

SUBORDINATE COURTS ACT
(CHAPTER 6)
MAGISTRATES' COURTS (CIVIL PROCEDURE)
RULES

S 6/92

Amended by
S 27/96

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SUBSIDIARY LEGISLATION

Rules under section 25

**MAGISTRATES' COURTS (CIVIL PROCEDURE)
RULES**

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SUBSIDIARY LEGISLATION

Rules under section 25

**MAGISTRATES' COURTS (CIVIL PROCEDURE)
RULES**

Commencement: 27th March 1992

[S 6/92]

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Magistrate' Courts (Civil Procedure) Rules.

Interpretation.

2. In these Rules —

“civil proceedings” means a civil action triable by a Magistrate and an order by a Magistrate for the payment of any sum of money or for the doing or abstaining from doing of any act or thing not enforceable by fine or imprisonment in the first instance;

“claim” means a debt, demand, damage or relief claimed and a claim for the recovery of a chattel or thing;

“Clerk” means the Clerk of the Magistrates' Court in which proceedings have been commenced;

“counter-claim” includes a claim by way of cross-action;

“Court” means a Magistrate's Court established under the Act;

“defendant” means a person against whom a claim is made;

“district” means the administrative district in which the Court house is situated;

“judgment” means any adjudication, order, or decision of a Magistrate;

“Magistrate's Court” means a Magistrate's Court established under the Act;

“plaintiff” means the person making a claim.

PART II

JURISDICTION AND LAW

Civil proceedings to be summary.

3. A civil proceeding within the jurisdiction of a Magistrate's Court shall be heard and determined in a summary manner under these Rules.

Claim not to exceed Magistrate's jurisdiction.

4. Subject to the provisions of section 17 of the Act, a Magistrate shall have jurisdiction to hear and determine an action if the claim consists of a balance not exceeding the amount of his jurisdiction after a set off of any debt or demand by the defendant and admitted by the plaintiff in his claim.

Money recoverable by written law.

5. (1) Subject to the provisions of section 17 of the Act, a Court shall have jurisdiction to hear an action for the recovery of a penalty, contribution or other like sum which is recoverable under a written law, if —

(a) it is not expressly provided by that or any other written law that the demand shall be recoverable only in some other Court; and

(b) the amount claimed in the action does not exceed the amount of the jurisdiction of the Magistrate concerned.

(2) For the purposes of this rule the expression "penalty" shall not include a fine to which a person is liable on conviction of an offence in criminal proceedings.

Division of causes of action.

6. (1) A plaintiff may not divide a cause of action for the purpose of bringing two or more actions in the Court.

(2) An action pending in the same Court may be consolidated by order of a Magistrate, of his own motion or on the application of any party on notice, whether or not such Magistrate finally adjudicates thereon.

(3) An action may not be consolidated if the effect of such consolidation is to bring the total of the consolidated action above the jurisdiction of the Magistrate adjudicating.

(4) If several actions by different plaintiffs against the same defendant are proceeding in the same Court, in respect of causes of action arising out of the same circumstances, the defendant may, on filing an undertaking to be bound, so far as his liability in the several actions is concerned, by the decision in such one of the actions as may be selected by the Court, apply to the Court for an order to stay the other actions until

judgment is given in the selected action. Application under this paragraph shall be made on notice to the plaintiffs who would be affected by any order made thereon.

Abandonment of part of claim.

7. (1) Subject of the provisions of section 17 of the Act, a plaintiff may, if he has a cause of action for more than the amount of the jurisdiction of the Magistrate adjudicating, abandon the excess. Thereupon the Court shall have jurisdiction to hear and determine the action.

(2) If a Court has jurisdiction to hear and determine an action by virtue of rule 7(1) the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

Executor may sue and be sued.

8. An executor or administrator may sue and be sued in the Court in like manner as if he were a party in his own right, and judgment and execution shall be such as, in the like case, would be given or issued in a Court.

Action by infant for wages.

9. An infant may bring an action in the Court for any sum of money, not exceeding \$5,000 which may be due to him for wages or piece work or for work as a servant, in the same manner and in all respects as if he were of full age.

Procedure when persons jointly liable.

10. (1) Where a plaintiff has a demand against two or more persons jointly liable, it shall be sufficient to serve any of those persons with process, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.

(2) If judgment is obtained against a person as aforesaid and is satisfied by that person, he shall be entitled to recover in a Court contribution from any other person jointly liable with him.

(3) The provisions of this rule shall not be deemed to affect the rights or liabilities of joint tortfeasors.

Suits by infants.

11. Subject to the provisions of rule 9 an infant may sue by his next friend and may defend by his guardian.

PART III

INSTITUTION OF ACTIONS

Where action may be commenced.

12. (1) Civil proceedings shall be commenced in the nearest Court within the district in which —

(a) the defendant or one of the defendants resides or carries on his business at the time of commencing the action;

(b) the cause of action arose wholly or in part; or

(c) the land, person or thing, which is the subject-matter of the civil proceedings is situated.

(2) Notwithstanding rule 12(1), if it appears to a Magistrate that it is the general convenience of the parties or witnesses for a cause to be heard in any other Court within Brunei Darussalam, he may so direct.

Action to be by plaintiff.

13. (1) On the application of a person wishing to institute civil proceedings, and on payment of the prescribed fee, the Clerk shall register in the Civil Cause Book a statement in writing, hereinafter called a *plaint*, stating the names and last known places of the residence of the parties and the substance of the action intended to be brought. The Clerk shall deliver a *plaint note* to the applicant in Form 1 in the Schedule.

(2) The Court may refuse to register a *plaint* which appears to disclose no cause of action. It shall so refuse if the *plaint* is in respect of a matter not within the jurisdiction of the Court.

(3) The Clerk shall enter such refusal and the grounds thereof in the Civil Cause Book and so inform the applicant.

(4) Any person aggrieved by a decision of the Court under rule 13(2) may appeal against such decision as if it were an order of the Court.

(5) The refusal to register a *plaint* under this rule shall not preclude the plaintiff from presenting a fresh *plaint* in respect of the same matter.

Issue of summons to defendant.

14. (1) Upon registration of a *plaint* the Court shall issue a summons directed to the defendant, requiring him to appear before the Court at a certain time, being not less than 7 days from the date of service of such summons, to answer to the *plaint*.

(2) Upon issue of the summons, the Court shall direct the defendant to file a written statement of defence in answer to the *plaint* within such time as the Court may think fit.

(3) A defendant who files a written statement of defence, shall not be precluded thereby from raising at or prior to the trial of the action grounds of defence other than those disclosed in his written statement of defence.

Effect of misnomer in plaint or summons.

15. (1) No misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so long as the person or place is so described therein as to be commonly known.

(2) If any misnomer or inaccurate description appears to the Court at the hearing to be such that the defendant has been thereby deceived or misled, the Court may make any necessary amendments, and adjourn the further hearing of the case, upon such terms as it may think fit.

PART IV

SERVICE OF PROCESS

Normal mode of service.

16. (1) Service of a summons shall be effected by the process server or other person appointed by the Court for the purpose of delivering the mode of summons —

- (a) if on an individual, to him personally;
- (b) if on a firm or corporation —
 - (i) to one of the partners;
 - (ii) to a director;
 - (iii) to the secretary;
 - (iv) to an agent within the district;
 - (v) by leaving the summons at its principal place of business in Brunei Darussalam; or
 - (vi) to anyone having control of this business.

(2) Where service has been effected by leaving a summons at an address given by the plaintiff, the Court may, if it is doubtful whether the defendant has actual knowledge of the summons, require the plaintiff to satisfy it that the summons has in fact come to the knowledge of the defendant.

(3) The provisions of this rule shall, with the necessary modifications as to the document, apply to any process.

[Subsidiary]

(4) The Court may authorise any person to effect service either generally or for any particular case.

Substituted service.

17. (1) The Court may if it appears that ordinary service of any process cannot conveniently be effected order that service may be effected —

(a) by delivery to an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would through that agent or other person, come to the knowledge of the person to be served;

(b) by advertisement in some newspaper circulating within Brunei Darussalam;

(c) by notice at the Court house or some other place of public resort in the district, or at the usual or last known place of abode, or of business, of the person to be served;

(d) by affixing the document to the last known place of abode or business of the person to be served; or

(e) in such other manner as the Court may direct.

(2) Upon compliance with such order, the service shall be deemed to be good and sufficient service of the said document upon the person to be served.

Service of Government officers.

18. When a person to be served is in the service of the Government, the Court may transmit a duplicate of the document to be served to the head of the department in which the person is employed, and such head shall cause the same to be served on the party accordingly.

When service may be effected.

19. Service shall not be made before 6 a.m. nor after 10 p.m. unless the Court directs otherwise by order indorsed on the document to be served.

Proof of Service.

20. If a summons or other process, issued from a Court, is served by a process server or other person appointed for the purpose, an indorsement on a copy of the summons or process under the hand of such person showing the fact and the mode of service shall be *prima facie* evidence thereof.

PART V

JOINDER OF PARTIES

Persons who may be joined as plaintiffs.

21. Any person may be joined as a plaintiff against whom a right to relief arising out of the same act or series of acts is alleged to exist, whether jointly, severally, or in the alternative where, if such persons brought separate actions, any common question of law or fact would arise.

Power to order separate trials.

22. The Court may, if it appears that a joinder of plaintiffs may embarrass or delay the trial of the action, order separate trials or make such other order as may be expedient.

Joinder of defendants.

23. A person may be joined as a defendant against whom a right to relief arising out of the same act or series of acts is alleged to exist, whether jointly, severally, or in the alternative, where, if separate actions were brought against such persons, any common question of law or fact would arise.

Joinder of parties liable on same contract.

24. The plaintiff may join as parties to the same action any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

One party may sue or defend on behalf of others.

25. (1) If there are numerous persons having the same interest in one action, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, on behalf of or for the benefit of all persons so interested.

(2) The Court shall in such a case give notice of the institution of the action to all such persons, either by personal service or (when by reason of the number of persons or any other cause such service is not reasonably practicable) by public advertisement, as the Court may direct.

(3) A person on whose behalf or for whose benefit an action is instituted or defended under this rule may apply to the Court to be made a party to such action.

Action not to fail by reason of mis-joinder or non-joinder.

26. (1) No action shall be defeated by reason of the mis-joinder or non-joinder of parties.

[Subsidiary]

(2) The Court may in every action deal with the rights and interests of the parties actually before it.

Court may substitute or add parties.

27. (1) If an action has been instituted in the name of the wrong person as plaintiff, or if it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) The Court may either upon or without the application of either party, order that any party improperly joined, be struck out, and that any person who ought to have been joined, be added.

(3) If a plaintiff or defendant is added, the plaint and the summons shall, unless the Court otherwise directs, be amended in such manner as may be necessary. Amended copies of the summons shall be served on every defendant.

(4) Subject to the provisions of any law relating to the limitation of actions, proceedings against any person added as defendant shall be deemed to have been instituted on the service of the summons on him.

Appearance of one of several plaintiffs or defendants for others.

28. (1) If there are more plaintiffs or defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for the others in any proceeding.

(2) The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Objections as to mis-joinder or non-joinder.

29. An objection on the ground of mis-joinder or non-joinder of parties shall be taken at the earliest possible opportunity.

Judgment for or against one or more of joint parties.

30. Judgment may be given without any amendment —

(a) for such one or more of the plaintiffs as may be found to be entitled to relief;
and

(b) against such one or more of the defendants as may be found to be liable.

PART VI

THIRD PARTY PROCEDURE

Written statement and summons to third party.

31. (1) A defendant who claims to be entitled to a contribution or indemnity against any person who is not a party to the action, may file in the Court a written statement setting forth the nature and grounds of the claim.

(2) A summons may then, by leave of the Court, be issued to such person, hereinafter called the third party, to appear on the date fixed for the hearing of the action. Such a summons shall contain details of the plaint and shall be accompanied by a copy of the written statement.

Non-appearance of third party.

32. (1) If a third party does not appear, when the action is called on for hearing, if it is not proved that the summons was duly served on the third party, he shall be dismissed from the action, but without prejudice to the right of the defendant upon whose application the summons was issued to enforce his claim to a contribution or indemnity in a separate action.

(2) If a third party does not appear, when the action is called on for the hearing, if it is proved that the summons was duly served on the third party —

(a) the defendant shall, if he suffers judgment by default, be entitled to obtain judgment against the third party to the extent of the contribution or indemnity claimed in the summons:

Provided that it shall be lawful for the Court to set aside or vary any judgment so obtained upon such terms as may seem just; and

(b) if the action is tried and there is a judgment for the plaintiff the Court may, enter judgment for the defendant.

(3) No execution shall be issued, without leave of the Court, until after satisfaction by the defendant of the judgment against him. If the action is finally decided in the plaintiff's favour otherwise than by trial the Court may, on application made, order judgment to be entered for the defendant against the third party after satisfaction by the defendant of the amount recovered by the plaintiff against him.

Appearance of third party.

33. If a third party appears, the defendant may apply to the Court for directions. The Court may, if satisfied that there is a question to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of liability to be tried in such manner as the Court may direct. If not so satisfied the Court may order judgment to be entered in favour of the defendant.

[Subsidiary]

What directions may be given.

34. The Court, on the hearing of the application mentioned in rule 33 may give such directions as shall appear proper for the determination of the question.

Costs.

35. The Court may order any party to pay the costs of any other party or may give such directions as to costs as it may think fit.

Defendant claiming against co-defendant.

36. (1) If a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a summons may be issued. The same procedure shall be adopted for the determination of such questions between the defendants as would apply if the last mentioned defendant were a third party.

(2) Rule 36(1) shall not prejudice the rights of the plaintiff against any defendant in the action.

Powers exercisable in chambers.

37. Any of the powers conferred upon the Court by rules 31 to 36 inclusive may be exercised by a Magistrate sitting in chambers.

PART VII

ENTERING JUDGMENT

Admitting debts or parts of debts and judgment thereon.

38. (1) A person against whom a plaint shall be entered in any Court may sign a statement admitting the amount of the claim, or part of the amount of the claim, for which the plaint is entered.

(2) It shall be the duty of the Clerk of the Court in which the plaint was entered, to send notice thereof to the plaintiff by post, or by causing it to be delivered at the address furnished in the plaint or at his usual place of abode or business. Thereupon it shall not be necessary for the plaintiff to prove the claim as admitted as aforesaid.

(3) The Court shall, upon proof by affidavit or otherwise of the signature of the party, enter judgment for the claim so admitted.

Agreement as to amount of debt and conditions of payment.

39. (1) If a defendant agrees with the plaintiff as to the amount of the claim, and as to the terms and conditions upon which it shall be paid and satisfied, they may sign a statement to that effect.

(2) The Court shall enter judgment for the plaintiff for the amount so agreed on, upon the terms and conditions mentioned in the statement. The judgment shall have the same effect, and shall be enforceable in the same manner, as if it had been a judgment of the Court.

Payment into Court by defendant and notice to plaintiff.

40. (1) The defendant may, at any time before the hearing, file a consent in writing to judgment; or may pay into Court a sum of money in full satisfaction of the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment.

(2) Notice of the payment shall be communicated by the Court to the plaintiff, either personally or in accordance with the provisions of rules 16, 17 and 18.

(3) The payment shall without delay be paid by the Clerk to the plaintiff. If the plaintiff elects to proceed and recovers no further sum in the action than has been paid into Court, he shall pay to the defendant the costs incurred by him in the action after the payment into Court, together with such compensation, not exceeding \$500 as the Magistrate directs. An order shall be made by the Magistrate for the payment of such costs, and compensation, by the plaintiff, to be recovered as in the case of a judgment against him.

Judgment in default.

41. (1) A plaintiff may apply to enter judgment if no defence or counterclaim has been filed.

(2) An application for entry of judgment under rule 41(1) shall be made in writing to a Magistrate.

(3) If application is made under rule 41(2) a Magistrate shall cause judgment to be entered for the plaintiff with costs.

(4) If the defendant files a defence or counterclaim before judgment has been entered, the provisions of this rule shall not apply.

(5) Judgment shall not be entered under this rule unless the Magistrate is satisfied that the defendant has been served with the plaint.

(6) A Magistrate may, on such terms as he thinks fit, set aside or vary judgment entered under this rule.

(7) An applicant for entry of judgment shall complete Form 7 in the Schedule.

PART VIII

PROCEDURE AT HEARING

Public or private sittings of the Court.

42. The sittings of the Court shall be in public; but the Court may, for special reasons to be recorded in writing, hear any particular matter in the presence only of the parties, the representatives, if any, qualified to appear on their behalf, and the officers of the Court.

Right of evidence.

43. In any civil proceedings in a Court, the following persons may address the Court —

(a) any party to the proceedings, including in the case of a person under a legal disability, his next friend or guardian *ad litem* or other proper person;

(b) any person duly admitted under the Legal Profession Act (Chapter 132) either generally or for the purposes of the proceedings; and

(c) any other person, at the discretion of the Magistrate, if the latter is satisfied that such person is not appearing for fee or reward.

Enlargement or abridgment of time.

44. (1) The parties may by consent enlarge or abridge any of the times fixed by these Rules for taking any step, or filing any document, or giving any notice.

(2) The Court may, at any time extend the time for doing any act or taking any proceeding, even if such time has expired.

Adjournment of Court.

45. (1) A Court may, from time to time, adjourn any civil proceedings held by it and shall note such adjournment in the record or draw up a formal order.

(2) If by reason of death or unavoidable absence, a Magistrate is not present at any sitting of a Court, the Clerk, after exercising any powers which he is authorised to exercise by any written law, shall adjourn generally all civil proceedings to such day as he thinks convenient, and enter in the record the cause of the adjournment.

(3) If there has been an adjournment, the Court may summon the parties to appear before the Court before the expiration of the period to which the case was adjourned.

Powers of amendment.

46. (1) A Court may, at any time before judgment, amend any defect and error in any proceedings, whether the defect or error is that of the party applying to amend or not.

(2) A Court may make any amendment as may be necessary for the purpose of determining the real question in issue between the parties.

(3) Any amendment may be made with or without costs and upon such terms as the Court may order.

Notes of evidence and minutes of civil proceedings.

47. (1) At the hearing of a civil proceeding the Court shall take notes in writing of —

- (a) any question of law raised at the hearing;
- (b) any legal submission made;
- (c) the substance of the oral evidence given before the Court; and
- (d) unless he reserves judgment, of his determination of the proceedings.

(2) Such notes shall form the record and be signed by the Magistrate.

(3) The Court shall, whether notice of appeal has been given or not, on the application of any party to the civil proceedings, and on payment by that party of such fee as may be prescribed, furnish him with a copy of the record.

Procedure when both parties appear.

48. (1) If, on the day of hearing, both parties appear the plaint shall be read to the defendant and the Court shall require him to make his defence thereto. On such defence being made, the Court shall record it and shall, except where it considers it necessary to order otherwise, proceed in a summary way to hear and determine the cause, without further pleading or formal joinder of issue.

(2) The Court may order the parties to state more fully their respective cases and may thereupon frame issues before determining the cause.

Examination of witnesses.

49. (1) Before the hearing of any civil proceedings in which witnesses are to be examined, the Court shall direct that all witnesses other than parties shall leave the Court.

(2) The Court may in its discretion permit professional and technical witnesses to remain in Court.

(3) Failure to comply with the provisions of this rule shall not invalidate the proceedings.

(4) The Court after an opening address, if any, shall hear the plaintiff, and such witnesses as he may examine and such other evidence as he may adduce in support of his plaint.

[Subsidiary]

(5) Subject to rule 53(2) the Court shall also hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence and such other witnesses as the plaintiff may, with leave of the Court, examine in reply.

(6) Addresses shall be made in accordance with the provisions of rule 61.

PROCEDURE WHEN ONLY ONE PARTY APPEARS

When plaintiff fails to appear or to prove his case.

50. (1) If, on the day of hearing or at any continuation or any adjournment of the Court or cause, the plaintiff shall not appear or sufficiently excuse his absence, the cause shall, unless the Court sees good reason to the contrary, be struck out except as to any counter-claim by the defendant.

(2) If the plaintiff appears but does not prove his claim to the satisfaction of the Court, the Court may strike out the cause or give judgment for the defendant without calling on the defendant for his defence.

(3) If the plaintiff does not appear when called upon, but the defendant appears and admits the cause of action to the full amount claimed, the Court may proceed to give judgment, with or without costs, as if the plaintiff had appeared.

Counter-claim where plaintiff does not appear.

51. If the defendant to a cause which has been struck out under rule 50 has a counter-claim the Court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counter-claim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counter-claim and direct notice of such postponement to be given to the plaintiff.

Costs of defendant where plaintiff does not appear.

52. If the plaintiff does not appear on the day of hearing, or at any continuation or adjournment of the Court or cause and the defendant appears, the Court may award costs to the defendant.

When defendant fails to appear.

53. (1) If on the day of hearing or at any continuation or adjournment of the Court or cause the plaintiff appears and the defendant does not appear or sufficiently excuse his absence or neglects to answer when called in Court the Court may, on due proof of service of the summons, and if satisfied that the time between the date of service and the date of hearing was sufficient for the defendant to have appeared had he wished so to do, proceed to the determination of the cause and the judgment thereon shall be as valid as if both parties had appeared.

(2) If the Court is not satisfied that the defendant has had such reasonable time, the Court shall adjourn the hearing to a convenient date and notify the defendant of the adjournment.

(3) If the Court has determined any cause or matter in the absence of the defendant under the provisions of sub-rule (1) and the defendant has filed a counter-claim, the counter-claim shall, unless the Court sees good reason to the contrary, be struck out.

Setting aside of judgment given in absence of party.

54. The Court, at the same or any subsequent sitting, may set aside any judgment or order given or made against any party in the absence of such party, and the execution thereupon, and may grant a new trial or hearing, upon such terms, if any, as it may think just, on sufficient cause being shown to the Court.

Re-listing of causes struck out.

55. Any cause struck out may, by leave of the Court, be re-instituted on such terms as to the Court may seem fit.

Power to refer to referee.

56. (1) A Court may send to a referee, on being satisfied that adequate provision has been made, whether by payment into Court or by giving security or otherwise for payment of the costs of the reference, for inquiry and report —

(a) a civil proceeding which requires the prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be carried out before it;

(b) a civil proceeding where the question in dispute consists wholly or in part of matters of account; and

(c) with the consent of the parties, any other matter arising out of a civil proceeding before it in which, for reasons to be recorded by the Court, it is satisfied that it is proper so to do.

(2) If a proceeding or matter is sent as aforesaid, the Court may direct how the reference shall be conducted, and may send back any report for further inquiry and report and, on consideration of any report or further report may give such judgment or make such order in the proceeding as it thinks fit.

(3) In this section a “referee” is a person appointed by the Chief Registrar.

How security is to be given and enforced.

57. (1) If either party to a cause makes an application to a Court that the other party shall give security, whether with or without sureties, and the Court is of the opinion, after hearing the parties, that such security should be given, it shall specify the amount of security and

[Subsidiary]

direct whether it be given with or without sureties and whether it shall be given by way of a cash deposit.

(2) If a party is required to give security by way of a bond with or without sureties or by any way other than a cash deposit, it shall be at the cost of the party giving it.

(3) If the Court has ordered that security, other than a cash deposit, be given, it shall be given to the satisfaction of an officer of the Court unless the Court directs that it be to the satisfaction of the other party.

(4) If security, other than a cash deposit, is required to be given, the party to whose satisfaction the security is to be given may require the Court to direct, or the Court may direct, that the value of the security offered or the standing of the sureties, if any, be verified by affidavit of the party offering the security or by some other person with a knowledge of the security or the sureties.

(5) The Court to which any action on the security shall be brought may, by order, give such relief as may be just and such order shall have the effect of a defeasance of such bond or the fulfilment of such security.

Court may direct security to be by deposit of money or otherwise.

58. The Court may direct that a party required to give security shall, instead of entering into a bond, give such other security, by deposit of money or otherwise, as the Court may deem sufficient.

Service of summons to witnesses.

59. A party to a cause may obtain from the Court summonses to witnesses, with or without a clause requiring the production of the books, deeds, papers, and writings in the possession or control of the person summoned as a witness in accordance with the provisions of rules 16, 17 and 18.

Power to require persons present in Court to give evidence.

60. Any person present in Court may be required by the Court to give evidence or to produce any document in his possession or power.

PART IX

ADDRESSES, JUDGMENTS AND COSTS

Addresses.

61. (1) The party on whom the burden of proof lies shall be entitled to address the Court at the commencement of the case.

(2) When the party who began has closed his case, his opponent shall, provided there is any case to meet, announce whether he intends to adduce evidence or not.

(3) If he announces that he does not intend to call evidence, the party beginning shall be entitled to address the Court for a second time, for the purpose of summing up his evidence, and his opponent shall have a right of reply.

(4) When the party beginning has concluded his case, if the opponent decides to call witnesses, he shall be at liberty to open his case, call his witnesses and sum up and comment not only on his own evidence but on the whole case.

(5) If the party opposed to the party who begins adduces evidence, the party beginning shall be at liberty to reply generally on the whole case.

Giving of judgment on conclusion of hearing.

62. On the conclusion of the hearing, the Court shall either at the same or at a subsequent sitting deliver judgment in the cause and shall, if so required by the plaintiff or defendant and on payment of the prescribed fee, cause to be delivered to the plaintiff or defendant, as the case may be, a certified copy of the judgment so delivered.

What orders to be made.

63. Subject to any written law, the Court may in any civil proceedings make any order which it considers necessary, whether such order has or has not been expressly asked for by the person entitled to the benefit of the order.

Judgment to be complied with without demand.

64. If a person is directed by a judgment or order to pay any money, or to deliver up or transfer any moveable property to another, the person so directed shall be bound to obey such judgment or order without demand.

Payment and suspension of judgments and orders.

65. (1) If a judgment is given or an order is made by a Court under which a sum of money is payable, whether by way of satisfaction of the claim or counter-claim or by way of costs or otherwise, the Court may order the money to be paid either —

(a) in one sum, whether forthwith or within such period as the Court may fix; or

(b) by such instalments payable at such times as the Court may fix.

(2) If it appears to the Court that a party to civil proceedings is unable to pay any sum ordered against him, whether by way of satisfaction of the claim or counter-claim or by way of costs or otherwise, or any instalment thereof, the Court may suspend or stay any judgment or order given or made or reduce the amount of any instalment ordered to be paid on such terms as the Court thinks fit.

[Subsidiary]

Judgment debt to carry interest.

66. (1) Unless it has been otherwise agreed between the parties, a judgment debt shall carry interest at the rate of 6% per annum calculated from the date of the judgment till the judgment is satisfied, unless the Court otherwise orders.

(2) Interest at a rate exceeding 6% per annum shall not be ordered.

Apportionment and payment of costs.

67. (1) The fees and costs of civil proceedings shall be paid by or apportioned between the parties in such manner as the Court may think fit, and, in default of any special direction, shall follow the event of such proceedings.

(2) Execution may issue for the recovery of such fees and costs together with interest thereon, if any, in like manner as it issues for the amount of any judgment obtained in the said Court.

(3) The Court shall have power to refuse costs in whole or in part to either party.

Costs may be set off against sum admitted or found to be due.

68. The Court may direct that the costs payable to one party by another shall be set off against any sum which is admitted or is found in the proceedings to be due from the former to the latter.

Interest on costs and payment of costs of subject-matter.

69. (1) The Court may, on the application of the party entitled to costs, order interest to be paid on such costs at a rate not exceeding 6% per annum from the date on which they became due.

(2) The Court may direct that costs, with or without interest, be paid out of or charged upon the subject-matter of the proceedings.

Security for costs.

70. In civil proceedings the Court may, either of its own motion or on the application of a defendant, require a plaintiff, to give security for costs to the satisfaction of the Court, by deposit or otherwise, or to give further or better security, and may likewise require any defendant to give security or further or better security, for the costs of a proceeding.

Forms.

71. The forms contained in the Schedule may, with such variations as the circumstances of the particular case may require, be used, and when so used shall be sufficient in law.

Procedure if no provision in Rules. [S 27/96]

71A. Where there is no provision in these Rules for the appropriate procedure or form, the procedure and forms in force or used in the High Court may, if the Court thinks fit, be followed and adopted, as near as maybe.

SCHEDULE

FORM 1

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 13)

PLAINT NOTE

In the Court,

Between Plaintiff

of (address)

and

..... Defendant

of (address).....

No. of plaint

Fees paid: on filing plaint \$

hearing fee \$

Total \$

Receipt No.

The above action was entered this day, and, if the plaint is entertained by the Court, the place, date and time of hearing will be notified to you in due course.

Dated this day of, 20

(Seal)

.....
Clerk

SCHEDULE — continued

FORM 1 — continued

Notes:

- (1) The hearing fee must be paid before an action or matter is called on.
- (2) Bring this plaint note with you when you come to the Court house for any purpose connected with these proceedings.
- (3) On the day of hearing bring all books and papers necessary to prove your claim.

FORM 2

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 14)

SUMMONS (CIVIL)

In the Court,

To

of (address)

WHEREAS

of (address)

has instituted a suit in this Court against you for (state cause of action, with brief particulars of the facts, and the damages or sum claimed or other remedy sought)

.....

.....

.....

.....

.....

.....

you are hereby summoned to appear in this Court in person on the

SCHEDULE — continued

FORM 2 — continued

day of at in the noon to answer the above-named plaintiff. And as the day fixed for your appearance is appointed for the final disposal of the suit you must be prepared to produce all your witnesses and documentary evidence on that day. And you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and may be determined in your absence.

Dated this day of, 20

(Seal)

..... Magistrate

I hereby acknowledge that I have received a copy of this summons No. dated, 20

.....

The summons of which this is a true copy was served by me on the defendant, personally, at on the day of, 20

..... Person effecting service

FORM 3

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 17)

SUBSTITUTED SERVICE IN THE GAZETTE OR NEWSPAPER

In the Court,

No. of plaint

TAKE NOTICE that an action has been commenced against you in the above Court by

of (address) for and an order has been made that publication of a notice of the entry of such action in the

SCHEDULE — continued

FORM 3 — continued

Gazette (or the newspaper) shall be deemed to be good and sufficient service of the proceedings on you.

The action will be heard at on the day of at the hour of in the noon, on which day you are to appear, and if you do not appear either in person or by a representative qualified to appear on your behalf at the time and place above-mentioned, such order will be made as the Court thinks just.

Dated this day of, 20

..... Magistrate

To of (address)

FORM 4

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 17)

ORDER FOR SUBSTITUTED SERVICE

In the Court, UPON READING the Affidavit of of sworn the day of 20

IT IS ORDERED [that a copy of the issued in this action together with a copy of this order be served on some inmate of or above the apparent age of eighteen years at being the usual (or last known) place of residence (or business) of (name of plaintiff, defendant, witness or party)]

[or that a copy of the issued in this action together with a copy of this order, be sent by registered post addressed to (name of plaintiff, defendant, witness or party)] at being the

SCHEDULE — continued

FORM 4 — continued

usual (or last known) place of residence (or business) of the said]

[or that notice of the be published in the Gazette]

[or that notice of the be published in the newspaper in (number) separate issues]

[or that a copy of the in this action shall be affixed to premises at being the usual (or last known) place of residence (or business) of (name of plaintiff, defendant, witness or party)]

(or as may otherwise be ordered by the Court).

Dated this day of, 20

..... Magistrate

To

FORM 5

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 40(1))

JUDGMENTS FOR PLAINTIFF FOR COSTS WHERE WHOLE CLAIM PAID OR AMOUNT PAID INTO COURT ACCEPTED IN SATISFACTION

In the Court,

The defendant having paid into Court the whole amount of the plaintiff's claim (or the sum of \$ paid into Court by the defendant having been accepted by the plaintiff in satisfaction of his claim) and the plaintiff's costs having been allowed at the sum of \$

IT IS ADJUDGED that the plaintiff do recover against the defendant the sum of \$ for his costs (including the costs of entering judgment).

SCHEDULE — continued

FORM 5 — continued

AND IT IS ORDERED that the defendant do pay the same to the Clerk of this Court forthwith.

Dated this day of, 20

.....
Magistrate

FORM 6

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 40(2))

NOTICE TO PLAINTIFF OF PAYMENT INTO COURT OF PART OF CLAIM

In the Court,

TAKE NOTICE that the defendant has paid into Court the sum of \$ in satisfaction of your claim in this action (add, if so, with a defence of tender before action or with a denial of liability).

If you elect to accept the payment made in satisfaction of your claim you must within 7 days after the receipt by you of this notice send to the Court by post or otherwise a written notice of acceptance. Your acceptance will not prelude you from recovering any costs properly incurred before the receipt by you of this notice.

Dated this day of, 20

.....
Magistrate

(Note: When applying for the above amount you must produce the plaint note issued to you on the entry of the plaint).

SCHEDULE — *continued*

FORM 7

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 41)

NOTICE OF APPLICATION FOR ENTRY OF JUDGMENT

In the Court,

Between Plaintiff

and

..... Defendant

Application is hereby made in accordance with rule 41 that judgment be entered for the plaintiff in the above action for the amount claimed, with costs and court fees, namely —

Amount claimed

Costs

Court fees

Total

Less amount paid
by defendant to plaintiff
since the issue of the
plaint

Net total

Dated this day of, 20

SCHEDULE — continued

FORM 8

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 57)

BOND

In the Court of

No., 20

Between Plaintiff,

and Defendant.

I/we of and of am/are bound to of

in the sum of \$ to be paid to the said his executors, administrators or assigns, for which payment I/we bind myself ourselves, and each of us for himself in the whole, my/our and every of my/our heirs, executors, and administrators.

Dated this day of, 20

WHEREAS a suit has been brought in the said Court at wherein is the plaintiff and is defendant.

AND WHEREAS the said has been ordered to give bail to the satisfaction of the Court until execution or satisfaction of the decree of Court in case judgment therein be given against him.

AND WHEREAS the above-named and at the request of the said have agreed to enter into this obligation for the purpose aforesaid.

THE CONDITION of this obligation is such, that if the said shall satisfy the judgment of the Court therein which may be given against him, with costs, then his obligation shall be void; otherwise his obligation shall remain in full force.

Signed, sealed and delivered)

by the above-named in the) (L.S.)

presence of —

SCHEDULE — continued

FORM 9

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 59)

SUBPOENA TO GIVE EVIDENCE

In the Court,
..... VS

To
of

Your attendance is required in Court because it is understood that you are likely to be able to give material evidence in the above case.

You are hereby summoned to appear before the
..... Court on the

day of at o'clock to testify what you know concerning the matter in the said case, and not to depart thence without leave of the Court. If you, without just excuse, neglect to appear on the said date, a warrant will be issued to compel your attendance.

You are further required to bring with you and to produce to the Court the following documents which are believed to be in your possession,

viz:—
.....
.....
.....

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

Fee \$

.....
Magistrate

SCHEDULE — continued

FORM 9 — continued

(SEAL)

I hereby acknowledge that I have received a copy of this subpoena No. dated, 20

I hereby declare that I duly served a copy of this subpoena upon the person named therein.

..... Person effecting service

FORM 10

MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES

(Rule 65)

JUDGMENT FOR PLAINTIFF

(Payment by Instalments)

In the Court,

IT IS ADJUDGED that the plaintiff do

recover against the defendant the sum of \$ for debt (or damages), and costs \$ amounting together to the sum of \$

(And the defendant having paid the sum of \$ into Court (or to the plaintiff).

IT IS ORDERED that the defendant do pay the sum of \$ to the Clerk of this Court by instalments of for every; the first instalment to be paid on the of 20

SCHEDULE — *continued*

FORM 10 — *continued*

IF DEFAULT is made in payment of any instalment according to this order, execution or successive may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the Court shall order.

Dated this day of, 20

.....

Magistrate