;

(c) if the defendant proposes to produce evidence after the evidence on behalf of the plaintiff has been given, then the defendant may make an opening speech and, at the close of the evidence, a closing speech,

(d) after the defendant's closing speech, the plaintiff may make a speech in reply.

(3) 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.

0.25 Rule 8. Scene inspection

The Judge and any jury may inspect any place or thing with respect to which any question arises at the trial.

0.25 Rule 9. Exhibits

(1) The Clerk of the Court shall take charge of every exhibit, number each exhibit consecutively and prepare and keep a list of those exhibits.

(2) 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.

0.25 Rule 10. Recordings

(1) The Clerk of the Court shall take charge of every audiotape recording of the evidence given in a trial.

(2) 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.

0.25 Rule 11. Application of rules to hearings other than trials

Subject to these rules and to any directions issued by the Court, the provisions of Orders 25, 26, and 27 shall apply, with any necessary modification, to any other hearing in a proceeding apart from trials.

ORDER 26 : ORAL AND EXPERT EVIDENCE

0.26 Rule 1. Facts to be proved by oral evidence

Subject to the provisions of Order 27 and to any statute relating to evidence, any fact required to be proved at a trial shall be proved by oral evidence.

0.26 Rule 2. Expert evidence

(1) Expert evidence may be adduced without leave.

(2) Unless otherwise ordered by the Court —

(a) 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 the expert's report on every opposite party; and

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

ORDER 27 : AFFIDAVIT EVIDENCE

0.27 Rule 1. When affidavit evidence permitted

(1) Subject to the provisions of this rule, the Court may permit the evidence of any witness in a proceeding 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 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 of whether or not consent is given to the affidavit being used in evidence and failure to do so shall be deemed to be 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.

0.27 Rule 2. Requirements for an affidavit

(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 the deponent 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.

0.27 Rule 3. Authority to take affidavits

(1) 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.

(2) Where an affidavit is sworn in a foreign country, judicial notice may be taken of the seal or signature of any Notary Public or other person before whom the affidavit is sworn if in the jurat or body of the affidavit it is stated that such person is lawfully authorised to administer oaths in that country.

0.27 Rule 4. Certificate as to understanding

Where it appears to the person taking an affidavit that the deponent is illiterate or blind, the person before whom the affidavit is sworn shall certify in the jurat that —

(a) the affidavit was read over to the deponent;

(b) the deponent appeared to fully understand it, and

(c) the deponent's signature or mark was made in the presence of the person certifying.

0.27 Rule 5. Exhibits

Any document to be used in conjunction with an affidavit shall be —

(a) identified in the affidavit by an exhibit letter or number;

(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.

0.27 Rule 6. Contents of affidavit

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

(2) An affidavit filed in support of an application notice may contain statements of information or belief provided that the source and grounds thereof are stated.

0.27 Rule 7. Cross-examination of deponent

(1) Any party desiring to cross-examine a deponent who has sworn an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's lawyer) requiring the production of the deponent for cross-examination before the Court at the hearing or trial.

(2) The notice shall be served, and copies thereof filed in the Court and delivered to all other parties who have taken any step in the proceeding, not less than three clear days before the day fixed for the hearing or trial.

(3) Unless the deponent is produced accordingly, the affidavit shall not be used as evidence except by the special leave of the Court.

(4) The party to whom the notice is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as the deponent might be compelled to attend as a witness to be examined.

0.27 Rule 8. Translations

If the affidavit is in any language other than English, there shall be annexed thereto at the time of filing an English translation verified by the affidavit of an interpreter.

ENFORCEMENT ACTION

ORDER 28: GENERAL PROVISIONS RELATING TO JUDGMENTS AND ORDERS

0.28 Rule 1. Judgments to be signed and sealed

Every judgment or order made by the Court shall be drawn up by the Court, signed by or on behalf of the Judge who made the order and sealed with the Court seal.

0.28 Rule 2. Name of Judge to be shown

Every judgment or order shall bear the name of the Judge who made it.

0.28 Rule 3. Date judgment takes effect

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

0.28 Rule 4. Service of judgments and orders

(1) A copy of every judgment or order shall be served by the party who obtained it in accordance with any directions issued by the Court.

(2) Every judgment and enforcement order to be served on a recipient in person shall have attached a directions notice as provided for in Order 11 rule 2.

0.28 Rule 5. Clerical mistakes may be corrected

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 without an appeal.

ORDER 29 : GENERAL PROVISIONS RELATING TO ENFORCEMENT PROCEEDINGS

0.29 Rule 1. When leave is required to issue enforcement proceedings

(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 the deceased's assets in the hands of the 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* by application notice supported by an affidavit setting out all relevant facts.

(3) Where the Court grants leave under this rule such leave shall lapse if proceedings are not taken within 12 months from its grant.

0.29 Rule 2. Term of writ of enforcement

(1) Upon execution, a writ of enforcement shall be deemed to have expired and any subsequent seizure shall require application to be made for the issuance of a fresh writ.

(2) A writ of enforcement is valid for 12 months from the date of its issue.

(3) The Court may for good reason extend the validity of a writ of enforcement from time to time for any period not exceeding 12 months from the date of its expiry.

0.29 Rule 3. Priorities of writs of enforcement

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 2(3), it shall be deemed to have been issued on the date when it was extended.

0.29 Rule 4. Withdrawal of enforcement action

(1) The party issuing a writ of enforcement may withdraw the execution at any time by notice in writing addressed to the Registrar and copied to the bailiff or other enforcement officer.

(2) In every case where an execution is withdrawn, satisfied, or stopped, the Court may order the reasonably incurred costs incurred in the execution process prior to the withdrawal to be paid by the person issuing the writ of enforcement.

0.29 Rule 5. Order of committal

(1) Where any person —

(a) required by a judgment or order to do an act fails or refuses to do it within the time specified by the Court; or

(b) disobeys a judgment or order not to do an act,

the judgment or order may be enforced by an order of committal under Order 38.

(2) Subject to paragraph (3), a judgment or order shall not be enforced under this rule unless —

(a) a copy of the judgment or order has been served personally on the person to whom it is directed;

(b) if that person is required to do an act, the copy has been served in time to allow the person to comply with it, and

(c) the copy so served was endorsed with a notice that if that person disobeys the judgment or order then the defaulter may be liable to committal or other execution to compel compliance with its terms.

(3) Paragraph (2) 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 that person's presence when it was made, or otherwise.

(4) The Court shall not, in the absence of special circumstances, make a committal order to enforce a judgment in respect of a debt unless it is satisfied that the judgment debtor either has or has had since the date of the order or

judgment the means to pay the sum in respect of which default has been made and has refused or neglected to pay the same.

ORDER 30 : ENFORCEMENT OF JUDGMENT FOR PAYMENT OF MONEY

0.30 Rule 1. Modes of enforcement

A judgment or order for the payment of money 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 Order 29, rule 5 applies, an order of committal.

0.30 Rule 2. Judgment debt to carry interest

(1) Every judgment debt shall carry interest from the time of judgment being given until the judgment is satisfied.

(2) Unless the Court specifies otherwise, the interest under paragraph (1) shall be at the rate of 10% per annum.

(3) The interest may be levied under any execution order upon judgment.

ORDER 31 : WRIT OF DISTRESS

0.31 Rule 1. Form of writ of distress

A writ of distress shall be in Form 13.

0.31 Rule 2. Application for writ

(1) An application for a writ of distress shall be made by application notice stating the manner in which it is suggested the goods seized are to be dealt with.

(2) 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.

0.31 Rule 3. Execution of writ of distress

(1) A writ of distress shall be executed by a bailiff as directed by the Court and in accordance with the procedures prescribed in the Bailiffs Act.

(2) Whenever application is made under rule 2 for a direction that any properties seized should be sold in some manner other than by public auction, all necessary steps and the costs of such steps will be the responsibility of the applicant unless the Court orders otherwise.

(3) Application may be made to the Court for reimbursement out of the proceeds of sale for costs properly incurred by the applicant.

(4) Whenever an alternative procedure is ordered by the Court, the applicant shall inform the bailiff of all steps in advance. The properties seized will remain in the custody of the bailiff pending disposal and will only be released on order of the Court.

(5) Unless the Court otherwise directs, the total net sum retained by the bailiff after execution of a writ of distress is to be paid to the judgment creditor.

(6) Upon execution, a writ of distress is deemed to have expired and any subsequent seizure shall require application for the issuance of a fresh writ.

0.31 Rule 4. Stay of execution

(1) Subject to paragraph (2) 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.

(2) The Court shall not stay execution under subparagraph (1) 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.

(3) An application under paragraph (1) may be made —

(a) orally, when the judgment or order is made, or

(b) by application notice supported by an affidavit setting out the special circumstances, or, if the applicant is unable to pay in full, the affidavit must disclose the applicant's full financial circumstances.

(4) An order made under this rule may be varied or revoked on application by any party.

ORDER 32: GARNISHEE PROCEEDINGS

0.32 Rule 1. When garnishee proceedings available

Where —

(a) a judgment creditor has obtained a judgment or order for the payment by a judgment debtor 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.

0.32 Rule 2. Form of application

An application for an order under rule 1 shall be made ex parte by application notice 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 the garnishee) 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.

0.32 Rule 3. Order to show cause

(1) An application under rule 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.

(2) An order to show cause shall be in Form 14.

(3) 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.

(4) An order to show cause shall bind the debt specified in the hands of the garnishee as from the service of the order.

0.32 Rule 4. Garnishee may make payment into Court

A garnishee who admits owing the judgment debtor the amount specified or any lesser amount may pay that amount into Court.

0.32 Rule 5. Orders on further consideration

On further consideration of the matter —

(a) if the garnishee does not attend or the Court is otherwise satisfied that the garnishee owes the judgment debtor the amount specified, the Court may make an order absolute in Form 15;

(b) if the garnishee disputes owing the judgment debtor the amount claimed the Court may determine the matter summarily or order that it be tried and give any necessary directions therefore;

(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 such claim, and may determine the matter summarily or order that it be tried and give any necessary directions therefore.

0.32 Rule 6. Effect of payment by garnishee

Any payment made by a garnishee in compliance with an order absolute under this Order shall be a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid, even if the garnishee order or the judgment or order on which it is founded is subsequently set aside or reversed.

ORDER 33 : APPOINTMENT OF RECEIVER

0.33 Rule 1. Form of application for appointment of receiver

Application for the appointment of a receiver to enforce a judgment or order shall be made by application notice 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) identifying the property in respect of which the receiver is sought to be appointed, and

(d) naming the proposed receiver.

0.33 Rule 2. Service of application

Unless the Court otherwise orders, the application notice shall be served on the judgment debtor not less than 7 days before the hearing date.

0.33 Rule 3. Court may give directions

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.

0.33 Rule 4 Service of order

Within 7 days of the issuance from the Court 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.

0.33 Rule 5. Receiver's remuneration

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

0.33 Rule 6. Receiver's functions

(1) A receiver shall —

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

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

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

ORDER 34: CHARGING ORDER

0.34 Rule 1. Purpose of charging order

A charging order shall provide a judgment creditor with security, in whole or in part, over the property and assets of the judgment debtor described in the order.

0.34 Rule 2. Application for charging order

(1) An application for a charging order shall be made *ex parte* by application notice 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.

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

0.34 Rule 3. Order to show cause

(1) An application under rule 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.

(2) An order to show cause shall be in Form 16.

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

(a) the judgment debtor;

(b) if 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.

0.34 Rule 4. Procedure on further consideration

On further consideration of the matter —

(a) the judgment creditor and the judgment debtor (if the judgment debtor attends) shall be heard;

(b) the Minister of Lands shall be entitled to be heard;

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.

0.34 Rule 5.Form of charging order

A charging order absolute shall be in Form 17.

0.34 Rule 6. Service of order

Any order made shall be served on every person required to be served under rule 3(3).

0.34 Rule 7. Order may be varied or discharged

On the application 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.

0.34 Rule 8. Enforcement

(1) A charging order may be enforced by the appointment of a receiver and/or an order for sale.

(2) Application for the enforcement of a charging order shall be supported by an affidavit, which shall be served on every party required to be served under rule 3(3).

ORDER 35: ENFORCEMENT OF JUDGMENT FOR DELIVERY OF GOODS

0.35 Rule 1. Modes of enforcement of judgement

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

(a) writ of delivery;

(b) if Order 29, rule 5 applies, an order of committal.

0.35 Rule 2. Form of writ of delivery

A writ of delivery shall be in Form 18.

0.35 Rule 3. Application for writ of delivery

Application for a writ of delivery shall be made by application notice supported by affidavit.

0.35 Rule 4. Writ may include provision for enforcing payment

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.

0.35 Rule 5. Duties of bailiff

The bailiff charged with execution of a writ of delivery shall, in accordance with the directions contained in the Court order and subject to the provisions of the Bailiffs Act —

(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 19 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.

ORDER 36 : ENFORCEMENT OF JUDGMENT FOR POSSESSION OF BUILDING

0.36 Rule 1. Modes of enforcement of judgement

A judgement or order for the delivery or giving up of possession of a building or dwelling-house may be enforced by one or more of the following means —

(a) writ of possession;

(b) if Order 29, rule 5 applies, an order of committal.

0.36 Rule 2. Form of writ of possession

A writ of possession shall be in Form 20.

0.36 Rule 3. Application for writ of possession

An application for a writ of possession shall be made by application notice supported by affidavit.

0.36 Rule 4. Writ may include provision for enforcing payment

A writ of possession may include provision for enforcing payment of any money payable (whether alternatively to or in addition to giving up possession of the building or dwelling-house) by the same person under the same judgment or order.

0.36 Rule 5. Duties of bailiff

The bailiff charged with execution of a writ of possession shall, in accordance with the directions contained in the Court order and in pursuance of his or her functions and powers under the Bailiffs Act —

(a) seize the building or dwelling-house by way of special seizure under section 8(1) of the Bailiffs Act;

(b) report on the outcome of the special seizure by promptly submitting to the Registrar a signed acknowledgement in Form 1 of the schedule to the Bailiffs Act;

(c) require any person(s) in occupation of the building or dwelling-house to give up possession and vacate the premises within 14 days or such other period as the Court shall determine;

(d) if any person(s) in possession of the building or dwelling-house fails to vacate the premises as directed by the bailiff under paragraph (c) then the bailiff shall proceed to evict the person(s) using such force as is reasonably necessary;

(e) upon request by any bailiff, a police officer shall aid and assist in carrying out any eviction under this Order;

(f) promptly report to the Court on the outcome of any eviction.

SPECIAL PROCEDURES AND GENERAL

ORDER 37 : EXAMINATION OF JUDGMENT DEBTOR

0.37 Rule 1. Application for examination

(1) Where a party ("the judgment creditor") has obtained a judgment or order for the payment by some other party ("the judgment debtor") of money, the Court may, on an application made *ex parte* by application notice, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Court and be orally examined as to means.

(2) The application shall state whether the examination is required to be recorded in which case it shall be heard in open Court.

(3) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination and such person is entitled to reasonable conduct money for attending to give evidence.

0.37 Rule 2. The examination

(1) The judgment debtor may be examined on the questions —

(a) whether any, and if so what, debts are owing to the judgment debtor, and

(b) whether the judgment debtor has any, and if so what, property or means of satisfying the judgment or order.

(2) The Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions in paragraph (1) at the time and place appointed for the examination.

ORDER 38 : CONTEMPT OF COURT

0.38 Rule 1. Punishment for contempt of Court

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

0.38 Rule 2. Contempt in face of Court

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

0.38 Rule 3. Disobedience of Court order or undertaking

(1) Where the contempt consists of disobedience to an order of the Court or breach of an undertaking to the Court application for leave to apply for an order of committal shall be made ex parte by application notice 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 the committal is sought.

(2) An order for committal may be sought against —

(a) the person in contempt if an individual, or

(b) where that person is a body of persons capable of suing and being sued, or a body corporate, any member or officer of that body.

0.38 Rule 4. Procedure if Court grants leave

(1) 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 the application notice and affidavit not later than 7 clear days before the hearing date.

(2) The Court may dispense with service of the summons under paragraph (1) if it thinks it just to do so.

0.38 Rule 5. Hearing of application

(1) Unless the Court otherwise orders, the hearing of an application for an order of committal shall be in open court.

(2) 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.

0.38 Rule 6. Enforcement may be suspended

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.

0.38 Rule 7. Committal on Court's own motion

Nothing in this order shall affect the power of the Supreme Court or Court of Appeal to make an order of committal of its own motion.

ORDER 39 : JUDICIAL REVIEW

0.39 Rule 1. When remedy available

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").

0.39 Rule 2. Leave of Court required

(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) an application notice which is to set out concisely the relief claimed and the grounds therefore;

(b) a copy of the proposed writ and statement of claim, and

(c) an affidavit verifying the facts relied on.

0.39 Rule 3. Court's powers

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

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

0.39 Rule 4. Position if Court grants leave

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 40 : HABEAS CORPUS

0.40 Rule 1. When the writ of habeas corpus is available

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").

0.40 Rule 2. Mode of application

(1) Application for a writ of habeas corpus may be made at any time on any day *ex parte* by way of application notice supported by an affidavit by the person restrained showing that it is made at that person's instance and setting out details of the restraint.

(2) Where the person restrained is unable to make the affidavit required by paragraph (1) it may be made by some person on the restrained person's behalf and the affidavit shall state the reason why the person restrained is unable to do so.

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

0.40 Rule 3. Court may direct service

The Judge to whom the application is made may —

(a) order that a writ of habeas corpus be issued forthwith, or

(b) direct that the application notice and affidavit be served on any necessary party.

0.40 Rule 4. Service of application

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

0.40 Rule 5. Directions to be given as to when writ returnable

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.

0.40 Rule 6. Form of writ of habeas corpus

A writ of habeas corpus shall be in Form 21.

0.40 Rule 7. Service of writ

A writ of habeas corpus shall be served personally on very 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 that person's servant or agent at the place where the person concerned is restrained or confined.

0.40 Rule 8. Return of writ

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 the control of the person served with the writ, and if so

(b) the justification therefore.

0.40 Rule 9. Hearing on return of writ

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 that person's behalf shall be read;

(c) counsel for the person exercising such restraint shall be heard and any affidavits filed on that person's 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 41 : RESEALING FOREIGN PROBATES

0.41 Rule 1. Application to be made *ex parte*

An application under section 39 of the Probate Act (Cap 16) to reseal in the Court a grant of probate or letters of administration issued by a foreign court shall be made *ex parte* by way of application notice.

0.41 Rule 2. Supporting affidavit required

The application for resealing shall be supported by an affidavit sworn by the applicant satisfying the evidentiary requirements of section 39 of the said Act.

0.41 Rule 3. The Court may require notification to be given

The Court may upon further consideration require notice of the application to be served on some other person or persons and may, if it thinks it appropriate, convene a directions hearing.

0.41 Rule 4. The Court may impose conditions

The Court may impose such terms and conditions regarding the resealing of the grant as it deems reasonable.

ORDER 42 : PROCEEDINGS IN ADMIRALTY

0.42 Rule 1. Jurisdiction

Notwithstanding the enactment of the Civil Law Amendment Act, the Court shall continue to exercise its inherent jurisdiction in relation to Admiralty proceedings.

0.42 Rule 2. Rules and practice

(1) The procedure and forms provided under the English Supreme Court Rules shall, with any necessary and appropriate modification and subject to these rules, continue to apply.

(2) Reference to the "Admiralty Marshall" in the English rules shall be deemed to be a reference to the Registrar.

ORDER 43: CHANGE OF LAWYER

0.43 Rule 1. Notice of a change of lawyer

(1) No order is necessary, but to make a change of lawyer effective the party or the new lawyer must file a notice of change of lawyer in Form 22 and serve a copy on the former lawyer and every other party to the proceeding.

(2) If the party intends to act in person, notice under Form 22 shall be modified accordingly.

0.43 Rule 2. Withdrawal of lawyer

(1) Where a lawyer who has acted for a party has ceased to act and the party has not given notice of change of lawyer under rule 1, the Court may upon application make an Order granting leave for the lawyer to withdraw from acting for the party.

(2) Unless otherwise ordered by the Court, an application under this rule may be made orally or by a request in writing.

(3) Unless and until the party whose lawyer is withdrawing either appoints another lawyer and complies with rule 1 or, being entitled to act in person, gives notice to that effect, then that party's last known address, or in the case of a body corporate, its registered office, shall be deemed to be the address for service.

ORDER 44 : WITNESS SUMMONS

0.44 Rule 1. Request to be made to Registrar

Any party may in writing request the Registrar to issue a summons for the examination of a witness and/or for the production of documents without the leave of the Court.

0.44 Rule 2. Form of witness summons

(1) A witness summons shall be in Form 23 modified as necessary.

(2) The names of two or more persons may be included in the one summons.

0.44 Rule 3. Service of summons

A witness summons must be served personally and service shall not be valid unless effected within 12 weeks after the date of its issuance and not less than 4 days or

such other period as the Court or Registrar may fix, before the day on which attendance before the Court is required.

0.44 Rule 4. Conduct money

(1) A person who has been served with a witness summons in any civil proceeding is not compellable to comply with the order unless, at the time of service or at some other reasonable time before the date on which the person is required to comply with the writ, a reasonable sum in the form of conduct money to meet the person's reasonable expenses of complying with the writ is tendered or paid to that person.

(2) Unless the Court orders otherwise, conduct money shall be fixed in the amount of 5 pa'anga.

ORDER 45 : MEDIATION

0.45 Rule 1. Application of this Order

(1) This Order shall apply if at any time the Court is satisfied that a suitably qualified person is available to act as a mediator.

(2) A person is not eligible to be a mediator unless this is justified by their experience as a mediator or training in a recognised mediation or training course.

0.45 Rule 2. Court may refer proceeding to mediation

(1) At any stage of a proceeding the Court may, with the consent of all parties, order that the proceeding or any part of the proceeding be referred to a mediation.

(2) When making a reference under this rule, the Court shall stipulate the time frame within which the mediation should be progressed and be finalised.

0.45 Rule 3. Reference not to operate as a stay of proceedings

Unless the Court otherwise orders, a reference to mediation shall not operate as a stay of the proceedings nor shall it be cause for delay in getting the case ready for trial.

0.45 Rule 4. Functions of mediator

(1) The mediator shall endeavour to assist the parties to reach a settlement of the proceeding or the part of the proceeding referred to mediation.

(2) The mediator shall report to the Court —

(a) regularly on the progress of mediation; or

(b) if mediation is finished, on the nature of the outcome, and

(c) where there is no agreement and shall comment on the reasons for that.

(3) The mediator shall not make any report to the Court other than a report under paragraph (2).

0.45 Rule 5. Procedure at mediation

(1) Unless all the parties who attend the mediation in writing agree, no evidence shall be admitted in the Court proceeding of anything said or done by any person at the mediation.

(2) Where an agreement is reached it shall be reduced to writing and signed by the parties at the mediation or later.

0.45 Rule 6. Costs in respect of mediation

(1) Unless the parties otherwise agree, the Court may determine the remuneration of the mediator, and by what party or parties and in what proportion the remuneration is to be paid, either in the first instance or finally.

(2) The Court may order any party to give security for the remuneration of the mediator.

(3) Where the Court is satisfied that a party's unreasonableness has led to no agreement the Court may order that party to pay the costs of the other party or parties on an indemnity basis.

ORDER 46 : TAXATION OF COSTS

0.46 Rule 1. Application of this Order

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

0.46 Rule 2. Costs to be assessed at conclusion of trial if possible

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.

0.46 Rule 3. Costs to be taxed if not assessed

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

0.46 Rule 4. Bill of costs to be lodged for taxation

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.

0.46 Rule 5. Service of bill of costs

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

0.46 Rule 6. Objection to bill of costs

(1) If the paying party wishes to dispute any sum claimed in the bill of costs, that party shall within 14 days after service of the copy bill give notice requesting an opportunity to be heard accompanied by a statement setting out the basic grounds of objection.

(2) If no notice is given under paragraph (1) within the time limited, the Registrar shall upon receiving a request in Form 24 from the party lodging the bill of costs proceed to carry out taxation.

(3) Upon taxation under paragraph (2) the Registrar shall give the party lodging the bill of costs the opportunity to be heard.

(4) If notice is given under paragraph (1) 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.

0.46 Rule 7. Procedure on taxation

(1) 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;

(c) may make such other inquiries as the Registrar thinks necessary, and

(d) may adjourn an appointment for taxation from time to time and may reserve making a decision.

(2) The Registrar's decision upon taxation shall be conveyed to the parties in a certificate of taxation in Form 25 which shall have attached a breakdown of the Registrar's taxed figures.

(3) Where it appears upon taxation that an objection to a particular item is frivolous or otherwise an abuse of process, the objecting party may be ordered to pay the other party's costs of the taxation hearing whether or not the objecting party is successful on other grounds of objection.

0.46 Rule 8. Referral to Judge

If any party so requests the bill of costs shall be taxed by a Judge, in which case the provisions of rule 7 shall apply with any necessary modifications.

0.46 Rule 9. Appeal from decision of Registrar

(1) A party who is dissatisfied with the decision of the Registrar on taxation may appeal to a Judge.

(2) An appeal under this rule shall be made by lodging concise written grounds of appeal within 14 days after the Registrar's decision.

(3) On the hearing of the appeal the Judge may exercise any of the powers set out in rule 7.

0.46 Rule 10. Review of Judge's decision

(1) A party who is dissatisfied with the decision of a Judge on taxation may apply to that Judge to review the decision.

(2) An application under this rule shall be made by application notice filed within 14 days after the Judge's decision.

(3) The application notice filed under this rule shall contain the objector's concise written grounds of objection.

(4) The opposite party may within 14 days after service of objections lodge concise written answers.

(5) On the hearing of the review the Judge may receive further evidence and may exercise all the powers available on the original taxation.

0.46 Rule 11. Taxation certificate

Upon completion of taxation, or of any appeal or review, the Court shall issue a certificate of taxation in Form 25.

ORDER 47 : ASSESSMENT OF COSTS

0.47 Rule 1. Application of this Order

This Order applies to costs payable by one party to another under an order in civil proceedings.

0.47 Rule 2. Allowance for costs

(1) 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.

(2) 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.

0.47 Rule 3. Solicitor — client costs

(1) This rule applies to costs payable by a client to a lawyer.

(2) There shall be allowed all such costs, charges and expenses as were incurred with the express or implied approval of the client.

(3) Unless there are exceptional circumstances, there shall not be allowed —

(a) any costs incurred or increased as a result of negligence, mistake, or over-caution;

(b) any unusual expense, unless the lawyer obtained the express approval of the client to such expense before it was incurred.

0.47 Rule 4. Practice directions relating to costs

(1) Practice Note 2 of 1992, as amended by Practice Direction No. 4 of 2003 and No. 5 of 2004, shall continue to apply in fixing allowable costs and disbursements.

(2) The Lord Chief Justice may from time to time issue further practice directions revoking, amending or replacing any one or more of those referred to in paragraph (1).

0.47 Rule 5. Additional costs to be certified for

(1) Any party seeking to recover costs at a higher rate than those provided for in the relevant practice direction shall make application to a Judge to have the higher rate certified for.

(2) Application for certification under this rule may be made orally at a directions hearing or informally by letter to the Registrar.

(3) In the absence of exceptional circumstances, application under this rule must be made prior to the hearing in respect of which the costs are to be incurred.

(4) Additional costs may be certified as appropriate under paragraph (1) upon special cause being shown.

ORDER 48: REPEAL AND TRANSITIONAL

0.48 Rule 1. Court Rules

The Supreme Court Rules 1991 are hereby repealed.

0.48 Rule 2. Transitional

Notwithstanding the repeal of the Supreme Court Rules 1991, any act which was properly done in accordance with those Rules before they were repealed and which can be validly done under these Rules, shall be deemed to have been validly done under these Rules.

0.48 Rule 3. Practice Directions

(1) Subject to paragraph (2), all Practice Directions issued between 1 January 1992 and the coming into effect of these Rules relating to the civil jurisdiction of the Court are hereby revoked.

(2) The following Practice Directions remain in force until cancelled or varied or replaced by other Practice Directions —

No.2 of 1992 – Taxation of Costs – [1992] Tonga LR 2

No.3 of 1993 – Application for Letters of Adoption – [1992] Tonga LR 27

No.1 of 1994 – Senior Counsel – [1994] Tonga LR 1

No.3 of 1994 – Commissioner for Oaths – [1994] Tonga LR 3

No.1 of 2000 – Filing of small civil claims

No.1 of 2003 – Supreme Court Case Files Prefixes

No.3 of 2003 – Tonga Law Reports

No.4 of 2003 – Counsel's Costs

No.1 of 2004 – Rules for the Production of Documentary Exhibits

No.5 of 2004 – Taxation of Costs

No.6 of 2004 – Applications out of working hours and other urgent applications

No.2 of 2005 – 48 hours notice of Applications

SCHEDULE

Form 1

WRIT OF SUMMONS

O.6 r.1

IN THE SUPREME COURT OF TONGA **[Case number]**

CIVIL JURISDICTION

Registry [state registry in which issued]

BETWEEN: [plaintiff]
[occupation and address]

Plaintiff

AND: [defendant]
[occupation and address if known]

Defendant

To the Defendant [name]

of [address]

THIS WRIT OF SUMMONS has been issued against you by the above-named plaintiff whose claim is fully set out in the attached statement of claim.

TAKE NOTICE THAT —

1. If you wish to defend the claim you must, within 28 days of service of this writ on you, send to the Court a written defence, stating concisely the grounds upon which you intend to rely, and whether you require the case to be tried by a jury. (A sealed copy must be served on each plaintiff).
2. If you fail to satisfy the claim or to file a defence within the time stated, the plaintiff may obtain judgment against you without further notice.
3. If the claim is defended the plaintiff *requires/does not require the case to be tried by a jury.

(* delete as appropriate)

Issued this ……. [insert date] day of …….……. [insert month and year]

……

Court Clerk / Registrar

[SEAL]

NOTE: This writ may not be served later than 12 months from its date of issue unless renewed by order of the Court.

Form 2

STATEMENT OF CLAIM

O.6 r.1
O.8 r.2

[Heading as in Form 1]

The plaintiff —

……
……
……
……
……

[set out concisely the nature of the plaintiff's claim to the relief sought]

PARTICULARS

……
……
……
……
……

[Set out the particulars required under the rules to inform the Court and the other parties of the plaintiff's cause of action]

RELIEF

……
……
……

[Specify the relief or remedy sought]

Form 3

NOTICE TO OTHER DEFENDANT

O.8 r.5

[Heading as in Form 1 without occupations and addresses]

TO: The above named defendant, ……[full name]

Take notice that the above named defendant, ……[full name], claims against you the following relief or remedy: ……

……..

……..

[set out the contribution or indemnity or relief or remedy claimed]

The grounds on which the relief or remedy is sought are: ……

……

……

……

……

[state the nature and grounds of the claim]

If you dispute the claim, you may, within 10 days after the day on which this notice is served upon you —

1) file in this office of the Court a statement of your defence to the claim, and

2) serve a copy of that statement of your defence on —

   (a) the above named defendant ……[full name]; and

   (b) the plaintiff, and

   (c) any other party who has filed an address for service.

Dated this ……[insert date] 20….

……

(Lawyer for) defendant

Form 4

DIRECTIONS NOTICE

O.11 r.2

IMPORTANT

IF YOU DO NOT UNDERSTAND THIS DOCUMENT OR IF YOU ARE UNCERTAIN WHAT IT REQUIRES YOU TO DO, YOU SHOULD CONSULT A LAWYER OR SPEAK TO THE STAFF AT THE SUPREME COURT REGISTRY AS SOON AS POSSIBLE AND BEFORE YOU TAKE ANY FURTHER ACTION.

THE PERSON SERVING THIS DOCUMENT ON YOU CANNOT GIVE YOU ANY LEGAL ADVICE.

FANONGONONGO FAKAHINOHINO

MAHU'INGA

KAPAU 'OKU 'IKAI MAHINO KIATE KOE 'A E TOHI´NI PE 'OKU 'IKAI KE KE FAKAPAPAU'I 'A E M'' A 'OKU´ NE FIEMA'U KE KE FAI, 'OKU TONU KE KE FETU'UTAKI KI HA LOEA PE 'EKE KI HE KAU NGAUE 'I FAI'ANGA LESISITA FAKAMAAU'ANGA LAHI 'I HE VAVE TAHA PEA KI MU'A 'I HA'O TOE FAI HA ME'A.

KOE TOKOTAHA 'OKU´NE TUFA ATU 'A E TOHI´NI KIATE KOE 'OKU 'IKAE NGOFUA KE NE 'OATU 'E IA HA FALE'I FAKALAO KIATE KOE

Form 5

CERTIFICATE OF SERVICE

O.11 r.4

CASE NO. ……

BETWEEN:

AND:

I, [print or type name in full and address] ……...
……..
do hereby certify that at *AM/PM on [insert date] …….
at [insert location] ……

I did serve the document(s) listed below on: [name of persons served]
……..
……..
……..

Whose identity I knew because [explain how the person served was identified]
……..
……..
……..

Signature: ……
Date: ……

Documents served —
……..
……..
……..

(* delete as appropriate)

Form 6

APPLICATION NOTICE

O.13 r.1(1)

[General heading as in Form 3]

BETWEEN: Plaintiff/ Applicant/ Judgment Creditor*

AND: Defendant/ Respondent/ Judgment Debtor*

(*EX PARTE*) APPLICATION NOTICE**

THE above named applicant hereby applies to the Court for an order (a draft of which is attached) that: ……..

……..

……..

[State clearly the terms of the order that the applicant is seeking]

UPON THE GROUNDS ……..……

……..……

……..……

[Set out the reasons why the order is sought. Include the material facts on which the applicant relies, identifying any rule, statutory provision or principle of law relied upon].

The applicant requests a hearing*.

The applicant requests that the application be dealt with without a hearing**.

DATED this [insert date] ……

……

(Lawyer for) Applicant

TO: The Registrar

AND TO: ……[respondent(s)]

FILED BY: ……..……

…….. [set out in full name and address for service]

(* delete as appropriate)

(** include if application is being made on an *ex parte* basis)

Form 7

DRAFT JUDGMENT IN DEFAULT

O.14 r.2(2)

[Entitlement as in Form 3]

A.B. *Plaintiff/Judgment creditor

AND

C.D. *Defendant/Judgment debtor

BEFORE THE HON …… [name the Judge]

AFTER CONSIDERING the plaintiff's notice of application dated ……..…… [insert date] for judgment in default against …… [identify the defendant] AND the affidavit of …… [name the deponent] dated …… [insert date], sworn and filed in support AND IN RELIANCE upon Order 14 rule 1 of the Supreme Court Rules.

IT IS ORDERED —

1. Judgment is hereby entered for the plaintiff against ……
   [identify defendant] in the sum of …… [insert details of order] together with interest on the said sum at …… [insert interest rate] from the …… [insert relevant date] down to the date of payment.
2. The plaintiff is to file and serve a bill of costs in accordance with Order 46, rule 4.
3. A copy of this Order is to be served on the defendant by the plaintiff within a period of 14 days of its issuance from the Court.

NUKU'ALOFA: …… **[insert date]**

……

***Lord Chief Justice/Judge**

(* delete as appropriate)

Form 8

LIST OF DOCUMENTS

O.18 r.2(1)

[Heading as in Form 3]

To the *defendant/plaintiff …… [name the party]

LIST OF DOCUMENTS

The following is a list of the documents relating to the issues in this action which are or have been in the possession, custody or power of the above named *plaintiff/defendant which is served in compliance with:

* Order 18 rule 1

* the order made the day of 20……

1. The *plaintiff/defendant has in the *plaintiff's/defendant's possession, custody or power the documents listed in Schedule 1.
2. The *plaintiff/defendant objects to produce the documents listed in Part 2 of Schedule 1 on the grounds that: …… [state grounds for objection]
3. The *plaintiff/defendant has had, but has not now, possession, custody or power of or over the documents listed in Schedule 2.
4. The date when and the circumstances in which the documents ceased to be in the possession, custody or power of the *plaintiff/defendant are set out in Part 2 of Schedule 2.
5. Neither the *plaintiff/defendant, nor that party's lawyer, nor any other person on the *plaintiff's/defendant's behalf has now, or ever had, in their possession, custody or power any document of any description relating to the issues in this action except as listed in Schedules 1 and 2.

(* delete as appropriate)

Schedule 1

Part 1

……..
……..
……..
……..

[List the relevant documents which the party does not object to produce]

Part 2

……..
……..
……..
……..

[List the relevant documents which the party objects to produce]

Schedule 2

Part 1

……..
……..
……..
……..

[List the documents which the party no longer has in their possession, custody or power]

Part 2

……..
……..
……..
……..

[State when and in what circumstances the documents ceased to be in the possession, custody or power of the party]

NOTICE TO INSPECT

The documents listed in Schedule 1 Part 1 may be inspected at …… [state address] by prior arrangement during normal working hours.

DATED the ……. day of …….. 20….

……

[Signed]

Lawyer for *plaintiff/defendant

Form 9

AFFIDAVIT VERIFYING LIST OF DOCUMENTS

O.18 r.3(3)

[Heading as in Form 3]

I, …… [full name and other particulars] the above named ……[party], make oath and say as follows —

The statements of fact made in paragraphs 1, 2, 3, and 4 of the list of documents annexed hereto and marked "A" are true.

The statements made in paragraph 5 of the said list are true to the best of my knowledge and belief.

SWORN at …… [place]

This …… [date]

Before me: ……

(Authorised to take affidavits)

Form 10

NOTICE OF DIRECTIONS HEARING

O.19 r.1(2)

NOTICE OF DIRECTIONS HEARING
FANONGONONGO ‘O E FAKAHINOHINO

IN THE SUPREME COURT OF TONGA No: ……
‘I HE FAKAMAAU‘ANGA LAHI ‘O TONGA Fika ‘o e ……

CIVIL JURISDICTION
MAFAI SIVILE

BETWEEN :
‘I he vaha‘a ‘o :

Plaintiff
Talatalaaki

AND
Mo :

Defendant
Faka’iloa

TAKE NOTICE THAT THE ABOVE CASE HAS BEEN SET DOWN FOR DIRECTIONS AT …… [state Registry office] on the …… [insert date] 20….. at …… [state time] before Hon Justice …… and you are required personally to attend in Chamber at the said Court.

Tokanga‘i ko e hopo ‘i ‘olunga kuo fokotu‘u ke Fakahinohino …… ‘i he ‘aho …… taimi ‘i he …… Fakamaau ko …… pea ke ke ha‘u tonu koe ki he Fakahinohino i he Fakamaau‘anga.

Dated the …… day of …… 20….
Faka’aho ‘o ……

……
(seal) Registrar
Failesisita

Clerk : ……

Kalake : ……

TO: ……

Kia : ……

Form 11

NOTICE OF PAYMENT INTO COURT

O.23 r.3

[Heading as in Form 3]

TAKE NOTICE THAT —

1) The defendant …… [name the defendant] has paid $……[insert amount] into Court.
2) The said sum is paid in satisfaction of —

∗• the whole claim

∗• the following causes of action, namely —

……

……

…… [identify causes of action]

In respect of which the plaintiff claims ……...

……..

……..

[insert details of the amount claimed by the plaintiff in respect of each such cause of action and the corresponding amount paid by the defendant]

• and after taking into account and satisfying this defendant's counterclaim in respect of …… [insert details]

DATED the …….. day of ……. 20….

(* delete as appropriate)

……

(Lawyer for) defendant

Form 12

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

O.23 r.5

[Heading as in Form 3]

TAKE NOTICE THAT the plaintiff accepts the sum of $..... paid into Court by the defendant ……..……. [name defendant] in satisfaction of the cause(s) of action against that defendant in respect of which it was paid in [* and the plaintiff's other claims in this action are abandoned].

DATED the ……. day of ……. 20….

(* delete as appropriate)

……

(Lawyer for) plaintiff

To: The Registrar

And to: The defendant

Form 13

WRIT OF DISTRESS

O.31 r.1

[Heading as in Form 7]

To : the Bailiff Officer in Charge, ……..……[location]

WHEREAS in this action on the …… day of …….. 20… the *plaintiff/defendant [name the party] of ……..…… [address] obtained judgment against the *defendant/plaintiff [name the party] of ……..…… [address] and the sum set out in the schedule below remains unpaid;

YOU ARE COMMANDED —

Unless the amount shown in the schedule hereto is paid,

1) to seize the property of the *defendant/plaintiff (except the person's house and fixtures, growing crops, and the clothes of the defendant/plaintiff and that person's family and tools of trade up to a value of $200)**;
2) to sell the same by public auction (unless otherwise ordered by the Court) and to pay the proceeds of such sale to the Registrar of the Supreme Court;
3) if no such property can be found, to certify to that effect to the Registrar of the Supreme Court.

Dated the …… day of ……. 20…

(* delete as appropriate)

(** delete when party is a body corporate)

……

Registrar of the Supreme Court

SCHEDULE

Amount adjudged	:	$_____
Interest at …….% per annum from date of judgment to date	:	$_____
Costs	:	$_____
Total debt	:	$_____
Less paid	:	$_____
Balance due	:	$_____
Costs of this writ	:	$_____
Total to be levied	:	$_____

Form 14

GARNISHEE ORDER TO SHOW CAUSE

O.32 r.3(2)

IN THE SUPREME COURT OF TONGA **CV No.**

CIVIL JURISDICTION

Registry …….. [state Registry in which issued]

BETWEEN: AB Judgment Creditor

AND: C. D. Judgment Debtor

AND: E. F. Garnishee

BEFORE Hon Justice …….. in Chambers

UPON READING the judgment creditor's application dated …… [insert date] for an order to show cause and the affidavit of …… [name the deponent] dated …… [insert date] sworn and filed herein

IT IS ORDERED —

1) That all debts due or accruing due from the garnishee to the judgment debtor up to a sum of $..... be attached to satisfy —

   (a) a judgment or order obtained by the judgment creditor in this Court on the …….. day of …… 20…., on which judgment or order the sum of $..... remains due and underpaid; and

   (b) $..... for the costs of these proceedings.

2) The garnishee do attend before Hon Justice …… in Chambers on the …….. day of …….. 20… at ..... a.m./p.m. to show cause why the garnishee should not pay to the judgment creditor the debt due from the garnishee to the judgment debtor, or so much thereof as will satisfy the judgment or order and the costs of these proceedings.

The judgment debtor's account is believed to be held at the branch of the garnishee; the account number is believed to be ……
[If the garnishee is a financial institution leave room for name of branch]

NUKU'ALOFA: …… [insert date]

……

SEAL Chief Justice/ Judge

NOTES:

1. This order must be served on the garnishee and the judgment debtor.

2. This matter is governed by Order 32 of the Supreme Court Rules.

Form 15

GARNISHEE ORDER ABSOLUTE

O.32 r.5(a)

[Heading as in Form 14]

UPON HEARING …… [name lawyer(s) appearing]

AND UPON READING the affidavit of …… [name the deponent] dated …… [insert date] sworn and filed herein

And the order made the …….. day of ……. 20…. whereby it was ordered that all debts due or accruing due from the garnishee to the judgment debtor up to a sum of $..... be attached to satisfy —

1) a judgment or order obtained by the judgment creditor in this Court on the ……. day of …….. 20…, on which judgment or order the sum of $..... remains due and underpaid; and
2) $..... for the cost of these proceedings;

after deducting the sum of $.....*

IT IS ORDERED that —

[If the garnishee owes the judgment debtor more than the judgment debt]

1. The garnishee do pay to the judgment creditor the sum of $..... to satisfy the judgment or order and the costs of these proceedings.
2. The garnishee be entitled to retain from the balance owed to the judgment debtor the sum of $..... for the garnishee's costs of this application

OR

[If the garnishee owes the judgment debtor less than the judgment debt]

1. The garnishee (after deducting the sum of $..... for the garnishee's costs of this application) do pay to the judgment creditor the balance of the debt owed to the judgment debtor, namely $..... in part satisfaction of the judgment or order.
2. Out of the said sum of $..... the judgment creditor is to retain the sum of $..... for the judgment creditor's costs of this application and the balance of $..... is to be credited to the judgment debt.

NUKU'ALOFA: …… [insert date]

……

SEAL Chief Justice/ Judge

(* include if appropriate)

Form 16

CHARGING ORDER – NOTICE TO SHOW CAUSE

O.34 r.3(2)

IN THE SUPREME COURT OF TONGA **CV No.**

CIVIL JURISDICTION

Registry …….. [state Registry in which issued]

BETWEEN : AB Judgment Creditor

AND: CD Judgment Debtor

BEFORE Hon Justice …….. in Chambers

UPON READING the plaintiff's application dated the …….. day of ……. 20… for a notice to show cause and the affidavit of …….. dated the …….. day of ……. 20… sworn and filed in support whereby it appears that —

1) by a judgment in this Court dated …….. the judgment debtor was ordered to pay to the judgment creditor the sum of $..... of which sum $..... remains unpaid; and

2) the judgment debtor has a beneficial interest in the asset described in the Schedule below;

IT IS ORDERED THAT —

1. Until the date given below the interest of the judgment debtor in the said asset be charged with the payment of the sum due under the judgment, together with the costs of this application; and

2. The judgment debtor do attend before Hon Justice ……. in Chambers on the ……. day of …….. 20… at …….. a.m./p.m. to show cause why the judgment debtor's interest should not continue to be so charged.

SCHEDULE

……..

……..

……..

……..

[Particulars of the asset to be charged]

Dated the …… day of …….. 20…

NUKU'ALOFA: …… [insert date]

……

SEAL Chief Justice/ Judge

Note:

This order must be served on the judgment debtor, the Minister of Lands, (if the subject matter of the charge is land) and any other person who may be affected by it.

Form 17

CHARGING ORDER ABSOLUTE

O.34 r.5

[Heading as in Form 16]

BEFORE Hon Justice …….. in Chambers

UPON HEARING ……..…… [name lawyer(s) appearing]

AND UPON READING the affidavit(s) of ……..……. dated the ……..... day of …….. 20… sworn and filed in support and the order to show cause made the …….. day of …… 20…

IT IS ORDERED THAT —

The interest of the judgment debtor in the asset described in the schedule below be charged with the payment of $..... being the sum due under the judgment, together with $..... for the costs of this application which shall be added to the judgment debt.

SCHEDULE

……..

……..

……..

……..

[Particulars of the asset to be charged]

NUKU'ALOFA: …… [insert date]

……

SEAL Chief Justice/Judge

Form 18

WRIT OF DELIVERY

O.35 r.2

[Heading as in Form 16]

TO: the Bailiff Officer in Charge, …… [location]

WHEREAS in this action on the ……. day of …… 20… the judgment creditor …… [name the party] of …… [address] obtained judgment against the judgment debtor …… [name the party] of …… [address] requiring the said *defendant/plaintiff —

1. To deliver to the plaintiff/defendant the goods described in Schedule 1 below, *(or in default to pay their value of $.....); and
2. To pay to the judgment creditor damages and costs, and the sum set out in *Schedule 2 below remains unpaid;

YOU ARE HEREBY COMMANDED —

1. To seize the said goods, to deliver them to a convenient place where they may be collected, and to notify the Court and the said judgment creditor in Form 19 where and when they may be collected;
2. And if you cannot obtain possession of the said goods, and their value of $..... *(together with the sum set out in Schedule 2) is not paid;
3. To seize the property of the judgment debtor except the person's house and fixtures, growing crops, clothes of the plaintiff/defendant and that person's family and tools of trade up to a value of $200);
4. To sell the same by public auction (unless otherwise ordered by the Court) and to pay the proceeds of such sale to the Registrar of the Supreme Court;
5. If no such property can be found, to certify to that effect to the Registrar of the Supreme Court.

DATED the ……. day of …….. 20.…

……

SEAL Chief Justice/ Judge

(* delete as appropriate)

SCHEDULE 1

……..
……..
……..
……..

[description of goods]

SCHEDULE 2

Amount adjudged	:	$_____
Interest at …….% per annum from date of judgment to date	:	$_____
Costs	:	$_____
Total debt	:	$_____
Less paid	:	$_____
Balance due	:	$_____
Costs of this writ	:	$_____
Total to be levied	:	$_____

Form 19

NOTICE OF EXECUTION OF WRIT OF DELIVERY

O.35 r.5

[Heading as in Form 16]

To: the Registrar of the Supreme Court

And to: the judgment creditor …… [name the party]

TAKE NOTICE that —

1. The writ of delivery issued in this action on the …… day of ……. has been executed in the following manner:

   ……

   ……

   ……

   [state manner and result of execution]

2. * [The sum of $..... has been remitted to the Supreme Court].

3. * [The goods ordered to be delivered may be collected within 14 days from ……..…… [state address from which goods may be collected] during normal working hours; and if not collected within 14 days they may be disposed of according to the direction of the Court.

DATED the …… day of …….. 20…

……

Bailiff Officer

[location]

(* delete as appropriate)

Form 20

WRIT OF POSSESSION

O.36 r.2

[Heading as in Form 16]

TO THE CHIEF BAILIFF, Tongatapu and ‘Eua District [insert different district if appropriate]

GREETINGS

In these proceedings on …….. [insert date] the judgment creditor obtained an order for delivery against the judgment debtor …….. [insert name] requiring the said judgment debtor to deliver to the judgment creditor the building/dwelling-house presently situated at: ……..……..……..……

[insert full details of location of building/dwelling-house] as ordered by the Court.

The judgment debtor has failed to comply with the said order for delivery.

YOU ARE THEREFORE HEREBY COMMANDED —

1. To enter and carry out a special seizure of the said building/dwelling-house in accordance with the provisions of section 8 of the Bailiffs Act.
2. If any person is in occupation of the said building/dwelling-house you are authorised to allow them up to 14 days in which to vacate the premises.

YOU ARE ALSO COMMANDED to forward to the Registrar immediately after execution of this writ a report in Form 1 of the Schedule to the Bailiffs Act.

NUKU’ALOFA: …….. [insert date]

……..……

SEAL Chief Justice/ Judge

Form 21

WRIT OF HABEAS CORPUS

O.40 r.6

IN THE SUPREME COURT OF TONGA **Application No.**

CIVIL JURISDICTION

REGISTRY …… [state Registry in which issued]

IN THE MATTER OF:

[name of person restrained]

AND

IN THE MATTER of an application for a Writ of Habeas Corpus

…… [Name of Reigning Monarch], by the grace of God, King —

To the Officer in Charge of our prison at [location] greeting —

YOU ARE COMMANDED to attend before the Hon Justice …… [name] at the Supreme Court, Nuku'alofa, on the …… day of …… 20… at a.m./p.m.

AND THAT you do then have with you —

1. …… [name of person restrained] who is said to be detained in your custody;
2. The authority for the person being taken and detained, by whatsoever name the person may be called therein;
3. This writ; and
4. Your return to this writ;

So that our Court may then and there determine whether such authority is legal.

AND TAKE NOTICE THAT in default you may be committed to prison for your contempt in not obeying this writ.

WITNESS THE HON JUSTICE ……,

Judge of the Supreme Court of Tonga this ……. day of …… 20….

……..……

SEAL Chief Justice/ Judge

This writ was issued by …… [name] of ……..……... [address]

Note: This matter is governed by Order 40 of the Supreme Court Rules, a copy of which is attached.

Form 22

NOTICE OF CHANGE OF LAWYER

O.43 r.1(1) and (2)

[Heading as in Form 1 — modified as necessary]

TAKE NOTICE that —

*the lawyer for the plaintiff (or defendant or third-party) is now —

……

……

……[name and address for service of the new lawyer].

*the plaintiff (or defendant or third-party) now acts in person in place of

……

……

……[name and address of previous lawyer].

DATED the …….. day of …… 20… .

……..……

Plaintiff or defendant or third party

[or the new lawyer]

To: the Registrar of the Supreme Court

and to: ……..…… [name other party to the proceedings]

(* delete as appropriate)

Form 23

WITNESS SUMMONS

O.44 r.2(1)

[to be printed in the Tongan language for all Tongan witnesses]

[Set out general heading to identify the proceeding]

To: …… [set out the name of the witness]

Of: …… [identify the location of the witness]

You are required to attend before the Supreme Court at …… [state relevant registry] on the …… day of …….. 20…, at the hour of …… am/pm to give evidence on behalf of …… [name the party].

You are entitled to be paid conduct money on service of the summons in the sum of $5 pa'anga (or state any other amount ordered by the Court).

TAKE NOTICE that if you fail to obey the summons you may be held in contempt of Court and imprisoned for any term not exceeding 8 days.

DATED the …… day of …… 20…. .

……..……

SEAL Registrar of Supreme Court

Form 24

REQUEST TO TAX BILL OF COSTS

O.46 r.6(2)

[on lawyer's letter head]

To: The Registrar of the Supreme Court

NUKU'ALOFA

Re: [Cite name of parties and Court reference number]

REQUEST TO TAX BILL OF COSTS

The *plaintiff's/defendant's bill of costs in this proceeding was filed on …… day of …… 20… pursuant to the order of Hon Justice …… dated …… day of …… 20…. .

Service of the bill of costs on the plaintiff/defendant was effected on the …… day of ……. 20… as is evidenced by the Certificate of Service filed on the …… day of …… 20…. .

To date no opposition to the *plaintiff's/defendant's bill of costs has been received and no agreement as to costs has been reached. I respectfully request taxation of my client's bill of costs.

Signed

……..……

(Lawyer for party making the request)

(* delete as appropriate)

Form 25

CERTIFICATE OF TAXATION

O.46 r.7(2)
O.46 r.11

[Heading as in Form 3 modified as necessary]

CERTIFICATE OF TAXATION

I hereby certify that pursuant to the Order of the Court made on the …… day of …….. 20… , the costs of the plaintiff/defendant have this day been taxed and allowed in the sum of —

TOTAL AMOUNT ALLOWED ON TAXATION = $.....

DATED: …… day of …… 20…

……..……

SEAL (Signature of Registrar or Judge as appropriate)

ENDNOTES

[1] Supreme Court Rules 2007.