

SUBORDINATE COURTS ACT
(CHAPTER 6)
MAGISTRATES' COURT (EXECUTION PROCEEDINGS)
RULES

S 5/92

REVISED EDITION 2001

(31st January 2001)

SUBSIDIARY LEGISLATION

Rules under section 25

**MAGISTRATES' COURTS (EXECUTION PROCEEDINGS)
RULES**

ARRANGEMENT OF RULES

Rule

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SUBSIDIARY LEGISLATION

Rules under section 25

MAGISTRATES' COURTS (EXECUTION PROCEEDINGS)
RULES

Commencement: 27th March 1992
[S 5/92]

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Magistrates' Courts (Execution Proceedings) Rules.

Interpretation.

2. In these Rules —

“Court” means a Magistrate’s Court;

“Court bailiff” means any person appointed to be a bailiff of a Court;

“decree” means a decree for the payment of money.

PART II

EXECUTION

Mode of execution.

3. A decree by a Court may be enforced as follows —

(a) by attachment and sale of the movable or immovable property of the judgment debtor;

(b) by garnishee proceedings under rule 17;

(c) by detention of the judgment debtor in prison.

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Judgment debtor may be summoned.

4. (1) A judgment creditor who wishes to execute a decree may apply, orally or in writing, to the Court which made the decree for a summons requiring the judgment debtor to appear at a place and time and on a date stated therein to the amount owing to the judgment creditor.

(2) The fee for any such application shall be \$5.

(3) The Court may issue a summons forthwith.

(4) Such summons shall be in Form 1 in the Schedule. The fee payable on the issue thereof shall be \$10.

(5) If the judgment debtor is not within the jurisdiction of the Court which made the decree, the summons issued under rule 4(3) shall be transmitted to the Court within whose jurisdiction the judgment debtor is believed to be and the latter Court shall cause the summons to be served on the judgment debtor.

When judgment debtor liable to arrest.

5. (1) If the judgment debtor does not appear before the Court in obedience to a summons issued under rule 4(3), the judgment creditor may apply, orally or in writing, for the issue of a warrant for the arrest of the judgment debtor.

(2) The fee for any such application shall be \$5.

(3) The Court may issue a warrant of arrest against the judgment debtor.

(4) Such warrant shall be in Form 2 in the Schedule. The fee payable on the issue thereof shall be \$20.

(5) If the judgment debtor is not within the jurisdiction of the Court which made the decree, the warrant of arrest issued under rule 5(3) shall be transmitted to the Court within whose jurisdiction the judgment debtor or is believed to be and the latter Court shall cause such warrant to be executed.

Examination of judgment debtor.

6. (1) When the judgment debtor appears before the Court in obedience to a summons issued under rule 4(3), or in pursuance of a warrant of arrest issued under rule 5(3), the Court shall examine him as to his means and his ability to pay the amount owing to the judgment creditor.

(2) The judgment debtor shall be examined on oath and shall be entitled to call witnesses.

(3) The judgment creditor shall be entitled to give evidence and to call witnesses. Any evidence given at the examination of the judgment debtor shall be subject to cross-examination by the opposing party.

Production of documents.

7. The judgment debtor shall upon such examination produce all books, papers and documents in his possession or power relating to his property.

Powers of Court.

8. (1) Subject to the provisions of these Rules, whenever —

- (i) the Court has concluded its examination under rule 6(1); or
- (ii) the judgment debtor, having been duly served with a summons issued under rule 4(3), fails to appear before the Court for examination under rule 6(1); or
- (iii) the judgment debtor cannot after diligent search be traced,

the Court may make an order under rule 8(2).

(2) The Court may, in accordance with rule 8(1), make any of the following orders —

(a) order the judgment debtor to be discharged, whereupon such discharge shall operate as an extinguishment of the debt;

(b) order the amount owing to the judgment creditor, together with costs, to be paid by instalments of such amount as the Court may fix, such instalments to be paid on specified dates or at specified intervals of time;

(c) by warrant addressed to the Court bailiff order the attachment and sale of any movable property belonging to the judgment debtor;

(d) order the judgment debtor to be committed to prison under rule 14; provided that such an order may be suspended on payment of instalments of such amount as the Court may fix;

(e) make such other order as in the circumstances of the case the Court may consider just.

Payment of instalments.

9. (1) If the judgment debtor makes default in the payment of any instalment ordered to be paid under rule 8(2) the judgment creditor may apply, orally or in writing, for a second or subsequent summons to be issued under rule 4 and thereupon the provisions of rules 4, 5, 6, 7 and 8 shall apply.

(2) No further fee shall be charged in respect of a second or subsequent application for a warrant of arrest or in respect of the issue of any such summons or warrant.

PART III

MOVABLE PROPERTY

Attachment and sale of movable property.

10. (1) The warrant of attachment and sale of movable property issued under rule 8(2)(c) shall be in Form 3 in the Schedule.

(2) The fee payable on the issue of such warrant shall be \$20.

(3) The attachment shall be made by seizure of the property to be attached. The Court shall, if it is practicable to do so, remove such property and convey it to the Courthouse where it shall be kept in safe custody. If it is not practicable to remove such property, the attachment shall be made by affixing thereto a copy of the warrant of attachment and sale, or by displaying at the place where such property is a copy of the warrant.

(4) No attachment shall be made before 6 a.m. or after 10 p.m.

(5) Such reasonable force as may be necessary to give effect to the warrant of attachment may be used. The Court bailiff and any person assisting him may, when he has gained access to a dwelling-house, break open, if necessary, the door of any room in which he has reason to believe any property liable to attachment to be.

(6) If he is engaged in executing any warrant of attachment and sale, the Court bailiff shall carry on his person a letter of authority, indicating that he is the holder of the office of Court bailiff. He shall produce such letter for inspection if requested to do so by any person interested in the attachment and sale. Failure to produce such certificate shall not invalidate such attachment and sale.

(7) A Court bailiff may, if he thinks it desirable, be accompanied by a police officer, who shall be in uniform, or by a Court peon, or by both, to assist him in making the attachment. The judgment creditor may also accompany the Court bailiff.

(8) No person shall without lawful authority —

(a) interfere with the process of attachment and sale; or

(b) obstruct the Court bailiff, or any person authorised by the Court to assist the Court bailiff in the execution of his duties.

(9) Any person contravening rule 10(8) shall be guilty of an offence and liable to a fine of \$2,000.

Property outside jurisdiction.

11. (1) If it appears that there is no property liable to attachment within the jurisdiction of the Court which made the decree, such Court shall transmit the warrant of attachment and sale to the Court within whose jurisdiction such property is believed to be, and the latter Court shall cause the warrant to be executed by the Court bailiff attached to that Court.

(2) The Court bailiff shall return the warrant on the due date to the Court to which he is attached and the latter Court shall transmit it to the Court which made the decree.

(3) If the property is sold in pursuance of the warrant of attachment and sale the Court bailiff shall pay the proceeds of the sale into the Court to which he is attached and the latter Court shall advise the Court which made the decree accordingly.

Sale of movable property.

12. (1) Any property sold in pursuance of a warrant of attachment and sale issued under rule 8(2)(c) shall be sold by public auction, unless the Magistrate otherwise directs. If the Magistrate does direct otherwise, the property shall be sold in accordance with such directions.

(2) Notice of the date, hour and place of the intended sale shall be exhibited at the Courthouse. No sale shall take place until after the expiration of at least 15 days from the date of such notice.

(3) Any property of a perishable nature may be sold in pursuance of a warrant of attachment and sale issued under rule 8(2)(c) by public auction, or in such other manner as the Magistrate may direct, without complying with the provisions of rule 12(2).

Raising of attachment and cancellation of sale.

13. If the judgment debtor, or any person on his behalf, pays the amount of owing to the judgment creditor, together with all costs, the attachment of the property shall cease forthwith and the sale shall be cancelled.

PART IV

SUPPLEMENTARY

Committal to prison.

14. (1) If the Court is satisfied —

(a) that the judgment debtor has, or has had since the date of the decree, the means to pay the sum in respect of which he has made default; and

(b) that the judgment debtor has refused or neglected, or refuses or neglects, to pay the sum in respect of which he is in default,

the Court may order the committal of such judgment debtor to prison.

(2) No order committing a judgment debtor to prison shall be made unless the judgment creditor deposits in Court the sum of \$600 as a subsistence allowance for the maintenance of the judgment debtor in prison. When the judgment debtor is released from

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prison, the cost of his maintenance calculated at the rate of \$20 per diem shall be deducted from the sum of \$600 and the balance, if any, shall be refunded to the judgment creditor.

(3) No period of detention in prison as a civil prisoner shall exceed 30 days.

(4) Detention in prison as a civil prisoner shall not extinguish the judgment debt, and the cost of such maintenance as calculated under rule 14(2) shall be added to and form part of such judgment debt.

(5) A judgment debtor shall not be committed to prison on more than one occasion in respect of the same judgment debt or any part thereof.

(6) When the judgment debtor, or any person on his behalf, pays the amount owing to the judgment creditor, together with all costs, including the subsistence allowance mentioned in rule 14(2) the judgment debtor shall be released from prison forthwith.

(7) If the judgment debtor is not within the local limits of the jurisdiction of the Court which made the decree, the order committing the judgment debtor to prison shall be transmitted to the Court within whose jurisdiction the judgment debtor is believed to be, and the latter Court shall cause such order to be executed.

(8) An order committing a judgment debtor to prison under this rule shall continue in force, if not executed, for a period of 12 months from the date thereof.

Investigation into claims and objections.

15. (a) If a claim is made by a third party to any property attached in pursuance of a warrant of attachment and sale issued under rule 8(2)(c); or

(b) if an objection is made on the ground that the property is not liable to attachment; or

(c) if in any proceedings under rule 17 it is suggested by a garnishee that the debt sought to be attached belongs to a third person, or that a third person has a lien or charge upon it,

the Court shall investigate the claim or objection and, after hearing all interested parties, shall make such order as it may think fit.

Exemption from attachment.

16. The following property shall be exempt from attachment and sale —

(a) the necessary wearing apparel, cooking utensils, beds and bedding of the judgment debtor, his wife and children;

(b) the tools of artisans;

(c) if the judgment debtor is a farmer, his implements of husbandry and such cattle, buffaloes and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such; and

(d) where the judgment debtor is a fisherman, his fishing gear, nets, traps and bait, and such fishing boats as may, in the opinion of the Court, be necessary to enable him to earn a living as such.

Attachment of debts by garnishee order.

17. (1) The Court may, upon the *ex parte* application of the judgment creditor and on payment of a fee of \$10, and upon being satisfied that the decree is still unsatisfied and that any other person is indebted to such judgment debtor, make an order nisi in Form 4 in the Schedule.

(2) Such order shall provide that debts owing from that other person, hereafter called the garnishee, to the judgment debtor shall be attached to satisfy the decree together with the costs of the garnishee proceedings. By the same or any subsequent order, the Court may order that the garnishee shall appear before the Court to show cause why he should not pay to the person who has obtained such decree the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the decree together with costs aforesaid.

(3) The following classes of periodical payments shall be exempt from attachment under rule 17(1) namely —

- (a) payments so exempt under any written law of Brunei Darussalam;
- (b) wages of seamen, or of domestic servants, labourers or workmen;
- (c) maintenance due from a husband to his divorced wife.

(4) At least 7 days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.

(5) If money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custody of a Court, the order nisi shall not be made under the provisions of rule 17(1) unless consent to the attachment is first obtained from the Attorney General, in the case of money in the custody or control of a public officer or of the Court, in the case of money in the custody of a Court. Notice of the order shall be served on the public officer or on the Registrar of the Court.

(6) Service of an order that a debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court may direct, shall bind the debt in his hands.

(7) If the garnishee does not within the time prescribed in the order nisi pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, together with the costs of the garnishee proceedings, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, the Court upon proof of service may order payment of the amount from such garnishee, or so much as may be sufficient to satisfy the judgment, together with the costs of the garnishee proceedings.

(8) If the garnishee appears and disputes his liability, the Court, instead of making an order that payment shall be made, may order that any issue necessary for determining his

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liability be determined in any manner in which any issue in any proceedings may be tried or determined.

(9) Payment made by, or execution levied upon, a garnishee under any such proceedings shall be a valid discharge to him against the debtor liable under a judgment, to the amount paid or levied.

Recovery of possession of immovable property.

18. When an order or judgment for the recovery of immovable property has been made by a Court, the party who has obtained the judgment may apply, orally or in writing, to the Court to be put in possession of the property, if necessary by the Court bailiff.

Execution if no procedure provided.

19. If no provision for execution procedure is made, or no appropriate form is provided by these Rules, the procedure and practice in force in the High Court shall, as near as may be, be followed.

SCHEDULE

FORM 1

In the Court of the Magistrate at

SUMMONS TO JUDGMENT DEBTOR TO SHOW CAUSE

(Rule 4(4))

A.B. ... Plaintiff-Judgment Creditor

versus

C.D. ... Defendant-Judgment debtor

Civil Case No. 20

To (name)

of (address)

WHEREAS *A.B.* has applied to this Court for a summons to be issued requiring you to show cause why the judgment passed in the abovementioned case should not be executed by the attachment and sale of your movable property and/or by your detention in prison as a civil prisoner.

THE SUMMONS is to require you to attend on the day of, 20, at o'clock the Court of Magistrate

at for the purpose of showing cause accordingly; provided that if the sum now owing to namely, \$ inclusive of all costs, be sooner paid, your attendance in obedience to this summons may be dispensed with.

Given under my hand and the seal of the Court this day of, 20

Magistrate

Fee: \$10. Paid vide Receipt No. dated

CERTIFICATE OF SERVICE

I hereby certify that I served the original of this summons on the aforesaid on the day of 20, at o'clock at (place) (Place) (Date)

(Signature) Process-server.

FORM 2

In the Court of the Magistrate at

WARRANT OF ARREST OF JUDGMENT-DEBTOR

(Rule 5(4))

A.B. ... Plaintiff-Judgment creditor

versus

C.D. ... Defendant-Judgment debtor

Civil Case No. 20

To the Officer in Charge of the Police District of and to all Police Constables.

SCHEDULE — continued

FORM 2 — continued

WHEREAS (name), the judgment debtor in the above-mentioned case, of (address) has failed to appear before this Court in obedience to a summons issued on the day of, 20

THIS WARRANT is to command you to arrest the said and to bring him before this Court as soon as may be practicable, provided that if the sum now owing to the judgment-creditor, namely \$, inclusive of all costs, be paid to you, you shall release the said forthwith.

You are further commanded to return this Warrant on or before the day of, 20, with an endorsement certifying the day on which and the manner in which it has been executed, or why it has not been executed.

Given under my hand and the seal of the Court this day of, 20

.....
Magistrate

Fee: \$20. Paid vide Receipt No. dated

FORM 3

In the Court of the Magistrate at

WARRANT OF ATTACHMENT AND SALE OF MOVABLE PROPERTY

(Rule 10(1))

A.B. ... Plaintiff-Judgment creditor

versus

C.D. ... Defendant-Judgment debtor

Civil Case No. 20

To the Court Bailiff:

SCHEDULE — continued

FORM 3 — continued

WHEREAS C.D. was ordered by judgment of this Court passed on the day of, 20, in the above-mentioned case to pay to A.B. the following sum —

Table with 2 columns: Description and Amount. Rows include Principal, Costs (including interest if any), Costs of execution, TOTAL, Less sum paid, if any, and Sum now owing.

AND WHEREAS the said sum of \$, now owing, has not been paid:

THIS WARRANT is to command you to attach the movable property as set forth in the Schedule hereto annexed (1) property of the said C.D. which shall be pointed out to you by the said A.B., (1) provided that if the sum now owing, namely \$ inclusive of all costs, shall be paid to you before you have attached the said property, you shall not proceed with the attachment.

YOU are further commanded to sell, or to arrange for a local auctioneer or other suitable person to sell, by public auction the property attached under the authority of this of this Warrant, providing that you have given at least days' previous notice of the intended sale affixing the same in the Court-house, and provided further that if the sum now owing, namely, \$ inclusive of all costs, be sooner paid, you shall cancel, or cause to be cancelled, the intended sale.

YOU are further commanded to return this Warrant on or before the day of, 20, with an endorsement certifying the manner in which it has been executed or why it has not been executed.

Given under my hand and the seal of the Court this day of, 20

..... Magistrate

SCHEDULE — continued

FORM 3 — continued

Fee: \$20. Paid vide Receipt No. dated

Note — (1) Delete whichever is inapplicable.

Schedule of movable property to be attached —
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.....

FORM 4

In the Court of the Magistrate at

GARNISHEE ORDER NISI

(Rule 17)

A.B. ... Plaintiff-Judgment creditor
versus
C.D. ... Defendant-Judgment debtor

Civil Case No. 20

WHEREAS —

1. On the day of, 20, in the
Court X.Y. (the judgment debtor) was ordered to pay \$ to
A.B. (the judgment creditor) together with \$ for costs.

2. Out of the total debt of \$ the sum of \$
remains owing to the judgment creditor.

3. The judgment creditor claims that you owe the said judgment debtor the sum of
\$

YOU ARE HEREBY ORDERED to appear at a Court to be held at
on the day of, 20, at
a.m./p.m. to tell the Court of any reason why you should not be ordered to pay the judgment
creditor either —

SCHEDULE — *continued*

FORM 4 — *continued*

- (i) the whole of the debt owed by you to the judgment debtor;
- or
- (ii) so much of it as may be the sum remaining owing to the judgment creditor, together with the costs of this summons.

AND TAKE NOTICE that after receiving this summons you may not pay the whole or any part of the debt owed by you to the judgment debtor to any person PROVIDED that if within days of receiving this summons (including the day you are served with it) you pay the total amount of the debt and costs (as shown below) into Court, then you will incur no further costs.

Given under my hand and the seal of the Court this
 day of, 20

.....
 Magistrate