

# Magistrates Court

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# Magistrates Court Act 1944

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Magistrates Court Act 1944 (No 20 of 1944) commenced on 9 February 1945, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
Magistrates Courts (Amendment) Ordinance 1947 (No 19 of 1947)	1 August 1947
Magistrates Courts (Amendment) Ordinance 1960 (No 19 of 1960)	7 October 1960
Magistrates Courts (Amendment) Ordinance 1962 (No 41 of 1962)	18 October 1962
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Constitution (Statutory Amendments) Order 1970 (LN 112 of 1970)	8 October 1970
Constitution (Statutory Amendments) (No 2) Order 1970 (LN 118 of 1970)	13 November 1970
Magistrates Courts (Amendment) Act 1973 (No 19 of 1973)	31 August 1973
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Law Revision (Miscellaneous Amendments) Act 1977 (No 13 of 1977)	1 July 1977
Magistrates Courts (Chapter 14) Amendment Decree 1987 (No 16 of 1987)	27 October 1987
Magistrates Courts (Civil Jurisdiction) Decree 1988 (No 35 of 1988)	1 January 1988
Magistrates Courts (Amendment) Act 1998 (No 12 of 1998)	ss 5 and 6: 15 August 1998, remainder: 27 July 1998
Magistrates Court Act (Amendment) Promulgation 2007 (No 34 of 2007)	27 September 2007
Fijian Affairs (Amendment) Decree 2010 (No 31 of 2010)	2 July 2010
Magistrate's Court (Amendment) Decree 2011 (No 24 of 2011)	16 May 2011
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016

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<b>Amending Legislation</b>	<b>Date of Commencement</b>
High Court (Amendment) Act 2021 (No 1 of 2021)	15 February 2021
High Court (Amendment) Act 2023 (No 20 of 2023)	19 September 2023

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AN ACT FOR THE CONSTITUTION OF MAGISTRATES COURTS, FOR THE APPOINTMENT OF MAGISTRATES AND OTHER OFFICERS THEREOF AND OF JUSTICES OF THE PEACE, AND FOR THE REGULATION OF THEIR DUTIES AND JURISDICTION

PART 1 — PRELIMINARY

**[MC 1] Short title**

1 This Act may be cited as the Magistrates Court Act 1944.

**[MC 2] Interpretation**

2 In this Act, unless the context otherwise requires—

**cause** includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding;

**cause of action** in suits founded on contract does not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;

**Chief Registrar** means a judicial officer with High Court jurisdiction under various Acts, Decrees and by virtue of the High Court Rules 1988, and who may also exercise all powers and jurisdiction of a Resident Magistrate;

[def insrt Decree 24 of 2011 s 2, opn 16 May 2011]

**clerk of the court** includes an assistant clerk of the court or other officer performing, or assisting a clerk of the court in, his or her duties;

**court** means a Magistrates Court established under this Act;

**criminal** includes quasi-criminal, and with reference to matters of jurisdiction, comprehends all such matters not falling within the term **civil**;

**existing** means existing at the commencement of this Act;

**High Court** means the High Court of Fiji;

**Imperial Act** used with reference to legislation means an Act of the Imperial Parliament;

[def am LN 112 of 1970 O 6, opn 8 Oct 1970]

**Imperial laws** means any Imperial Act and includes general rules or orders made thereunder;

[def am LN 112 of 1970 O 6, opn 8 Oct 1970]

**Judge** has the same meaning as in the High Court Act 1875;

**judgment** includes a decree;

**Magistrate** means any person appointed under this Act to hold a Magistrates Court of any class;

**matter** includes every proceeding in the court not in a cause;

**senior magistrate**

[def rep Act 13 of 1977 s 3, opn 1 July 1977]

**sheriff** means the sheriff of Fiji appointed under the High Court Act 1875, and includes any deputy appointed by the sheriff; and

**suit** includes action, and means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by rules of court, and does not include a criminal proceeding.

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PART 2 — CONSTITUTION OF THE COURTS

**[MC 3] Establishment of Magistrates Courts**

**3** (1) There shall be and are hereby constituted Magistrates Courts subordinate to the High Court.

[subs (1) subst LN 118 of 1970 O 7, opn 13 Nov 1970]

- (2) There shall be the following classes of Magistrates—
- (a) Resident Magistrate including the Chief Registrar;
  - (b) second class Magistrate;
  - (c) third class Magistrate.

[subs (2) am LN 118 of 1970 O 7, opn 13 Nov 1970; Decree 24 of 2011 s 3, opn 16 May 2011]

(3) There shall be, in each Division, such Magistrates Courts as the Chief Justice may direct.

(4) Any power, authority, function or discretion vested in a Magistrates Court by this or any other Act shall be possessed and may be exercised by a Magistrate having adequate jurisdiction.

(5) All Magistrates Courts shall be courts of record.

**[MC 4] Territorial limits of jurisdiction of courts**

**4** (1) Subject to any express provisions of this or any other Act, every Magistrates Court shall exercise jurisdiction within the limits of the Division within which it is situated, provided that when there is more than one Magistrates Court in the same Division, the Chief Justice may direct the distribution of business between such courts.

(2) The jurisdiction of a Magistrates Court shall extend over any territorial waters adjacent to the Division within which it is situated as well as over inland waters whether within or adjacent to such Division.

**[MC 5] Seals**

**5** All Magistrates Courts shall use seals of such nature and pattern as the Chief Justice may, by notice in the Gazette, direct.

[s 5 subst LN 118 of 1970 O 7, opn 13 Nov 1970]

**[MC 6] Contempt of court**

**6** The High Court shall have the same power to deal with cases of contempt of its authority as the High Court of Justice in England, and such power shall extend to the upholding of the authority of Magistrates Courts.

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PART 3 — OFFICERS OF THE COURT

MAGISTRATES

**[MC 7] Appointment of Magistrates**

7 (1) The Judicial Service Commission may appoint persons admitted as barristers and solicitors in Fiji, or having the qualifications specified in the Legal Practitioners Act 2009, to be Resident Magistrates and may appoint from among such resident Magistrates a Chief Magistrate who shall continue to be, and to have and to hold all the powers of, a Resident Magistrate in addition to any other powers specific to his or her appointment.

[subs (1) subst Act 13 of 1977 s 3; am Act 12 of 1998 s 3, opn 27 July 1998; Act 31 of 2016 s 124, opn 1 Dec 2016]

(2) The Judicial Service Commission may appoint fit and proper persons to be second and third class Magistrates.

[subs (2) subst Act 19 of 1973 s 2, opn 31 Aug 1973; am Act 12 of 1998 s 3, opn 27 July 1998]

(3) All Magistrates including the Chief Registrar, when so appointed, shall have and exercise the powers and jurisdiction conferred upon them by this or any other Act, provided that the Judicial Service Commission may, by the terms of the appointment, restrict the powers to be exercised by a person appointed to be a third class Magistrate in such manner and to such extent as it may think fit, and such person shall thereupon have and exercise the powers and jurisdiction conferred by this Act only to the extent authorised by the appointment.

[subs (3) am LN 71 of 1970 s 2, opn 10 July 1970; Act 12 of 1998 s 3, opn 27 July 1998; Decree 24 of 2011 s 4, opn 16 May 2011]

**[MC 7A] Termination of appointment etc**

7A (1) The Judicial Service Commission may remove a Magistrate from office and may take disciplinary action against a Magistrate.

(2) The reference in subsection (1) to removal of a Magistrate from office includes a reference to—

- (a) requiring or permitting the Magistrate to retire from office;
- (b) terminating the contract on which the Magistrate is employed; or
- (c) not renewing the contract on which the Magistrate is employed.

[s 7A insrt Act 12 of 1998 s 4, opn 27 July 1998]

**[MC 8] Territorial jurisdiction of Magistrates**

8 Subject to any restrictions imposed under the provisions of section 7(3), every Magistrate shall have jurisdiction throughout Fiji but may be assigned to any specified Division or Divisions and transferred from one Division to another. Notwithstanding any such assignment a Magistrate so assigned may, without any special notification or appointment to that effect, exercise jurisdiction in any other Division or Divisions.

**[MC 9] Procedure when Magistrate personally interested in case before him or her**

9 Where a Magistrate is a party to any cause or matter, or is unable, from personal interest or any other sufficient reason, to adjudicate on any cause or matter, the

Chief Justice shall direct some other Magistrate to act instead of such first named Magistrate for the hearing and determination of such particular cause or matter, or may direct that such cause or matter shall be heard and determined in a court of any other Division.

### [MC 10] Records and returns

**10** (1) All Magistrates Courts shall keep written records and furnish returns of cases tried by them to the High Court in such manner as the Chief Justice may from time to time direct.

(2) A Judge of the High Court shall periodically inspect the records of all Magistrates Courts and may give such instructions and advice thereon as he or she may deem necessary.

### JUSTICES OF THE PEACE

### [MC 11] Justices of the Peace

**11** (1) The Minister may, following consultation with the Chief Justice—

- (a) appoint a person as a Justice of the Peace;
- (b) review or revoke the appointment of a Justice of the Peace; or
- (c) renew the appointment.

(2) A Justice of the Peace must notify the Minister, at least 2 months before the expiry of his or her term, if he or she wishes to be reappointed.

(3) A person appointed as a Justice of the Peace will be appointed for a term of 3 years unless the person is appointed for a specific purpose in which case the appointment is subject to the terms and conditions set out in the instrument of appointment.

(4) Before a person is appointed under subsection (1)(a) or reappointed under subsection (1)(c), the Minister has to be satisfied that the person—

- (a) is of good character and ability;
- (b) is respected and has good standing in society;
- (c) has good knowledge of local customs, cultures and traditions;
- (d) will maintain independence and impartiality; and
- (e) has the ability to keep social distance from his or her immediate community.

(5) A person who is a member of the Parliament is a Justice of the Peace for as long as he or she remains a member.

(6) The Minister may revoke an appointment if the Minister is satisfied that the person—

- (i) has been adjudged or declared by a competent medical authority or medical practitioner to be of unsound mind;
- (ii) is or was under a sentence of death imposed on him or her by a court in Fiji or in another country;
- (iii) has been sentenced to imprisonment for a term exceeding 12 months;
- (iv) does an act or engages in conduct contrary to his or her allegiance, obedience or adherence to the State; or
- (v) is an undischarged bankrupt either in Fiji or in another country.

(7) An appointment of a Justice of the Peace made before the commencement of this section continues to be in force, as if it was made under this section for a period of 3 years from the commencement of this section.

[s 11 subst Act 12 of 1998 s 5, opn 15 Aug 1998]

**[MC 12] Powers and functions of Justices of the Peace**

12 Subject to the provisions of this and of any other Act, every Justice of the Peace shall, subject to any exceptions which may be contained in the appointment, within the area in and for which he or she holds such office, have—

- (a) all the powers, rights and duties of a Magistrate under this or any other Act to—
  - (i) issue summonses and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before a court;
  - (ii) issue search warrants; and
- (b) such other powers and rights and perform such duties of Magistrates as may be conferred or imposed upon him or her by rules of court made under any Act not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

[s 12 am Act 12 of 1998 s 6, opn 15 Aug 1998]

CLERK OF THE COURT

**[MC 13] Clerk of the court**

13 The clerk of the court attached to a Magistrates Court shall, subject to the general supervision and control of the Chief Justice, be under the immediate direction and control of the Magistrate.

**[MC 14] Duties of clerk of the court**

- 14 The duties of the clerk of the court shall be—
- (a) to attend at such sittings of the court as the Magistrate may direct;
  - (b) to fill up or cause to be filled up summonses, warrants, orders, convictions, recognisances, writs of execution and other documents, and submit the same for the signature of the Magistrate;
  - (c) to issue civil process in accordance with rules of court for the time being in force;
  - (d) to make or cause to be made copies of proceedings when required to do so by the Magistrate, and to record the judgments, convictions and orders of the court;
  - (e) to receive or cause to be received all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the court, and to keep or cause to be kept accounts of the same; and
  - (f) to perform or cause to be performed such other duties connected with the court as may be assigned to him or her by the Magistrate.

SHERIFF

**[MC 15] Sheriff to execute process of Magistrates Courts**

15 The sheriff shall be charged with the execution of all orders and process of a Magistrates Court and for that purpose shall have the same powers and authority as may be conferred upon him or her by the law for the time being in force in respect of the orders and process of the High Court.

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**[MC 16] Jurisdiction of Magistrates in civil causes**

16 (1) Without prejudice to the jurisdiction of a Magistrate under this Act or other written law, a Resident Magistrate shall have and exercise jurisdiction in the following civil causes—

- (a) in all personal suits arising out of any accident in which any vehicle is involved if the amount, value or damages claimed, whether as a balance claimed or otherwise, is not more than \$50,000;
  - (b) in all other personal suits, whether arising from contract, or from tort, or from both, if the value of the property or the debt, amount or damage claimed whether as a balance claimed or otherwise, is not more than \$50,000;
  - (c) in all suits between landlords and tenants for possession of any land (including any building or part thereof) claimed under any agreement or refused to be delivered up, if the annual value or annual rent does not or did not exceed \$50,000;
  - (d) in all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);
  - (e) in any type of suit covered by paragraphs (a) to (d) whatever the value, amount, debt, damages sought to be recovered is, or whatever the annual value or annual rent is, if all the parties or their respective legal practitioners consent thereto in writing;
  - (f) to issue writs of *habeas corpus* for the production before the court of any person alleged upon oath to be wrongfully imprisoned and detained, and to make orders thereon;
  - (g) to appoint guardians of infants, and to make orders for the custody of infants;
  - (h) to grant in any suit instituted in the court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;
  - (i) to enforce by attachment any order made by the court;
  - (j) to commit to prison for a term not exceeding 6 weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from the person under an order or judgment of the court or any other competent court (including the High Court).
- (2) A Magistrates Court shall not exercise the following jurisdiction—
- (a) in suits wherein the title to any right, duty or office is in question; or
  - (b) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or
  - (c) in suits wherein the legitimacy of any person is in question; or
  - (d) except as specifically provided in the Family Law Act 2003 or any other written law, in suits wherein the validity or dissolution of any marriage is in question; or
  - (e) in any action for malicious prosecution, libel, slander, seduction or breach of promise of marriage.

(3) For subsection (1)(a) to (e), if any such suit has already been commenced in the High Court, the suit may only be transferred to the Resident Magistrates Court with the prior consent of the High Court.

(4) For subsection (1)(j)—

- (a) the power for committal shall only be exercised if it is proved, to the satisfaction of the Resident Magistrate, that the person making default—
  - (i) has, or has had since the date of the order or judgment, the means to pay the sum in respect which the person has made default; and
  - (ii) has refused or neglected or refuses or neglects to pay the same;
- (b) the Resident Magistrate may direct any debt due from any person, under an order or judgment of that or of any other competent court (including the High Court), to be paid by instalments, and may rescind or vary such order.

(5) A second or third class Magistrate shall have and exercise jurisdiction in civil causes under subsection (1)(a), (b), (i) and (j) as follows—

- (a) for a second class Magistrate, any cause or matter not exceeding \$2,500; and
- (b) for a third class Magistrate, any cause or matter not exceeding \$500.

(6) If in any action the debt or demand consists of a balance not exceeding \$50,000 after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a Magistrate shall have jurisdiction and power to hear and determine such action within the limits of jurisdiction and power under this section.

[s 16 subst Promulgation 34 of 2007 s 2, opn 27 Sep 2007]

### [MC 17] Criminal jurisdiction

17 In the exercise of their criminal jurisdiction Magistrates shall have all the powers and jurisdiction conferred on them by the Criminal Procedure Act 2009, this Act or any other law for the time being in force.

[s 17 am Act 31 of 2016 s 124, opn 1 Dec 2016]

### [MC 18] Special jurisdiction in certain cases

18 Where an offence is committed or any cause or matter arises over which a Magistrate has jurisdiction in any ship, boat or canoe, such offence may be prosecuted or such cause or matter heard and determined either by the Magistrate exercising jurisdiction over the place where the ship, boat or canoe may be at the time when the offence was committed or the cause or matter arose, or by the Magistrate exercising jurisdiction over any place where the ship, boat or canoe may call at after the commission of the offence or the arising of the cause or matter.

### [MC 19] Extension of jurisdiction

19 The Chief Justice may, by order under his or her hand and the seal of the High Court, authorise an increased jurisdiction in civil causes and matters to be exercised by the Magistrate named in the order, within the division prescribed in the order, and to the extent specified in the order. Such order may, at any time, be revoked by the Chief Justice by an instrument under his or her hand and the seal of the High Court.

### [MC 20] General powers of Magistrate

20 Every Magistrate shall have power to issue writs of summons for the commencement of actions in a Magistrates Court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make

such decrees and orders and issue such process and exercise such powers judicial and administrative in relation to the administration of justice, as shall from time to time be prescribed by any Act, or by rules of court, or, subject thereto, by any special order of the Chief Justice.

### **[MC 21] Acts of Magistrate not affected by error as to venue**

21 (1) Subject to the provisions of the Criminal Procedure Act 2009, no act done by or under the authority of a Magistrate shall be void or impeachable by reason that such act was done, or that any act, offence or matter in respect of or in relation to which such act was done, occurred or was situated beyond the limits of the area of the jurisdiction of such court.

[subs (1) am Act 31 of 2016 s 124, opn 1 Dec 2016]

(2) If the defendant in any civil cause or matter wherein such objection might but for this enactment be of force, shall at or before, but not after, the time when he or she is required to state his or her answer in such cause or matter before the court, allege specially any such objection, the court shall consider the same, and if there is *prima facie* proof of the objection the Magistrate shall report such cause or matter to a Judge and the Judge shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

### **[MC 22] Proceedings by or against officer of the court**

22 Subject to the provisions of section 9, any civil or criminal proceedings by or against any Magistrate or officer of a Magistrates Court for any offence or matter cognisable by a Magistrates Court may be brought in any other court, before a Magistrate having jurisdiction and power in the case of any particular proceeding.

### **[MC 23] Administration of oaths in proceedings**

23 (1) Every Magistrate and every justice of the peace is hereby authorised to administer all oaths which may require to be taken before him or her in the exercise of any of the jurisdictions and powers conferred upon him or her by this or any other Act.

(2) Any such oath may also be administered by the clerk of the court or other officer of the court under the direction and in the presence of the Magistrate.

[s 23 subst Ordinance 37 of 1966 s 4, opn 13 Jan 1967]

### **[MC 24] Magistrates to be Commissioners for Oaths**

24 Every Magistrate shall be a Commissioner for Oaths and shall have and may exercise the powers thereof.

[s 24 am Ordinance 19 of 1947 s 5, opn 1 Aug 1947]

LAW TO BE ADMINISTERED

### **[MC 25] How far law of England in force**

25 Subject to the provisions of any Act, the common law, the rules of equity and the statutes of general application which were in force in England on 2 January 1875 (being the date when Fiji obtained a local legislature) shall be in force within the jurisdiction of Magistrates Courts, provided that, subject as aforesaid, any Imperial Act of later date now

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applied to Fiji, or which hereafter is applied thereto by any Act or otherwise, shall be in force within the jurisdiction of Magistrates Courts.

[s 25 am Ordinance 37 of 1966 s 4, opn 13 Jan 1967; LN 112 of 1970 O 6, opn 8 Oct 1970]

### **[MC 26] Rules as to application of Imperial laws**

26 (1) All Imperial laws declared to extend or apply to the jurisdiction of the courts constituted by this Act shall be in force so far only as the limits of the local jurisdiction and local circumstances permit and subject to any existing or future local Act.

(2) Every Magistrate or officer of any of the said courts having or exercising functions of the like kind, or analogous to the functions of any Magistrate, justice of the peace or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last mentioned officer.

(3) Whenever the great seal or any other seal is mentioned in any such law it shall be read as if the seal of the court were substituted therefore.

(4) In matters of practice all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment or otherwise.

### **[MC 27] Law and equity to be concurrently administered but equity to prevail in certain cases**

27 (1) In every civil cause or matter which shall be instituted in any of the Magistrates Courts constituted by this Act law and equity shall be administered concurrently.

(2) A Magistrate in the exercise of the jurisdiction vested in him or her by this Act shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that as far as possible all matters in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

(3) In all causes or matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same subject the rules of equity shall prevail.

#### RECONCILIATION

### **[MC 28] Courts to promote reconciliation**

28 In civil causes magistrates and their officers shall, as far as there is proper opportunity, promote reconciliation among persons over whom such magistrates have jurisdiction, and encourage and facilitate the settlement in an amicable way and without recourse to litigation of matters in difference among them.

### **[MC 29] In pending civil cases**

29 Where a civil suit or proceeding is pending, the Magistrate may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

### **[MC 30] In criminal cases**

**30** In criminal causes a Magistrate may promote reconciliation in the cases and in the manner provided in the Criminal Procedure Act 2009.

[s 30 am Act 31 of 2016 s 124, opn 1 Dec 2016]

#### POWER OF TRANSFER

### **[MC 31] Transfer between Magistrates in same Division**

**31** Where 2 or more magistrates are appointed to any Division, any such Magistrate with such Division may, at any stage of the proceedings before final judgment, transfer, within the limits of such Division, any cause or matter before him or her to any other such Magistrate and such cause or matter shall be commenced *de novo*, inquired into, tried and disposed of, by any Magistrate of competent jurisdiction to whom it has been transferred as if it had been instituted before him or her, provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular Magistrate shall again be transferred without leave of a Judge.

[s 31 am LN 112 of 1970 O 6, opn 8 Oct 1970]

### **[MC 32] Magistrates may report cases for transfer**

**32** Subject to the provisions of the Criminal Procedure Act 2009, a Magistrate may, of his or her own motion, or on the application of any person concerned, report to the High Court the pendency of any cause or matter which in the opinion of such Magistrate ought for any reason to be transferred from his or her court to any other Magistrates Court or to the High Court. The High Court shall direct in what mode and where the cause or matter shall be heard and determined.

[s 32 am Act 31 of 2016 s 124, opn 1 Dec 2016]

### **[MC 33] Transfer of cases by a Judge**

- 33** (1) (a) The High Court may at any time at any stage thereof before judgment—
- (i) transfer to a Magistrates Court any civil cause before the High Court, being a civil cause which is not excluded from the jurisdiction of such Magistrates Court;
  - (ii) transfer any civil cause or matter before a Magistrates Court, to any other Magistrates Court, being a civil cause which is not excluded from the jurisdiction of such other Magistrates Court, or to the High Court.
- (b) Any civil cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.

[subs (1) subst Ordinance 19 of 1960 s 5, opn 7 Oct 1960]

(2) The power of transfer shall be exercised by means of an order under the hand of a Judge and the seal of the court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such order be in dependence.

(3) The High Court may at all times cancel, alter, add to or amend any such order.

(4) The High Court may, if it appear expedient, in the first instance cause the contents of any such order to be telegraphed, and such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

**[MC 34] Effect of order of transfer**

34 (1) Every order of transfer shall operate as a stay of proceedings in the court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the court relative thereto, shall be transmitted to the court to which the same shall be transferred and henceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

(2) Any order given under section 31, 32 or 33 shall not be subject to appeal.

**[MC 35] Judgment may be entered in the High Court on a judgment of a Magistrates Court**

35 (1) A Judge of the High Court, if satisfied that a person whether resident within Fiji or not against whom judgment for an amount exceeding \$40 has been obtained whether by way of a claim or counterclaim or by way of costs or otherwise, in a Magistrates Court, has no goods or chattels within Fiji which can be conveniently seized to satisfy the judgment, may if he or she thinks fit, and upon such terms as to costs as he or she may direct, by order under his or her hand and the seal of the court, remove the judgment into the High Court.

(2) Upon the removal of a judgment into the High Court in pursuance of this section no further proceedings shall be had or taken thereon in the Magistrates Court and judgment shall be entered in the High Court for the amount due and payable under the judgment of the Magistrates Court together with the costs aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the High Court.

(3) This section applies to orders obtained in a Magistrates Court as it applies to judgments so obtained.

[s 35 insrt Ordinance 19 of 1947 s 6, opn 1 Aug 1947]

[The next page is 816,001]

## PART 5 — APPEALS

### CIVIL CASES

#### **[MC 36] Civil appeals**

**36** (1) Subject to the provisions of this Act, an appeal shall lie to the High Court from a Resident Magistrate in the following cases—

- (a) from all final judgments and decisions; and
- (b) from all interlocutory orders and decisions made in the course of any suit or matter before a Magistrates Court.

(2) An appeal shall lie to the High Court from all judgments, decisions or orders of a Resident Magistrate sitting in its appellate jurisdiction under section 40.

[subs (1) am Act 12 of 1974 s 3, opn 24 May 1974]

#### **[MC 37] Power to reserve question of law for the opinion of the High Court**

**37** In addition to and without prejudice to the right of appeal conferred by this Act, a Magistrate may reserve for consideration by the High Court, on a case to be stated by him or her, any question of law which may arise on the trial of any suit or matter, and may give any judgment or decision subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

#### **[MC 38] Conditions precedent to appeal**

**38** Subject to the provisions of section 39, the High Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal imposed by the Magistrates Court or by the High Court, as prescribed by rules of court.

#### **[MC 39] Discretionary power of High Court**

**39** Notwithstanding anything hereinbefore contained, the High Court may entertain any appeal from a Magistrates Court, on any terms which it thinks just.

#### **[MC 40] Appeals from second or third class Magistrates**

**40** (1) An appeal from all judgments, decisions or orders of a second or a third class Magistrate shall lie to a Resident Magistrate.

(2) The provisions of sections 37 and 38 shall, *mutatis mutandis*, apply to appeals from second and third class Magistrates.

[s 40 subst Act 12 of 1974 s 4, opn 24 May 1974]

### CRIMINAL CASES

#### **[MC 41] Criminal appeals**

**41** Appeals in criminal causes shall lie from Magistrates Courts in accordance with the provisions of the Criminal Procedure Act 2009.

[s 41 am Act 31 of 2016 s 124, opn 1 Dec 2016]

[The next page is 816,201]

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**[MC 42] Place and time for sittings of courts**

42 (1) Magistrates Courts shall ordinarily be held at such places as the Chief Justice may direct, but should necessity arise they may also be held at any other place within the limits of their jurisdiction.

In the absence of any such directions by the Chief Justice, Magistrates Courts shall continue to be held at such places as existing courts of a like character have been held.

(2) Subject to the directions of the Chief Justice, each Magistrates Court shall be held at such time as the presiding Magistrate shall deem most adapted to facilitate the dispatch of the business of the court.

**[MC 43] Nature of business at any sitting**

43 At any sitting of the court both civil and criminal causes and matters may be heard, determined and dealt with, or either one or the other.

**[MC 44] Adjournment of court**

44 (1) The Magistrate may adjourn the court from day to day or to any convenient day.

(2) If the Magistrate is not present at the time and place appointed for any sitting of the court, an officer of the court or any other person authorised in that behalf by the Magistrate, may, by public notice, written or oral, adjourn the sitting until such time and to such place as may have been communicated to him or her by the Magistrate, and, in the absence of any such communication, to such time and to such place as may be convenient; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.

**[MC 45] Adjournment over Sunday or holiday**

45 When any day appointed for the sitting or adjourned sitting of the court falls on a Sunday or a public holiday, the Magistrate shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or public holiday) next after the day appointed for such sitting.

[The next page is 816,401]

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**[MC 46] Practice and procedure**

46 The jurisdiction vested in Magistrates shall be exercised (so far as regards practice and procedure) in the manner provided by this Act and the Criminal Procedure Act 2009, or by such rules and orders of court as may be made pursuant to this Act and the Criminal Procedure Act 2009, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction.

[s 46 am Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 47] Completion by Magistrate of process begun by his or her predecessor**

47 Where a Magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding or matter whether civil or criminal, under any authority however conferred, and subsequently ceases to act as such Magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in the same manner as if the Magistrate who issued such summons or warrant had not ceased to act as such Magistrate and any successor of such Magistrate, or any person acting for such Magistrate, may hear, determine, execute, enforce and carry to completion any proceeding or matter so commenced as aforesaid save that, except where otherwise provided by the Criminal Procedure Act 2009, such Magistrate shall commence the trial of any such cause or matter *ab initio*.

[s 47 am Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 48] Process of Magistrate valid throughout Fiji**

48 Subject to the provisions of the Criminal Procedure Act 2009, all summonses, warrants, orders, judgments, writs of execution or other process or proceedings, whether civil or criminal, issued or taken by or by the authority of any Magistrate respecting any cause or matter within his or her jurisdiction shall have full force and effect, and may be served or executed anywhere within Fiji by the sheriff or by the member of the Police Force to whom the same are directed or by any other member of the Police Force.

[s 48 am Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 49] Issue of process**

49 All summonses, warrants, orders, convictions and recognisances, and all other process, whether civil or criminal, shall be issued or made under the hand of a Magistrate or, where so authorised by this or any other Act, under the hand of a Justice of the Peace, provided that where expressly authorised by rules of court, writs of summons and other civil process may be issued under the hand of a clerk of the court.

**[MC 50] Duty of police to obey Magistrates**

50 All police officers are hereby authorised and required to obey the warrants, orders and directions of a Magistrate in the exercise of his or her criminal jurisdiction, and so far as such obedience may be authorised and required by any Act in that behalf, of his or her civil jurisdiction.

**[MC 51] Language of the court**

**51** (1) The language of Magistrates Courts is English but evidence may be given in iTaukei or Hindustani or, with the approval of the court, in any other language.

(2) If a witness proposes to give evidence in iTaukei or Hindustani, or any other language as approved, the Magistrate may, as necessary, direct that communication by and with the witness at the hearing should proceed through an interpreter.

(3) The record of proceedings in the court must be kept in English.

[s 51 subst Act 12 of 1998 s 7, opn 27 July 1998]

[The next page is 816,601]

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**[MC 52] Summoning witnesses**

52 (1) In any civil suit or matter, and at any stage thereof, a Magistrate may, either of his or her own motion or on the application of any party, summon any person within Fiji to attend to give evidence, or to produce any document in his or her possession or power, and may examine such person as a witness, and require him or her to produce any document in his or her possession or power, subject to just exceptions.

(2) In criminal causes Magistrates shall have such powers with respect to compelling the attendance of and examining witnesses as are conferred on them by the Criminal Procedure Act 2009.

[subs (2) am Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 53] Compelling attendances — penalty for non-attendance**

53 If the person summoned as provided in section 52, having reasonable notice of the time and place at which he or she is required to attend, after tender of his or her reasonable travelling expenses to and from the Magistrates Court, fails to attend accordingly, and does not excuse his or her failure to the satisfaction of the court he or she shall, independently of any other liability, be guilty of a contempt of court, and may be proceeded against by warrant to compel his or her attendance.

**[MC 54] Refusal to be sworn or to give evidence**

54 If, in any civil suit or matter, any person whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath, or to answer any question lawfully put to him or her, or to produce any document in his or her possession or power, and does not excuse his or her refusal to the satisfaction of the court, he or she shall, independently of any other liability, be guilty of a contempt of court.

**[MC 55] Bystander may be required to give evidence**

55 Any person present in court, whether a party or not in a cause or matter, may be compelled by a Magistrates Court to give evidence, or produce any document, in his or her possession or in his or her power, in the same manner and subject to the same rules as if he or she had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the court.

**[MC 56] Prisoners may be brought up by order to give evidence**

56 A Magistrate may issue an order under his or her hand to bring up any person confined as a prisoner under any sentence or otherwise to be examined as a witness in any suit or matter pending in any Magistrates Court, and the gaoler, or person in whose custody such prisoner shall be, shall obey such order and shall provide for the safe custody of the prisoner during his or her absence from the prison for the purpose aforesaid.

**[MC 57] Allowances to witnesses**

57 Subject to any rules made under section 68 or under section 287 of the Criminal Procedure Act 2009, the presiding Magistrate may, in civil as well as criminal proceedings, order and allow to all persons required to attend or be examined as witnesses, such sum or sums of money as shall seem fit, as well for defraying the reasonable expenses of such witnesses as for allowing them a reasonable compensation for their trouble and loss of time. But it shall not be lawful, in any criminal proceeding, for any person to refuse to attend as a witness or to give evidence, when so required by process of the court, on the ground that his or her expenses have not been first paid or provided for.

[s 57 am Act 12 of 1974 s 5, opn 24 May 1974; Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 58] How defrayed**

58 All sums of money allowed under the provisions of section 57 shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of the suit, if the Magistrate shall so order, and, in criminal proceedings, they shall, where not ordered to be paid by the party convicted or the prosecution, be paid out of the Consolidated Fund.

**[MC 59] Inspection**

59 In any cause or matter, a Magistrate may make such order for the inspection by the court, the parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the court may seem fit.

**[MC 60] No person entitled to inspection of copy of record of evidence.**

60 No person shall be entitled, as of right, at any time or for any purpose, to inspection of a copy of the record of evidence given in any case before any Magistrates Court, or to a copy of the notes of such court, save as may be expressly provided by any rules of court.

**[MC 61] Recording of evidence before Magistrates Courts**

61 (1) Subject to Division 7 of Part 11 of the Criminal Procedure Act 2009, in every case heard before a Magistrates Court, and at every stage thereof, the presiding Magistrate shall, save as hereinafter provided, take down in writing the oral evidence given before the court or so much thereof as he or she deems material, provided that, should the presiding Magistrate, in any case, find himself or herself temporarily incapacitated from taking down such evidence, he or she may direct that such evidence shall be taken down by the clerk of the court or other officer performing his or her duties in court.

[subs (1) am Act 31 of 2016 s 124, opn 1 Dec 2016]

(2) Such clerk of the court or other officer shall take down in writing the oral evidence in manner as aforesaid, under the supervision and control of the presiding Magistrate, who may, at any time before appending his or her signature to such writing, amend anything therein which he or she may consider require to be amended; and, before so appending his or her signature, such Magistrate shall peruse and examine such writing, and satisfy himself or herself that it is, in substance, an accurate and faithful record of the oral evidence given.

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- (3) (a) Notwithstanding the provisions of subsections (1) and (2), in all suits before a Resident Magistrate where the value of property or the debt or damage claimed, whether as balance claimed or otherwise, or where such value of property, debt or damage remaining in dispute, is not more than \$40, it shall be sufficient for the Magistrate to record the names of the witnesses and such notes if any of the evidence and finding as he or she considers desirable.
- (b) The Magistrate shall, in such cases, if requested by either party, record a sufficient note of any question of law and of any relevant evidence relating thereto which arises in the course of the trial.
- (c) If notice of intention to appeal is given the Magistrate shall record briefly the reasons for his or her decision in the case.

[subs (3) insrt Ordinance 41 of 1962 s 2, opn 18 Oct 1962]

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[The next page is 816,801]

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PART 8A — JURISDICTION OVER STATUTORY TRIBUNALS

[Pt 8A insrt Decree 24 of 2011 s 5, opn 16 May 2011]

**[MC 61A] Definition of statutory tribunal**

**61A** For the purposes of this Part, “statutory tribunal” means those tribunals, boards, committees, authorities, commissions or any other adjudicatory body established under any written law which are designated as statutory tribunals for the purposes of this Part by the Chief Justice, following consultation with the Attorney-General, by a notice published in the Gazette.

**[MC 61B] Magistrates may exercise jurisdiction of statutory tribunals**

**61B** (1) Notwithstanding anything contained in this Act or in any written law, any Magistrate appointed pursuant to this Act or the Constitution of the Republic of Fiji, may exercise the jurisdiction and powers and perform any duties and functions of any statutory tribunal subject to this Part.

[subs (1) am Act 31 of 2016 s 124, opn 1 Dec 2016]

(2) Subject to any rules and directions made by the Chief Justice under this Part, any Magistrate exercising the jurisdiction and powers or performing any duties or functions of any statutory tribunal subject to this Part, shall do so in accordance with the written law which established that statutory tribunal.

(3) Any order, award, decision, finding, judgment or ruling made by a Magistrate in the exercise of the powers and the performance of duties and functions of any statutory tribunal under this Part, shall be deemed to be made by the statutory tribunal under the written law and any rules and regulations made therein which established that statutory tribunal.

(4) Any order, award, decision, finding, judgment or ruling made by a Magistrate in the exercise of the powers and the performance of duties and functions of any statutory tribunal under this Part, shall be enforced or implemented in accordance with the written law and any rules and regulations made therein which established that statutory tribunal, provided however that if the written law and any rules and regulations made therein which established that statutory tribunal do not contain any provision for enforcement or implementation, then any such order, award, decision, finding, judgment or ruling made by a Magistrate under this Part shall be enforced in accordance with the provisions of this Act.

(5) Where any written law provides for more than one person to be members of any statutory tribunal, it shall be lawful for only one Magistrate to exercise the jurisdiction of that statutory tribunal, unless the Chief Justice may otherwise direct.

(6) Notwithstanding anything contained in the written law establishing any statutory tribunal, a Magistrate exercising the powers and performing the duties and functions of that statutory tribunal pursuant to this section shall not be entitled to any additional remuneration or allowances which may be provided for in that written law.

**[MC 61C] Administration, registry and records of statutory tribunal**

**61C** (1) The Chief Registrar shall establish a registry or registries within the Judicial Department to maintain the records of all proceedings of any statutory tribunal subject to this Part, and allocate such number of staff as necessary for the performance of the functions of the statutory tribunals.

(2) Subject to such directions as may be issued by the Chief Justice, the Chief Registrar or any person or persons appointed by the Chief Registrar shall be responsible for the administration and management of all statutory tribunals subject to this Part, including the allocation to any Magistrate of the cases, applications, appeals, pleas, submissions or other matters as the case may be, which have been pending before any statutory tribunal.

(3) Where under the written law, a statutory tribunal is required to provide regular records or reports to any person or authority, then any such records or reports shall, upon the commencement of this Part, be prepared by the Chief Registrar in accordance with that written law and provided to the Chief Justice, and to such other person or authority as the Chief Justice may direct.

#### **[MC 61D] Lodgement or filing of applications etc**

**61D** Upon the commencement of this Part, all cases, applications, appeals, pleas, submissions or other matters as the case may be, that are required to be lodged or filed by any person to any statutory tribunal, shall be lodged or filed in the registry established by the Chief Registrar under section 61C.

#### **[MC 61E] Appeals**

**61E** Any appeal from the decision of a Magistrate exercising the jurisdiction of a statutory tribunal subject to this Part, shall be made in accordance with the written law that established that statutory tribunal, provided however, that

- (i) if any written law that established the statutory tribunal provides for an appeal against the decision of that statutory tribunal subject to this Part to be made to the Magistrates Court, then any appeal from the decision of a Magistrate exercising the jurisdiction of the statutory tribunal under this Part shall lie to the High Court; and
- (ii) if any written law that established the statutory tribunal does not provide for any appeal against the decision of that statutory tribunal, then any appeal from the decision of a Magistrate exercising the jurisdiction of the statutory tribunal under this Part shall lie to the High Court.

#### **[MC 61F] Rules and directions**

**61F** Notwithstanding anything contained in any written law, the Chief Justice may make rules or issue directions for regulating the practice and procedure for the exercise of jurisdiction of statutory tribunals by a Magistrate, and all such matters necessary to give effect to this Part.

#### **[MC 61G] Transitional and savings**

**61G** (1) Upon commencement of this Part, the Chief Registrar shall require all cases, applications, appeals, reviews, submissions, determinations or any other matter before the statutory tribunal to be transferred to the Chief Registrar, in such manner as the Chief Registrar may direct.

(2) Any person who, at the date of the commencement of this Part, is responsible for the records or the registry of any statutory tribunal subject to this Part, shall transfer all records, documents or such other particulars as the Chief Registrar may require, to the Chief Registrar.

(3) Subject to any specific directions as may be issued by the Chief Justice, all existing appointments of members or any employee of any statutory tribunal subject to this Part,

shall be deemed to have been annulled upon the commencement of this Part, provided however, that any member or employee of any statutory tribunal subject to this Part may be transferred to the Judicial Department without his or her appointment being annulled, in such manner as directed by the Chief Justice.

(4) Upon the commencement of this Part, no person may be appointed as, or as a member of, a statutory tribunal subject to this Part under the written law which established that statutory tribunal.

(5) At the commencement of this Part, the existing fees and forms prescribed in any written law establishing a statutory tribunal subject to this Part shall continue to be applicable for the purposes of this Part, until such time as they are amended or revised by the Chief Justice pursuant to section 61F.

(6) Any existing rules of procedure or practice prescribed for any statutory tribunal subject to this Part in any written law shall continue to be applicable by any Magistrate exercising the jurisdiction of any statutory tribunal under this Part, until such time as they are revised or amended by the Chief Justice pursuant to section 61F; provided however, that where a written law which established a statutory tribunal does not provide any rules of procedure or practice, then the rules applicable in the Magistrates Court shall apply mutatis mutandis.

(7) Any order, award, decision, finding, judgment or ruling made by any statutory tribunal subject to this Part prior to the commencement of this Part in all cases, applications, appeals, pleas, submissions or other matters as the case may be, shall continue to be effective and valid in accordance with that written law until such time as they are appealed, renewed or expired, provided however, that any interim or interlocutory order, award, decision, finding, judgment or ruling made by any statutory tribunal prior to the commencement of this Part may be reviewed by any Magistrate exercising the jurisdiction of any statutory tribunal under this Part.

(8) Subject to any directions issued by the Chief Justice, all cases, applications, appeals, reviews, submissions, determinations or any other matter, which had been heard by the statutory tribunal prior to the commencement of this Part but not finally determined, shall be determined by a Magistrate in accordance with this Part, in such a manner as the Magistrate may deem just and appropriate in the circumstances.

(9) All written laws and any amendments thereto establishing and providing for any statutory tribunal subject to this Part shall continue to remain valid, provided however, that in the event of any inconsistency with that written law and this Part, this Part shall prevail.

(10) The Chief Justice may make rules for the purposes of such other transitional matters, as may be necessary to give effect to this Part.

[The next page is 816,901]

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PART 8B — ANTI-CORRUPTION DIVISION OF THE MAGISTRATES COURT

*[Repealed]*

[Pt 8B rep Act 20 of 2023 s 3, opn 19 Sep 2023]

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[The next page is 817,001]

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PART 9 — MISCELLANEOUS

FEES AND COSTS

**[MC 62] Fees and Costs**

62 The fees and costs set forth in the rules of court made under this Act or the Criminal Procedure Act 2009 may be demanded and received by the clerk of the court or other person, appointed to receive such fees and costs for and in respect of the several matters therein mentioned, provided that in the absence of the clerk of the court or in the event of there being no clerk of the court or other person appointed to receive such fees and costs, such fees and costs may be demanded and received by the Magistrate.

[s 62 am Act 31 of 2016 s 124, opn 1 Dec 2016]

**[MC 63] By whom fees payable**

63 All fees and costs payable under or by virtue of this Act shall in the first instance be paid by the party applying for the summons, warrant or other process or document in respect whereof the same are payable, provided that no fees shall be payable in any case instituted by a public officer when acting in his or her official capacity or in any case in which the Magistrate endorses on the plaint, information or complaint, as the case may be, that it is a fit one for the remission of fees on account of the poverty of the party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the Magistrate, be recoverable from the other party, if the decision be given against him or her.

**[MC 64] All fees and moneys received in courts to be subject to foregoing provisions**

64 The provisions of sections 62 and 63 shall apply to all moneys received by the clerk of the court or other person under the provisions of this or any other Act, whether the same be fees, costs, fines, forfeitures, penalties or money paid into court for any purpose, or received or recovered under or by virtue of any process of execution or distress.

PROTECTION OF MAGISTRATES, JUSTICES OF THE PEACE AND OFFICERS OF THE COURT

**[MC 65] Protection of judicial officers**

65 (1) No Magistrate, Justice of the Peace or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him or her in the discharge of his or her judicial duty whether or not within the limits of his or her jurisdiction provided that he or she at the time, in good faith, believed himself or herself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any such Magistrate, Justice of the Peace or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order which he or she would be bound to execute if within the jurisdiction of the person issuing the same.

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## REPRESENTATION OF PARTIES

**[MC 66] Representation of State and Government departments**

66 In any suit or matter in which the State or any public officer in his or her official capacity is a party or in any suit or matter affecting the revenues of Fiji, the State or that officer may be represented by a law officer, State counsel, district officer or by any barristers and solicitor or other person duly authorised in that behalf by or on behalf of the Attorney-General or by the head of the department concerned.

**[MC 67] Employment of barristers and solicitors**

67 The employment of barristers and solicitors shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before a Magistrates Court.

## RULES OF COURT

**[MC 68] Rules of court**

68 The Chief Justice may make rules of court for all or any of the following purposes—

- (a) for regulating the practice and procedure of Magistrates Courts in matters not specifically provided for in this or any other Act;
- (b) for regulating the forms to be used and all matters connected therewith;
- (c) for regulating the receipt of moneys paid into court, or received or recovered under or by virtue of any process of execution or distress;
- (d) for regulating the payment out of court of all moneys to the persons entitled thereto;
- (e) for prescribing the books and forms of account to be kept or used in Magistrates Courts;
- (f) for prescribing fees, costs and amounts for service of process which may be demanded and received by clerks of court and others in connection with the practice and procedure of the courts;
- (g) for prescribing the acceptance, retention and disposal of fees and costs;
- (h) for fixing tables of fees and costs recoverable by barrister and solicitor for their services on taxation and providing for the taxation of the same;
- (i) for prescribing the allowances and expenses to be paid to any witness in any civil proceedings;
- (j) for the better carrying into effect of the provisions and objects and intentions of this Act.

[s 68 am Act 12 of 1974 s 6, opn 24 May 1974]

## SAVING

**[MC 69] Jurisdiction of iTaukei courts not to be affected**

69 Subject to the provisions of section 71, nothing in this Act contained shall affect the jurisdiction of any court established under the iTaukei Affairs Act 1944.

[s 69 am Act 19 of 1973 s 4, opn 31 Aug 1973; Decree 31 of 2010 s 4, opn 2 July 2010]

**[MC 70] Application of Act to Rotuma**

70 This Act shall, in its application to Rotuma, be subject to the provisions of the Rotuma Act 1927.

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**[MC 71] Enforcement of iTaukei courts**

71 (1) Where any judgment or order has at any time been made by a court established under the provisions of the iTaukei Affairs Act 1944 and such judgment or order provides for the making of periodic payments, any court shall have jurisdiction to enforce any such judgment or order registered therein under the provisions of this section.

[subs (1) am Decree 31 of 2010 s 4, opn 2 July 2010]

(2) A judgment or order referred to in subsection (1) shall be registered in the register of a court if the person entitled to receive the payments thereunder, or any other person on his or her behalf and with his or her written authority, presents a certificate of the said judgment or order issued under the hand of an officer nominated by the permanent secretary responsible for iTaukei affairs in writing in that behalf.

(3) Every certificate issued under the provisions of subsection (2) shall be in a form approved by the Chief Justice.

(4) Subject to the provisions of subsections (5) and (6); when a judgment or order has been registered in a court under the provisions of this section, it shall be enforceable in the same manner as an order made under the provisions of the Family Law Act 2003.

[subs (4) am Act 31 of 2016 s 124, opn 1 Dec 2016]

(5) Written notice of the registration of a judgment or order under the provisions of subsection (2) together with a copy of the certificate issued under the provisions of that subsection shall be served, by or on behalf of the person entitled to receive payment thereunder, on the person liable to make payments thereunder and such judgment or order shall not be enforced until—

- (a) 14 days after the date of the said service of the said notice and copy of the certificate or the day after the determination of any application made under the provisions of subsection (6), whichever shall be the later; and
- (b) proof of the said service by affidavit or evidence on oath is filed in the court.

(6) Within 14 days of the service upon him or her of the notice of registration and of the copy of the certificate under the provisions of subsection (5), the person liable to make the payments under the judgment or order registered may apply to the court to have the certificate and the registration thereof set aside or to have any errors therein corrected and to have such corrected certificate issued by and ordered to be registered by the Magistrate.

(7) In any proceedings for the enforcement of a judgment or order registered under the provisions of this section, the certificate issued and registered under the provisions of subsection (2), or the corrected certificate issued and registered under the provisions of subsection (6), as the case may be, shall be conclusive proof of the facts stated therein.

[s 71 insrt Act 19 of 1973 s 5, opn 31 Aug 1973]

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# Magistrates Court Rules 1945

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Service 0

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# Magistrates Court Rules 1945

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## TABLE OF AMENDMENTS

Magistrates Court Rules 1945 (Vol 4 of 1945), commenced on 1 May 1945, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
Magistrates Courts (Amendment) Rules 1950 (LN 101 of 1950)	17 November 1950
Magistrates Courts (Amendment) Rules 1953 (LN 107 of 1953)	21 August 1953
Magistrates Courts (Amendment) Rules 1958 (LN 16 of 1958)	28 February 1958
Magistrates Courts (Amendment) (No 2) Rules 1958 (LN 86 of 1958)	5 September 1958
Magistrates Courts (Amendment) (No 4) Rules 1958 (LN 95 of 1958)	26 September 1958
Magistrates Courts (Amendment) (No 5) Rules 1958 (LN 98 of 1958)	3 October 1958
Magistrates Courts (Amendment) (No 6) Rules 1958 (LN 100 of 1958)	3 October 1958
Magistrates Courts (Amendment) Rules 1959 (LN 29 of 1959)	6 March 1959
Magistrates Courts (Amendment) (No 2) Rules 1959 (LN 165 of 1959)	9 October 1959
Magistrates Courts (Amendment) (No 3) Rules 1959 (LN 206 of 1959)	1 January 1960
Magistrates Courts (Amendment) Rules 1961 (LN 92 of 1961)	1 August 1961
Magistrates Courts (Amendment) (No 2) Rules 1961 (LN 138 of 1961)	3 November 1961
Magistrates Courts (Amendment) (No 2) Rules 1962 (LN 183 of 1962)	1 January 1963
Magistrates Courts (Amendment) Rules 1963 (LN 59 of 1963)	26 April 1963
Magistrates Court (Amendment) Rules 1965 (LN 121 of 1965)	1 October 1965
Magistrates Courts (Amendment) Rules 1966 (LN 72 of 1966)	3 June 1966
Magistrates Courts (Amendment) Rules 1967 (LN 21 of 1967)	23 March 1967

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<b>Amending Legislation</b>	<b>Date of Commencement</b>
Magistrates Courts (Amendment) Rules 1968 (LN 176 of 1968)	16 December 1968
Magistrates Courts (Amendment) Rules 1972 (LN 73 of 1972)	21 August 1972
Magistrates Courts (Amendment) Rules 1974 (LN 20 of 1974)	18 February 1974
Magistrates Courts (Amendment) Rules 1975 (LN 18 of 1975)	10 February 1975
Magistrates Courts (Amendment) Rules 1984 (LN 53 of 1984)	7 May 1984
Magistrates Courts (Amendment) Rules 1994 (LN 29 of 1994)	1 March 1994
Magistrates Courts (Amendment) (No 2) Rules 1994 (LN 80 of 1994)	9 September 1994
Magistrates Courts (Amendment) Rules 2000 (LN 10 of 2000)	11 February 2000
Magistrates Courts (Amendment) Rules 2002 (LN 41 of 2002)	12 July 2002
Legal Practitioners (Magistrates Courts Costs) Regulations 2006 (LN 77 of 2006)	7 July 2006

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**[MC 10,005] Short title**

1 These Rules may be cited as the Magistrates Court Rules 1945.

**[MC 10,010] Definitions**

2 In these Rules, unless the context otherwise requires—

**appellate court** means, in the case of appeals from a Resident Magistrate, the High Court, and, in the case of appeals from a second or third class Magistrate, a Resident Magistrate;

**Chief Registrar** means the Chief Registrar of the High Court and includes a Deputy Registrar;

**court** means a Magistrates Court;

**magisterial area** means the area within which a Magistrates Court normally exercises jurisdiction in accordance with directions issued by the Chief Justice under section 4(1) of section 4 of the Act; and

**the Act** means the Magistrates Courts Act 1944.

**[MC 10,015] Orders**

3 These Rules are divided into the following Orders:

Order	1	Forms, Fees, Allowances and Costs.
Order	2	Computation of Time.
Order	3	Miscellaneous Provisions.
Order	4	Employment of Legal Practitioners.
Order	5	Evidence.
Order	6	Form and Commencement of Suit.
Order	7	Service of Process.
Order	8	Parties.
Order	9	Particulars of Claim.
Order	10	Guardian for Purposes of Suit.
Order	11	Alteration of Parties.
Order	12	Discontinuance of Suits.
Order	13	Place of Trial and of Instituting Suits.
Order	14	Amendment.
Order	15	Admissions.
Order	16	Pleadings.
Order	17	Settlement of Issues.
Order	18	Inquiries and Accounts.
Order	19	Appearance of Parties.
Order	20	Arrest of Absconding Defendant.
Order	21	Interim Attachment of Property.
Order	22	Preservation of Disputed Property.
Order	23	Equitable Relief, Counterclaim, Set-off.
Order	24	Tender.

Order	25	Interrogatories, Discovery and Production of Documents.
Order	26	Motions.
Order	27	Listing of Causes for Hearing.
Order	28	Postponement of Hearing.
Order	29	Sittings of Court.
Order	30	Non-attendance of Parties at Hearing.
Order	30A	Power to Strike Out.
Order	31	Proceedings at the Hearing.
Order	32	Judgment.
Order	33	Costs.
Order	34	Enforcement of Orders.
Order	35	Interpleader other than under Executions.
Order	36	Execution.
Order	37	Appeals.
Order	38	Recovery of Costs by Legal Practitioners.

[r 3 am LN 59 of 1963 r 2, opn 26 Apr 1963]

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## ORDER 1 — FORMS, FEES, ALLOWANCES AND COSTS

### **[MC 10,025] Sealing writs**

1 The sealing of any writ or process shall not be necessary in addition to the signature of a Magistrate or clerk of the Court, as the case may be, unless sealing is particularly prescribed by some law or rule of court.

### **[MC 10,030] Forms. Appendix A**

2 The forms in Appendix A or forms to the like effect, may be used in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

### **[MC 10,035] Provision for additional forms**

3 In proceedings for which forms are not provided in Appendix A or prescribed by any Act or rules or orders of court, the Chief Registrar may, subject to the approval of the High Court, from time to time, frame the forms required, using as guides those which may have been provided.

### **[MC 10,040] Fees. Appendix B**

4 The fees specified in Appendix B shall be paid by the party at whose instance they are incurred, and may be afterwards recovered as costs of the cause if the court shall so order. The court may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, or for other sufficient reasons, dispense, if it sees fit, with the payment of any fees or any part thereof.

### **[MC 10,045] Taxation of Costs**

5 Where the costs of a legal practitioner are required to be taxed there shall be allowed such costs, not exceeding the amounts prescribed in the scale of costs in Appendix B appropriate to the work done, as the taxing master shall in his or her discretion think fit, provided that unless the court otherwise orders—

- (a) in defended causes or matters in which the subject matter or amount recovered does not exceed \$100 in value such costs shall be allowed in accordance with the scale set forth in Part 1 of Appendix B; and
- (b) in undefended causes or matters such costs shall be allowed in accordance with the scale set forth in Part 2 of Appendix B.

[r 5 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 10,047] Fees — Matrimonial Causes Act**

6 The fees specified under the Family Law Act 2003 shall be paid by the party at whose instance they are incurred, and may be afterwards recovered as costs of cause if the court shall so order.

[r 6 insrt LN 107 of 1953 r 2, opn 21 Aug 1953]

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**[MC 10,049] Costs — Matrimonial Causes Act**

7 In the case of petitions presented and heard under the Family Law Act 2003, costs shall be allowed to barristers and solicitors in accordance with Part 3 of Appendix D.  
[r 7 insrt LN 107 of 1953 r 2, opn 21 Aug 1953]

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## ORDER 2 — COMPUTATION OF TIME

### [MC 10,055] How to be made

1 Where, by any section of the Act, or any order or rule of court, or any special order, or the course of the court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply—

- (a) **Commencement of a time limited** — The limited time shall not include the day of the date or of the happening of the event, but shall commence at the beginning of the day next following that day.
- (b) **When act to be done** — The act or proceeding must be done or taken at latest on the last day of the limited time.
- (c) **Sundays and holidays** — When the limited time is less than 6 days, the following days shall not be reckoned as part of the time, namely, Saturdays, Sundays and any public holidays.
- (d) **Time expiring on Sunday or holiday** — When the time expires on a Saturday, Sunday or any public holiday, the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards, not being one of those days.

[r 1 am LN 72 of 1967 r 2, opn 18 Mar 1967]

### [MC 10,060] Enlargement or abridgement of time

2 Parties may, by consent, enlarge or abridge any of the times fixed for taking any step, or filing any document, or giving any notice, in any suit. Where such consent cannot be obtained, either party may apply to the court for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed.

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## ORDER 3 — MISCELLANEOUS PROVISIONS

### **[MC 10,070] Public or private sittings of court**

1 The sittings of the court for the hearing of causes and matters shall ordinarily be public; but the court may, for a reason to be specified by it on the minutes, hear any particular cause or matter in the presence only of the parties, with their legal practitioners, if any, and the officers of the court.

[r 1 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 10,075] What orders to be made**

2 Subject to any particular rules, the court may, in all causes and matters, make any interlocutory order which it considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.

### **[MC 10,080] Consolidation of cases**

3 Causes or matters pending in the court may, by order of the court, be consolidated, and the court shall give any directions that may be necessary as to the conduct of the consolidated actions.

### **[MC 10,085] Interpreter**

4 If, in any cause or matter, any accused person, party, witness or other person is unable to speak or understand the English language, the court may direct a fit and proper person to attend and interpret the proceedings so far as may be necessary. Before so interpreting, such person shall swear on oath in the following form—

“I swear that I will well and truly interpret and explanation make of all such matters and things as shall be required of me to the best of my skill and understanding. So help me God.”

### **[MC 10,090] Receipts**

5 (1) When any fee is paid or when, in any criminal cause, any fine or any costs are paid, the clerk of the court shall issue a receipt therefore in the name of the person by whom such fee is payable or the person ordered to pay such fine or costs as the case may be.

(2) When any fee is paid in respect of a document the clerk of the court shall endorse a note of the amount of the fee paid and the number of the receipt issued therefore upon the original and upon the filing copy of such document.

### **[MC 10,095] Court records**

6 There shall be kept in Magistrates Courts books to be called “Cause Books”, in such form as the Chief Registrar may direct, in which all actions instituted in the court shall be entered and numbered consecutively in each year, according to the order in which the same shall be commenced; and the particulars of each action, and a note of the steps and proceedings therein, shall be entered in the said books in such manner as the Chief Registrar may from time to time direct.

**[MC 10,100] Application of Rules**

7 Except where it is otherwise specifically provided these Rules shall apply to civil procedure only.

**[MC 10,105] Application of High Court Rules**

8 In the event of there being no provision in these Rules to meet the circumstances arising in any particular cause, matter, case or event, the court and/or the clerk of the court and/or the parties shall be guided by any relevant provision contained in the High Court Rules 1988.

**[MC 10,110] Power to enlarge or abridge time**

9 A court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceedings, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, provided that when the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of these Rules or by any direction or order of the court or a Judge the costs of any application to extend such time and of any order made thereon shall be borne by the party making such application unless the court or a Judge shall otherwise order.

[The next page is 823,011]

## ORDER 4 — EMPLOYMENT OF LEGAL PRACTITIONERS

### **[MC 10,125] Change of practitioners during the hearing of a cause or matter**

1 A party suing or defending by a legal practitioner in any cause or matter shall be at liberty to change his or her legal practitioner in such cause or matter, without an order for that purpose, upon notice of such change being filed in the office of the clerk of the court in which such cause or matter may be proceeding. But, until such notice is filed and a copy served, the former legal practitioner shall be considered the legal practitioner of the party until final judgment, unless allowed by the court, for any special reason, to cease from acting therein; but such legal practitioner shall not be bound, except under express agreement or unless re-engaged, to take any proceedings in relation to any appeal from such judgment.

[r 1 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 10,130] Liability to pay costs**

2 When it shall appear to the court that any civil cause or matter has been commenced or carried on maliciously or without probable grounds, and the party by whom or on whose behalf such cause or matter has been so commenced or carried on has been represented therein by a legal practitioner who had knowledge of such malice or lack of probable grounds, or if it shall appear that any legal practitioner has, by any sort of deceit, induced his or her client to enter into or continue any litigation, every such legal practitioner shall, on failure of his or her client to pay any costs which he or she may be ordered to pay, be liable, if the court so orders, to pay the amount thereof to the party to whom costs are given. Such failure shall be deemed to have taken place if the client shall have refused or neglected to make payment after a demand has been made on him or her, although no process of execution may have been issued against him or her, provided that no order for the payment of costs of a legal practitioner under this Rule shall have effect until it is confirmed by a Judge.

This Rule shall not be construed to restrict the liability of any legal practitioner in respect of the abovementioned or any other misconduct for which he or she would otherwise be punishable.

[r 2 am LN 10 of 2000 r 12, opn 11 Feb 2000]

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[The next page is 823,211]

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823,012

## ORDER 5 — EVIDENCE

### A — EXCLUSION OF WITNESSES

#### **[MC 10,140] Ordering witnesses out of court**

1 On the application of either party, or on its own motion, the court may order witnesses on both sides to be kept out of court; but this Rule does not extend to the parties themselves or to their professional representatives, although intended to be called as witnesses.

#### **[MC 10,145] Preventing communication with witnesses**

2 The court may, during any trial, take such means as it considers necessary and proper for preventing communication with witnesses who are within the court house or its precincts awaiting examination.

### B — DOCUMENTARY EVIDENCE

#### **[MC 10,150] Production of documents without giving evidence**

3 Any person, whether a party or not, in a cause or matter may be summoned to produce a document, without being summoned to give evidence; and, if he or she causes such document to be produced in court, the court may dispense with his or her personal attendance.

### C — AFFIDAVITS

#### **[MC 10,155] Affidavits to be filed**

4 Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognised for any purpose in the court.

#### **[MC 10,160] Not to be sworn before certain persons**

5 An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his or her legal practitioner, or before a partner or clerk of his or her legal practitioner.

[r 5 am LN 10 of 2000 r 12, opn 11 Feb 2000]

#### **[MC 10,165] Defective in form**

6 The court may permit an affidavit to be used, notwithstanding it is defective in form according to these Rules, if the court is satisfied that it has been sworn before a person duly authorised.

#### **[MC 10,170] Amendment and re-swearing**

7 A defective or erroneous affidavit may be amended and re-sworn, by leave of the court, on such terms as to time, costs or otherwise as seems reasonable.

**[MC 10,175] No extraneous matter**

8 An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.

**[MC 10,180] Contents of affidavits**

9 Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his or her own personal knowledge or from information which he or she believes to be true.

**[MC 10,185] Grounds of belief to be stated**

10 When a witness deposes to his or her belief in any matter of fact, and his or her belief is derived from any source other than his or her own personal knowledge, he or she shall set forth explicitly the facts and circumstances forming the ground of his or her belief.

**[MC 10,190] Informant to be named**

11 When the belief of a deponent is derived from information received from another person, the name of his or her informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstances of the information.

**[MC 10,195] Costs of affidavits**

12 The costs of every affidavit contravening any of the provisions of Rules 8, 9, 10 or 11 shall be paid by the party filing the same.

**[MC 10,200] Rules in taking affidavits**

13 The following Rules shall be observed by commissioners and others before whom affidavits are taken—

- (a) **To be properly entitled** — Every affidavit taken in a cause or matter shall be headed in the court and in the cause or matter.
- (b) **Description of witness** — It shall state the full name, trade or profession, and residence of the deponent.
- (c) **In first person** — It shall be in the first person and divided into convenient paragraphs, numbered consecutively.
- (d) **Alteration to be attested** — Any erasure, interlineation or alteration made before the affidavit is sworn shall be attested by the commissioner, who shall affix his or her signature or initials in the margin immediately opposite to the interlineation, alteration or erasure.
- (e) **If improperly written** — Where an affidavit proposed to be sworn is illegible or difficult to read, or is, in the judgment of the commissioner, so written as to facilitate fraudulent alteration, he or she may refuse to swear the deponent, and require the affidavit to be re-written in an unobjectionable manner.
- (f) **Deponent to sign** — The affidavit shall be signed by the deponent (or, if he or she cannot write, marked by him or her with his or her thumbprint or mark in the presence of the commissioner).
- (g) **Form of jurat** — The jurat shall be written, without interlineation, alteration or erasure (unless the same be initialled by the commissioner), immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the commissioner.

#### **Date and place**

It shall state the date of the swearing and the place where it is sworn.

#### **In presence of commissioner**

It shall state that the affidavit was sworn before the commissioner or other officer taking the same.

#### **Illiterate or blind deponent**

Where the deponent is illiterate or blind, it shall state the fact, and that the affidavit was read over (or translated into his or her own language in the case of a deponent not having sufficient knowledge of English), and that the deponent appeared to understand it.

#### **Mark or thumbprint**

Where the deponent makes his or her thumbprint or mark instead of signing, the jurat shall state that fact, and that the thumbprint or mark was made in the presence of the commissioner.

#### **Joint affidavit**

Where 2 or more persons join in making an affidavit, their several names shall be written in the jurat, and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him or her in the affidavit.

- (h) **If affidavit altered, to be re-sworn** — The commissioner shall not allow an affidavit, when sworn, to be altered in any manner without being re-sworn.
- (i) **New jurat** — If the jurat has been added and signed, the commissioner shall add a new jurat on the affidavit being re-sworn; and, in the new jurat, he or she shall mention the alteration.
- (j) **New affidavit** — The commissioner may refuse to allow the affidavit to be re-sworn, and may require a fresh affidavit.
- (k) **Declarations without oath** — The commissioner may take, without oath, the declaration of any person affirming that the taking of any oath whatsoever is, according to his or her religious belief, unlawful, or who, by reason of immature age or want of religious belief, ought not, in the opinion of the commissioner, to be admitted to make a sworn affidavit. The commissioner shall record in the attestation the reason of such declaration being taken without oath.

### **D — OBJECTIONS TO EVIDENCE**

#### **[MC 10,205] When to be made**

**14** In every case, civil or criminal, and at every stage thereof, any objection to the reception of evidence by a party affected thereby shall be made at the time the evidence is offered, provided that an appellate court may, in its discretion, entertain any objection to evidence received in the court below, though not objected to at the time it was offered.

#### **[MC 10,210] Where question objected to**

**15** Where a question proposed to be put to a witness is objected to, the court, unless the objection appears frivolous, shall, if required by either party, take a note of the question and objection, and mention on the notes whether the question was allowed to be put or not and, if put, the answer to it.

#### **[MC 10,215] Marking of rejected documents**

**16** Where a document is produced and tendered in evidence and rejected by the court, the document shall be marked as having been so tendered and rejected.

## E — TAKING OF EVIDENCE

**[MC 10,220] Evidence of witnesses, how taken**

17 In the absence of any agreement between the parties, and subject to these Rules, the witnesses at the trial of any suit shall be examined *viva voce* and in open court; but the court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court may think reasonable; or that any witness whose attendance in court ought, for sufficient cause, to be dispensed with be examined by interrogatories or otherwise before an officer of the court or other person, provided that, where it appears to the court that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

**[MC 10,225] Admission of affidavits**

18 In any suit, the court may, in its discretion, if the interests of justice appear absolutely so to require (for reasons to be recorded in the minutes of the proceedings), admit an affidavit in evidence, although it is shown that the party against whom the affidavit is offered in evidence has had no opportunity of cross-examining the person making the affidavit.

**[MC 10,230] Evidence on commission**

19 The court may, in any suit where it shall appear necessary for the purpose of justice, make an order for the examination, before any officer of the court or other person, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any such suit to give such deposition in evidence therein on such terms, if any, as the court may direct.

**[MC 10,235] How to be taken**

20 Evidence on commission, when not directed to be taken upon interrogatories previously settled, shall be taken, as nearly as may be, as evidence at the hearing of a suit, and then the notes of the evidence shall be read over to the witness and be signed by him or her. If the witness refuses, the officer of the court or other person shall add a note of his or her refusal, and the statement may be used as if he or she had signed it.

**[MC 10,240] Evidence before suit instituted**

21 Evidence may be taken in like manner, on the application of any person, before suit instituted, where it is shown to the satisfaction of the court on oath that the person applying has good reason to apprehend that a suit will be instituted against him or her in the court, and that some person within the jurisdiction at the time of the application can give material evidence respecting the subject of the apprehended suit, but that he or she is about to leave the jurisdiction, or that, from some other cause, the person applying will lose the benefit of his or her evidence if it be not at once taken; and the evidence so taken may be used at the hearing, subject to just exceptions, provided always that the court may impose any terms or conditions with reference to the examination of such witness, and the admission of his or her evidence, as to the court may seem reasonable.

**[MC 10,245] Facilities for proving deed or instrument**

22 Any party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed may deliver to the opposite party, not less



than 4 clear days before the return day, a notice in writing specifying the date and nature of and the parties to such deed or instrument, and requiring the opposite party to admit that the same was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents; and if, at or before the hearing of the suit, the party so notified shall neglect or refuse to give such admission, the court may adjourn the hearing in order to enable the party tendering such deed or instrument to obtain proof of the due execution thereof, and, upon production of such proof, the court may order the costs of such proof to be paid by the party so neglecting or refusing, whether he or she be the successful party or not.

DFLRC (RT) - 17/12/24

823,215

Service 0

[The next page is 823,411]

Service 0

823,216

## ORDER 6 — FORM AND COMMENCEMENT OF SUIT

### **[MC 10,255] Commencement by writ of summons**

1 Every suit shall be commenced by a writ of summons to be issued by the Magistrate or the clerk of the court. The summons may issue without application in writing.

### **[MC 10,260] Contents of writ of summons. Appendix A. Form 2.**

2 The writ shall contain the name, place of abode and occupation of the plaintiff and of the defendant, so far as they can be ascertained, and the date (called “return day”) and place of hearing; and there shall be endorsed on the writ particulars of the claim signed by the plaintiff or his or her legal practitioner which shall state briefly and clearly the subject matter of the claim and the relief sought.

[r 2 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 10,265]**

2A If a claim is signed by a legal practitioner, it must be endorsed with a statement of the date on which any letter before action was sent to the defendant.

[r 2A insrt LN 10 of 2000 r 2, opn 11 Feb 2000]

### **[MC 10,270] Date**

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

### **[MC 10,275] Void if altered without leave**

4 Any alteration of the writ, without leave of the court, shall render the writ void.

### **[MC 10,280] Time for service of writ**

5 Every writ of summons shall be served 8 clear days before the date of hearing when the defendant resides within the magisterial area of the court from which the writ is issued and in all other cases the period shall be fixed by the court when the writ is issued and shall be endorsed on the writ, provided that the court may from time to time extend the date of hearing of a writ of summons which has not been served in time.

### **[MC 10,285] Filing of notice of intention to defend**

6 If the party served with the writ of summons deliver to the clerk of the court, and serve on the plaintiff, not less than 3 days before the day fixed for hearing, a notice in writing that he or she intends to defend the suit, then and in such case the suit shall be entered for hearing on the aforesaid date for hearing.

[r 6 am LN 73 of 1972 r 4, opn 21 Aug 1972]

### **[MC 10,290] Special leave to defend where foregoing Rule not complied with**

7 When any defendant neglects to deliver and serve the notice of defence, as prescribed by Rule 6, within the time limited by the said Rule, the court may, at any time

before judgment is entered, on the defendant disclosing a defence on the merits, let in the defendant to defend upon such terms as the court may think just.

[r 7 subst LN 72 of 1966, opn 3 June 1966; am LN 73 of 1972 r 5, opn 21 Aug 1972]

#### **[MC 10,295] Disposal of undefended suit**

8 In the case of liquidated demands only, where any defendant neglects to deliver and serve the notice of defence prescribed by Rule 6 within the time limited by the said Rule, and is not let in to defend in accordance with the provisions of Rule 7, then and in such case the plaintiff may enter final judgment against that defendant.

[r 8 subst LN 73 of 1972 r 6, opn 21 Aug 1972]

#### **[MC 10,300] Saving of court's powers**

9 Nothing herein shall preclude the court from hearing or requiring oral evidence, should it so think fit, at any stage of the proceedings.

#### **[MC 10,305] Division of causes of action**

10 It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing 2 or more actions, but any plaintiff having a cause of action in excess of the amount for which an action might be brought in any court may abandon the excess, and, on proving his or her case, recover such amount; and the judgment of the court in respect of that amount shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

#### **[MC 10,310] Service through court or by solicitor**

11 [r 11 rep LN 10 of 2000 r 2, opn 11 Feb 2000]

[The next page is 823,611]

## ORDER 7 — SERVICE OF PROCESS

### [MC 10,320] Service may be effected by any person

1 (1) Personal service of a writ, petition, notice, summons, order or other document of which service is required may be made by any person.

[para (1) am LN 95 of 1958 r 4, opn 26 Sep 1958subst LN 10 of 2000 r 3, opn 11 Feb 2000]

(2) Any person serving any document shall, on the request of the party served, explain to such party the nature of such document.

### [MC 10,325] When proof shall be oral or by affidavit

2 Proof of service shall be oral or by affidavit, and the court, if not satisfied that service has been properly effected, may direct that it be effected by a police officer or by a bailiff or other officer of the court, before proceeding further with the hearing of the cause or matter.

### [MC 10,330] Service to be personal

3 Unless, in any case, the court thinks it just and expedient otherwise to direct, service shall be personal; that is, the document to be served shall be delivered to the person to be served himself or herself.

### [MC 10,335] Original need not be shown

4 Service shall be completely effected by the delivery of a duplicate or attested copy of any document, without the exhibition of any original.

### [MC 10,340] Service other than personal

5 Where it appears to the court (either after or without an attempt at personal service) that, for any reason, personal service cannot be conveniently effected, the court may order that service be effected—

- (a) **Delivery to inmate** — by delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served; or
- (b) **To agent** — by delivery thereof to some person being 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 will, through that agent or other person, come to the knowledge of the person to be served; or
- (c) **By advertisement** — by advertisement in the Gazette, or in some newspaper circulating within the jurisdiction of the court; or
- (d) **By notice** — by notice put up at the court house, or some other place of public resort, of the district wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode or of business of the person to be served; or
- (e) by sending the document by prepaid registered post addressed to the person to be served at his or her last known place of abode or business; or
- (f) by any 2 or more of the foregoing methods.

[r 5 am LN 72 of 1966 r 3, opn 3 June 1966]

**[MC 10,345] Varying order of service**

6 An order for service may be varied, from time to time, with respect to the mode of service directed by the order.

**[MC 10,350] Dies non**

7 Service in a civil case shall not be made on Sunday, Good Friday or Christmas Day.

**[MC 10,355] On partners**

8 (1) Where partners are sued in the name of their firm, the writ or other document shall be served either upon any one or more of the partners, or at the principal place of business of the partnership upon any person appearing to be over the age of 16 years and to have, at the time of service, the control or management of the partnership business there; and such service shall be deemed good service upon the firm.

(2) Where a writ is issued against a firm, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he or she is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

(3) Service on a company shall be effected in accordance with the provisions of the Companies Act 2015.

**[MC 10,360] On prisoner**

9 Where the person on whom service is to be effected is a prisoner in a prison, it shall be sufficient service to deliver the writ or document at the prison to the officer in charge of such prison, who shall cause the same to be served on such prisoner.

**[MC 10,365] On person in asylum or prison**

10 Where the person on whom service is to be effected is employed and dwells in any mental hospital or other public asylum or in any prison, it shall be sufficient service to deliver the writ or document to the gatekeeper or lodge keeper of such hospital, asylum or prison, who shall cause the same to be served on such person.

**[MC 10,370] Where defendant resides out of but carries on business within Fiji**

11 Where the suit is against a defendant residing out of but carrying on business within Fiji in his or her own name, or under the name of a firm, through an authorised agent, and such suit is limited to a cause of action which arose within the jurisdiction of the court, the writ or document may be served by giving it to such agent, and such service shall be equivalent to personal service on the defendant.

**[MC 10,375] When court may direct service out of Fiji**

12 Service out of Fiji may be allowed by the court—

- (a) whenever the whole or any part of the subject matter of the suit is land or stock or other property situate within its jurisdiction, or any act, deed or thing affecting such land, stock or property; or

- (b) whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into within its jurisdiction; or
- (c) whenever there has been a breach within its jurisdiction of any contract, wherever made; or
- (d) whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within its jurisdiction.

### [MC 10,380] Application for leave to serve out of Fiji

13 Every application for an order for leave to serve a writ or document on a defendant out of Fiji shall be supported by evidence by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and the grounds upon which the application is made.

### [MC 10,385] Order to prescribe mode of service

14 Any order giving leave for service out of Fiji shall prescribe the mode of service and the date of hearing, and the court may receive an affidavit of such service having been effected as *prima facie* evidence thereof.

### [MC 10,390] Service in another Division

15 Where a writ or other document is required to be served in the Division of another court, the clerk of the court from whose office the writ or other document is issued may, if the Magistrate so directs, transmit the same and a copy thereof, together with any other documents annexed thereto and copies thereof, to the clerk of such other court for service.

### [MC 10,395] Where service refused or threatened

16 Where the officer or person charged with the service of any writ or document on any person is prevented by the refusal of such person to receive such writ or document or by the violence or threats of such person, or any other person in concert with him or her, from personally serving the writ or document, it shall be sufficient to inform the person to be served of the nature of the writ or document, and to leave the writ or document as near such person as it is practicable.

### [MC 10,400] Time of service

17 (1) Every writ of summons and every judgment summons shall be served within 6 months from the date of issue thereof and if not served within such period shall thereafter be of no effect unless renewed as hereinafter provided.

(2) The court may if it thinks fit, on application made by the plaintiff not less than 7 days before the expiry of the said period of 6 months on *ex parte* notice of motion, supported by an affidavit showing the reason why service has not been effected, renew any such writ of summons or judgment summons for one further period of 6 months. Any writ of summons or judgment summons so renewed and not served within such extended time shall thereafter be of no effect.

[r 17 insrt LN 29 of 1959 r 2, opn 6 Mar 1959]

### [MC 10,405] Witness Summons

18 (1) Where any party to a suit or matter desires a person to be summoned as a witness to give evidence at the hearing in court or to produce at the hearing in court a

document in his or her possession or power, the court shall, on application by the party, issue a witness summons, provided that unless it appears at the time of any such application that there is a reasonable probability that service of the summons can be effected not less than 3 clear days before the date of hearing, the summons shall not be issued except on the express direction of a Magistrate.

(2) The summons shall be served on the witness personally a reasonable time before the day fixed for hearing.

(3) There shall be paid or tendered to the witness at the time of the service of the summons the sum estimated to be payable to that witness for allowances and travelling expenses.

[para (3) insrt LN 72 of 1966 r 3, opn 3 June 1966]

[The next page is 823,811]

Service 0

823,614



## ORDER 8 — PARTIES

### **[MC 10,415] Suit on behalf of others**

1 If any plaintiff sues, or any defendant is sued, in any representative capacity, it shall be expressed on the writ. The court may order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties.

### **[MC 10,420] Joint ground of suit**

2 Where a person has jointly with other persons an alleged ground for instituting a suit, all those other persons ought ordinarily to be made parties to the suit.

### **[MC 10,425] Where joint interest, parties may be authorised to sue or defend for others**

3 Where more persons than one have the same interest in one suit, one or more of such persons may be authorised to sue or to defend in such suit for the benefit of or on behalf of all parties so interested.

### **[MC 10,430] Joint and several demand**

4 Where a person has a joint and several demand against 2 or more persons, either as principals or sureties, it is not necessary for him or her to bring before the court as parties to a suit concerning that demand all the persons liable thereto, and he or she may proceed against any one or more of the persons severally or jointly and severally liable. Where a defendant claims contribution, indemnity or other remedy or relief over against any other person, he or she may apply to have such person made a party to the suit.

### **[MC 10,435] Non-joinder**

5 (1) If it shall appear to the court, at or before the hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in, the subject matter, of the suit, or who may be likely to be affected by the result, have not been made parties, the court may adjourn the hearing of the suit to a future day, to be fixed by the court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the court shall issue a notice to such persons, which shall be served in the manner provided by the rules for the service of a writ of summons or in such manner as the court thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he or she shall have appeared or not, shall be bound by all proceedings in the cause, provided that a person so served, and failing to appear within the time limited by the notice for his or her appearance, may, at any time before judgment in the suit, apply to the court for leave to appear, and such leave may be given upon such terms (if any) as the court shall think fit.

(2) The court may, at any stage of the proceedings, and on such terms as appear to the court to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out.

(3) No suit shall be defeated by reason of non-joinder or misjoinder of parties.

### **[MC 10,440] Claims by the Government**

6 Claims by the Government against any person may be brought by the Attorney-General or by any officer authorised by law to prosecute such claims on behalf of the Government, as the case may be.

**[MC 10,445] Proceedings by or against partners**

7 Any persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms (if any); and any party to an action may, in such case, apply to the court for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the court may direct.

**[MC 10,450] Distinct causes of action in one writ**

8 In case a writ states 2 or more distinct causes of action by and against the same parties, and in the same rights, the court may, either before or at the hearing, if it appears inexpedient to try the different causes of action together, order that the trials be had separately, and make such order as to adjournment and costs as justice requires.

**[MC 10,455] Misjoinder of actions**

9 In case a writ states 2 or more distinct causes of action, but not by and against the same parties, or by and against the same parties but not in the same rights, the writ may, on the application of any defendant, be amended or dismissed, as justice may require.

[The next page is 824,011]

## ORDER 9 — PARTICULARS OF CLAIM

### **[MC 10,465] Particulars of claim**

1 It shall be sufficient for the plaintiff to state his or her claim in the writ of summons briefly in a general form, but he or she may deliver to the clerk of the court, at the time of making application for the writ of summons, particulars of his or her demand in any form which shall give the defendant reasonably sufficient information as to the details of his or her claim.

Whenever the plaintiff shall deliver such particulars, he or she shall also deliver to the clerk of the court as many duplicates thereof as there are defendants and such particulars shall be served with the writ.

### **[MC 10,470] Further particulars**

2 The court may, on the application of the defendant, or on its own motion, order further or better particulars.

### **[MC 10,475] Judgment not to exceed claim**

3 The plaintiff shall not, at the hearing, obtain a judgment for any sum exceeding that stated in the particulars, except for subsequent interest and the cost of suit, notwithstanding that the sum claimed in the writ for debt or damages exceeds the sum stated in the particulars.

### **[MC 10,480] Amendment thereof**

4 Particulars of claim shall not be amended except by leave of the court, but the court may, on any application for leave to amend, grant the same, on its appearing that the defendant will not be prejudiced by the amendment. Otherwise, the court may refuse leave or grant the same, on such terms as to notice, adjournment or costs as justice requires.

### **[MC 10,485] Amendment thereof at trial**

5 Any variance between the items contained in the particulars and the items proved at the hearing may be amended at the hearing, either at once or on such terms as to notice, adjournment or costs as justice requires.

[The next page is 824,211]

Service 0

824,012

## ORDER 10 — GUARDIAN FOR PURPOSES OF SUIT

### **[MC 10,495] Court may appoint guardians to infant defendants and persons of weak mind**

1 Where, on default of a defendant in answering or otherwise defending the suit, after service of the writ, it appears to the court that he or she is an infant, or a person of weak or unsound mind, so that he or she is unable by himself or herself to defend the suit, the court may, if it thinks fit, on the application of the plaintiff, or of its own motion, appoint, by order, some fit person to be guardian of the defendant for the purposes of the suit by whom he or she may defend it.

### **[MC 10,500] Notice and service thereof**

2 Before such an order is made, the court shall cause such notice as it thinks reasonable to be served on or left at the dwelling house of the person with whom or under whose care the defendant is, and also, unless the court sees good reason to the contrary, in the case of an infant not residing with or under the care of his or her guardian, to be served on or left at the dwelling house of his or her guardian.

### **[MC 10,505] Suits by infants and persons of weak minds**

3 Infants or persons of weak or unsound mind may sue as plaintiffs by their committees or next friends on such terms as to the liability for costs and otherwise of such committees or next friends as the court shall consider just.

### **[MC 10,510] Guardian not liable for costs**

4 A guardian *ad litem* of an infant or a person of weak or unsound mind shall not be personally liable for any costs not occasioned by his or her personal negligence or misconduct.

[r 4 am LN 72 of 1966 r 4, opn 3 June 1966]

### **[MC 10,515] Power to set aside judgment where no guardian**

5 Where a judgment has been obtained or an order made against a defendant who was at the time an infant or a person of weak or unsound mind without a guardian having been appointed, the court or a Magistrate may set aside the judgment or order and order a new trial or make such order as the court or Magistrate think just.

[r 5 insrt LN 72 of 1966 r 4, opn 3 June 1966]

[The next page is 824,411]

Service 0

824,212

**[MC 10,525] Where change of interest, court may make order enabling suit to proceed**

1 Where, after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings, provided that any person served with such an order may, within such time as the court in the order directs, apply to the court to discharge or vary the order.

**[MC 10,530] Death of party not to abate suit, if cause of action survive**

2 The death of a plaintiff or defendant shall not cause the suit to abate, if the cause of action survive.

**[MC 10,535] Cause of action surviving to surviving plaintiff or plaintiffs**

3 If there be 2 or more plaintiffs or defendants, and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

**[MC 10,540] Cause of action surviving to surviving plaintiff and personal representative of deceased plaintiff**

4 If there be 2 or more plaintiffs, and one of them die, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone, but shall survive to them and the personal representative of the deceased plaintiff jointly, the court may, on the application of the personal representative of the deceased plaintiff, enter the name of such representative in the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such personal representative of the deceased plaintiff. If no application shall be made to the court by any person claiming to be the personal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the personal representative of the deceased plaintiff shall, after notice to appear, be interested in, and shall be bound by, the judgment given in the suit, in the same manner as if the suit had proceeded at his or her instance conjointly with the surviving plaintiff or plaintiffs, unless the court shall see cause to direct otherwise.

**[MC 10,545] Death of sole or surviving plaintiff**

5 In case of the death of a sole plaintiff, or sole surviving plaintiff, the court may, on the application of the personal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the suit, and the suit shall thereupon proceed; if no such application shall be made to the court within what it may consider a

reasonable time by any person claiming to be the personal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the court to make an order that the suit shall abate, and to award to the defendant the reasonable costs which he or she may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the court may, if it thinks proper, on the application of the defendant, and upon such terms as to costs as may seem fit, make such order for bringing in the personal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to reach a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

**[MC 10,550] Dispute as to personal representative**

6 If any dispute arises as to who is the personal representative of a deceased plaintiff, it shall be competent to the court either to stay the suit until the fact has been duly determined in another suit, or to decide, before the hearing of the suit, who shall be admitted to be such personal representative for the purpose of prosecuting the suit.

**[MC 10,555] Death of one of several defendants or of a sole surviving defendant**

7 If there be 2 or more defendants, and one of them dies, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the court specifying the name, description and place of abode of any person whom the plaintiff alleges to be the personal representative of such defendant, and whom he or she desires to be made the defendant in his or her stead; and the court shall thereupon enter the name of such representative in the suit in the place of such defendant, and shall issue an order to him or her to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

**[MC 10,560] Bankruptcy of plaintiff**

8 The bankruptcy of the plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the creditors, shall not be a valid objection to the continuance of such suit, unless the assignee or trustee shall decline to continue the suit and to give security for the costs thereof, within such reasonable time as the court may order; if the assignee or trustee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within 8 days after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.

[The next page is 824,611]



## ORDER 12 — DISCONTINUANCE OF SUITS

### [MC 10,570] Discontinuance of suit

1 If, before the date fixed for the hearing, the plaintiff desires to discontinue any suit against all or any of the defendants, or to withdraw any part of his or her alleged claim, he or she shall give notice in writing of discontinuance or withdrawal to the clerk of the court and to every defendant as to whom he or she desires to discontinue or withdraw. After the receipt of such notice, such defendant shall not be entitled to any further costs, with respect to the matter so discontinued or withdrawn, than those incurred up to the receipt of such notice, unless the court shall otherwise order; and such defendant may apply *ex parte* for an order against the plaintiff for the costs incurred before the receipt of such notice and of attending the court to obtain the order. Such discontinuance or withdrawal shall not be a defence to any subsequent suit. If, in any other case, the plaintiff desires to discontinue any suit or to withdraw any part of his or her alleged claim, or if a defendant desires to discontinue or withdraw his or her counterclaim or any part thereof, such discontinuance or withdrawal may, in the discretion of the court, be allowed on such terms as to costs and as to any subsequent suit and otherwise as to the court may seem just.

### [MC 10,575] Stay of subsequent suit

2 If any subsequent suit shall be brought before payment of the costs of a discontinued suit, for the same or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs shall have been paid.

824,611

Service 0

[The next page is 824,811]

Service 0

824,612

## ORDER 13 — PLACE OF TRIAL AND OF INSTITUTION OF SUITS

[Order 13 subst LN 59 of 1963 r 3, opn 26 Apr 1963]

### [MC 10,585] Place of trial

1 Subject to the law respecting transfer, the place for the trial and institution of any suit or matter shall be regulated as follows—

- (a) **Suits upon contract** — All suits arising out of the breach of any contract may be commenced and determined in the court nearest to the place in which such contract ought to have been performed, or in which the defendant, or one of the defendants, resides or carries on business.
- (b) **Suits other than suits upon contract** — Any suit other than a suit founded on contract, may be commenced and determined in the court nearest to the place in which the defendant, or one of the defendants, resides or carries on business.
- (c) **Suits commenced in wrong court** — Where any suit shall have been commenced in the wrong court, and whether or not the defendant shall plead specially in objection to the jurisdiction, the court may—
  - (i) if the suit should have been commenced in some other court in the same Division in which it was commenced, transfer the suit to the court in which it ought to have been commenced; or
  - (ii) order that the suit shall continue in the court in which it was commenced; or
  - (iii) order the proceedings to be struck out; or
  - (iv) report to the High Court pursuant to section 32 of the Act the pendency of the action.
- (d) **Procedure of transfer** — Where a transfer of a suit to another court is ordered the clerk of the court in which the suit was commenced shall send to the clerk of the court to which the suit is transferred a certified copy of all the entries in the books of the first mentioned court, together with all the documents in his or her possession relating to the proceedings, and the clerk of the court to which the proceedings are transferred shall appoint a day for the hearing and send notice of the hearing to all parties interested and all subsequent proceedings shall be taken in that court.

[The next page is 825,011]

Service 0

824,812

## ORDER 14 — AMENDMENT

### [MC 10,595] Under what circumstances

1 The court may, at any stage of the proceedings, either of its own motion or on the application of either party, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just.

825,011

Service 0

[The next page is 825,211]

Service 0

825,012

## ORDER 15 — ADMISSIONS

### **[MC 10,605] Notice of admissions**

1 Any party to a suit may give notice, by his or her own statement or otherwise, that he or she admits the truth of the whole or any part of the case stated or referred to it in the writ of summons, statement or particulars of claim, defence or other statement of any other party.

### **[MC 10,610] Notice to admit. Appendix A. Forms 6 and 7**

2 Any party may call upon any other party to admit, saving just exceptions, any document or fact.

### **[MC 10,615] Costs on refusal to make reasonable admissions**

3 In case of refusal or neglect to admit after notice, the costs of proof of the document or fact shall be paid by the party refusing or neglecting to admit, whatever be the result of the suit, unless the court is of opinion that the refusal or neglect to admit was reasonable.

### **[MC 10,620] Admissions by defendants**

4 If any defendant shall sign a statement admitting the amount claimed in the summons or any part of such amount, the court, on being satisfied as to the genuineness of the signature of the person before whom such statement was signed, and unless it sees good reason to the contrary, shall, in case the whole amount is admitted, or in case the plaintiff consents to a judgment for the part admitted, enter judgment for the plaintiff for the whole amount or the part admitted, as the case may be, and, in case the plaintiff shall not consent to judgment for the part admitted, shall receive such statement in evidence as an admission without further proof.

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## ORDER 16 — PLEADINGS

### [MC 10,630] Written statements, in what cases

1 Suits shall ordinarily be heard and determined in a summary manner without pleadings; but, where it appears to the court (for reasons recorded in the minutes) that the nature and circumstances of any case render it expedient in the interests of justice to do so, the court may order the plaintiff to file a written statement of his or her claim, and may likewise order the defendant to file a written answer or statement of his or her defence. The filing of a statement of claim need not necessitate, unless the court so directs, that an answer shall also be filed. The order may be made at any stage of a suit, either before or at the hearing.

### [MC 10,635] Illiterate parties

2 In making any such order, the court shall have regard to the condition of the parties, and shall not require any party to file a written statement who, from want of education, is incapable of preparing or understanding the same. If, in any case, the court considers it necessary in the interests of justice that any statement of such party should be reduced into writing prior to the hearing, the court may direct that the same be taken down in writing by the clerk of the court, and, after verifying the statement so prepared by oral examination of the party, where necessary, may direct, if it thinks fit, that such statement be filed as a pleading.

### [MC 10,640] Where pleadings ordered

3 Whenever any pleading, statement or answer is ordered to be filed, the provisions of the following Rules shall be observed—

- (a) **The pleading to state all material facts** — Every pleading shall contain a statement of all the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation.
- (b) **How facts to be stated** — The facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement.
- (c) **The relief claimed to be stated** — Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief, and the same Rule shall apply to any counterclaim made or relief claimed by the defendant in his or her statement of defence.
- (d) **Grounds of claim founded on separate facts to be separately stated** — Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same Rule shall apply where the defendant relies upon several distinct grounds of set-off or counterclaim founded upon separate and distinct facts.
- (e) **Defendant's pleading to meet allegations in statement of claim** — The defendant's pleading shall deny all such material allegations in the statement of claim as the defendant intends to deny at the hearing. Every allegation of fact, if

not denied specifically or by necessary implication or stated to be not admitted, shall be taken as established at the hearing.

- (f) **Allegations shall not be met generally, but specifically** — It shall not be sufficient to deny generally the facts alleged by the statement of claim but the defendant must deal specifically therewith, either admitting or denying the truth of each allegation of fact *seriatim*, as the truth or falsehood of each is within his or her knowledge, or (as the case may be) stating that he or she does not know whether such allegation or allegations is or are true or otherwise.
- (g) **Denial of fact must answer point of substances** — When a party denies an allegation of fact, he or she must not do so evasively, but answer the point of substance. And when a matter of fact is alleged with diverse circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.
- (h) **Admissions: their effect** — The answer shall admit such material allegations in the statement of claim as the defendant knows to be true or desires to be taken as admitted, and such allegations may be taken as established without proof thereof.
- (i) **Allegation of new facts in defence** — The answer must allege any fact not stated in the statement of claim on which the defendant relies in defence, as establishing, for instance, fraud on the part of the plaintiff, or showing that the plaintiff's right to recover, or to any relief capable of being granted on the statement of claim, has not yet accrued, or is released or barred or otherwise gone.
- (j) **Set-off or counterclaim to be pleaded** — Where any defendant seeks to rely upon any facts, as supporting a right of set-off or counterclaim, he or she shall, in his or her statement of defence, state specifically that he or she does so by way of set-off or counterclaim, and the particulars of such set-off or counterclaim shall be given.
- (k) **Evidence in denial of allegation or in support of defence not set up in pleading** — The answer of a defendant shall not debar him or her, at the hearing, from disproving any allegation of the plaintiff not admitted by the answer, or from giving evidence in support of a defence not expressly set up by the answer, except where the defence is such as, in the opinion of the court, ought to have been expressly set up by the answer, or is inconsistent with the statements thereof, or is, in the opinion of the court, likely to take the plaintiff by surprise and to raise new issues not fairly arising out of the pleadings as they stand and such as the plaintiff ought not to be then called upon to meet.
- (l) **Costs in certain cases** — Where the court shall be of opinion that any allegations of fact, denied or not admitted by any pleading, ought to have been admitted, the court shall make such order as may be just with respect to costs.
- (m) **Verification of pleadings** — The court may order any plaintiff or defendant to verify his or her statement, or any part thereof, on oath or affidavit.
- (n) **Filing and service of pleadings** — Every pleading shall be filed at such time as the court directs, and be served on the opposite party, if the court thinks fit, at such time and in such manner as it directs.

[The next page is 825,611]

## ORDER 17 — SETTLEMENT OF ISSUES

### **[MC 10,650] At or before hearing**

1 At any time before or at the hearing, the court may, if it thinks fit, on the application of any party or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce such questions into writing and settle them in the form of issues, which issues, when settled, may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind and partly of the other.

### **[MC 10,655] Court may direct parties to prepare issues**

2 The court may, if it thinks fit, direct the parties to prepare issues, and the same shall be settled by the court.

### **[MC 10,660] When to be settled**

3 The issues may be settled, without any previous notice, at any stage of the proceedings at which all the parties are actually present, or at the hearing. If otherwise, notice shall be given to the parties to attend at the settlement of the issues.

### **[MC 10,665] The court may amend or frame additional issues**

4 At any time before the decision of the case, if it shall appear to the court necessary for the purpose of determining the real question or controversy between the parties, the court may amend the issues or frame additional issues, on such terms as to it shall seem fit.

[The next page is 825,811]

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## ORDER 18 — INQUIRIES AND ACCOUNTS

### **[MC 10,675] Questions of fact or of account may be investigated by referee**

1 In any civil cause or matter in which all parties interested who are under no disability consent thereto, and also, without such consent, in any civil cause or matter requiring any prolonged examination of documents or accounts or any scientific or local examination which cannot, in the opinion of the court, conveniently be made by the court in the usual manner, the court may, at any time, on such terms as it may think proper, order any question or issue of fact, or any question of account arising therein, to be investigated or tried before a referee, to be agreed on between the parties or appointed by the court.

### **[MC 10,680] Instructions to referee**

2 Where an order has been made under Rule 1, the court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his or her guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry. The instructions shall specify whether the referee is merely to transmit the proceedings which he or she may hold on the inquiry, or also to report his or her own opinion on the point referred for his or her investigation.

### **[MC 10,685] Interim inquiries or accounts**

3 The court may, at any stage of the proceedings, direct any necessary inquiries or accounts described in Rule 1 to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

### **[MC 10,690] General powers of referee**

4 The referee may, subject to the order of the court, hold the inquiry at or adjourn it to any place which he or she may deem most convenient, and have any inspection or view which he or she may deem expedient for the disposal of the controversy before him or her. He or she shall, so far as is practicable, proceed with the inquiry *de die in diem*.

### **[MC 10,695] Evidence**

5 Subject to any order to be made by the court ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses may be enforced by subpoena; and every such inquiry shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Magistrate, but not so as to make the tribunal of the referee a public court of justice.

### **[MC 10,700] Referee's authority in the inquiry**

6 Subject to any order as mentioned in Rule 5, the referee shall have the same authority in the conduct of any inquiry as a Magistrate when presiding at any trial.

**[MC 10,705] Referee may report questions or facts specially**

7 The referee may, before the conclusion of any inquiry before him or her, or by his or her report under the reference, submit any question arising therein for the decision of the court, or state any facts specially.

**[MC 10,710] Effect of report by referee**

8 The proceedings and report in writing of the referee shall be received in evidence in the case, unless the court may have reason to be dissatisfied with them, and the court shall have power to draw such inferences from the proceedings or report as shall be just.

**[MC 10,715] Powers of court**

9 The court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for further inquiry or consideration to the same or any other referee, as often as may be necessary, and shall pass such ultimate judgment or order as may appear to be right and proper in the circumstances of the case.

[The next page is 826,011]

## ORDER 19 — APPEARANCE OF PARTIES

### **[MC 10,725] Court may permit party to appear by proxy**

1 In every civil cause or matter pending before the court, in case it shall appear to the satisfaction of the court that any plaintiff or defendant who may not be represented by a legal practitioner is prevented by some good or sufficient cause from attending the court in person, the court may, in its discretion, permit any other person who shall satisfy the court that he or she has authority in that behalf to appear for such plaintiff or defendant, provided that nothing in this Rule shall be deemed to authorise any person other than a legal practitioner to charge a fee for any advice given or services rendered in relation to any such cause or matter.

[r 1 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 10,730] Proceeding without authority**

2 Any person doing any act or taking any proceeding in the name or on behalf of another person, not being lawfully authorised thereunto, and knowing himself or herself not to be so authorised, shall be guilty of a contempt of court.

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## ORDER 20 — ARREST OF ABSCONDING DEFENDANT

### **[MC 10,740] Defendant leaving Fiji or removing property. Appendix A. Form 8. Application for security**

1 If, in any suit for an amount of value of \$10 or upwards, the defendant is about to leave Fiji, or has disposed of or removed from Fiji his or her property, or any part thereof, the plaintiff may, either at the institution of the suit or at any time thereafter until final judgment, make an application to the court that security be taken for the appearance of the defendant to answer any judgment that may be passed against him or her in the suit.

### **[MC 10,745] Warrant to arrest. Appendix A. Form 9**

2 If the court, after making such investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the defendant is about to leave Fiji, or that he or she has disposed of or removed from Fiji his or her property, or any part thereof, and that, in either case, by reason thereof the execution of any decree which may be made against him or her is likely to be obstructed or delayed, it shall be lawful for the court to issue a warrant to bring the defendant before the court, that he or she may show cause why he or she should not give good and sufficient bail for his or her appearance.

### **[MC 10,750] Bail for appearance. Appendix A. Forms 10 and 11**

3 If the defendant fail to show cause as aforesaid, the court shall order him or her to give bail for his or her appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him or her in the suit; and the surety or sureties shall under take, in default of such appearance, to pay any sum of money that may be adjudged against the defendant in the suit, with costs.

### **[MC 10,755] Deposit in lieu of bail**

4 Should a defendant offer, in lieu of bail for his or her appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him or her, with costs of the suit, the court may accept such deposit.

### **[MC 10,760] Committal in default**

5 In the event of the defendant neither finding security nor offering a sufficient deposit, he or she may be committed to custody until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree, if the court shall so order, provided that the court may, at any time, upon reasonable cause being shown and upon such terms as to the security or otherwise as may seem just, release the defendant.

### **[MC 10,765] In what courts proceedings may be taken**

6 The application may be made to any court of the Division in which the defendant may be, and such court may issue the warrant for detaining and bringing the defendant before the court, and may make such further orders as shall seem just. In case the warrant shall be issued by a different court from that in which the suit is pending, such court shall transmit the application and the evidence therein to the court in which the suit is so

depending, and take sufficient security for the appearance of the defendant in that court, or send him or her there in the custody of a police officer or an officer of court, and the court in which the suit is pending shall thereupon examine into and proceed in the application in accordance with the foregoing provisions, in such manner as to it shall seem just.

**[MC 10,770] Costs of executing warrant**

7 It shall be lawful for a court, before issuing the warrant, to require the plaintiff to deposit in court such sum as the court may think sufficient for the cost of executing the warrant and of bringing the defendant before the court, and, where necessary, of sending him or her in custody to the court in which the suit is pending.

**[MC 10,775] Costs of subsistence of person arrested**

8 The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action in advance. The court shall fix whatever allowance it shall think sufficient for such subsistence not exceeding \$0.35 *per diem*. The amount so disbursed may be recovered by the plaintiff in the suit, unless the court shall otherwise order. The court may release the person so imprisoned on failure by the plaintiff to pay the subsistence, money, or, in case of serious illness, order his or her removal to hospital. During the period of such person's stay in hospital, the subsistence allowance shall be paid by the plaintiff, unless the court shall see fit, in any case, to order otherwise.

[r 8 am LN 98 of 1958 r 2, opn 3 Oct 1958]

[The next page is 826,411]

## ORDER 21 — INTERIM ATTACHMENT OF PROPERTY

### **[MC 10,785] In what cases**

1 If the defendant, in any suit for an amount or value of \$10 or upwards, with intent to obstruct or delay the execution of any decree that may be passed against him or her, is about to dispose of his or her property, or any part thereof, or to remove any such property from Fiji, the plaintiff may apply to the court, either at the time of the institution of the suit, or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him or her in the suit, and, on his or her failing to give such security, to direct that any property, real or personal, belonging to the defendant, shall be attached until the further order of the court.

### **[MC 10,790] Application for attachment**

2 The application shall contain a specification of the property required to be attached and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same, and shall be supported by oral evidence or by affidavit.

### **[MC 10,795] Form of order**

3 If the court, after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his or her property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the court to order the defendant, within a time to be fixed by the court, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he or she should not furnish security. The court may also, in the order, direct the attachment, until further order, of the whole or any portion of the property specified in the application.

### **[MC 10,800] Where defendant fails to show cause or give security. Appendix A. Form 12**

4 If the defendant fails to show such cause, or to furnish the required security within the time fixed by the court, the court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant show such cause, or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the court shall order the attachment to be withdrawn.

### **[MC 10,805] Rights of third parties not to be affected**

5 The attachment shall not affect the rights of persons not parties to the suit, and, in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

### **[MC 10,810] Removal of attachment**

6 In all cases of attachment before judgment, the court shall, at any time, remove the same on the defendant furnishing security as hereinbefore required together with security for the costs of the attachment.

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**[MC 10,815] In what courts proceedings may be taken**

7 The application may be made to any court of the Division where the defendant or, in case of emergency, where the property proposed to be attached may be, and such court shall make such order as shall seem just. In case an order for the attachment of property shall be issued by a different court from that in which the suit is depending, such court shall, on the request of either of the parties, transmit the application and evidence therein to the court in which the suit is so depending, retaining the property in the meantime when attached, or taking sufficient security for its value, and the court in which the suit is depending shall thereupon examine into and proceed in the application in accordance with the foregoing provisions, in such manner as shall seem just.

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## ORDER 22 — PRESERVATION OF DISPUTED PROPERTY

### **[MC 10,825] Orders to stay waste, damage or alienation**

1 In any suit in which it shall be shown, to the satisfaction of the court, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the court to issue an injunction to such party, commanding him or her to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him or her from wasting, damaging or alienating the property, as to the court may seem meet.

### **[MC 10,830] Appointment of receiver**

2 In all cases in which it may appear to the court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the court may seem proper.

### **[MC 10,835] Orders for sale of perishable goods**

3 It shall be lawful for the court, on the application of any party to a suit, to make any order for the sale by any person named in such order, and in such manner and on such terms as to the court may seem desirable, of any goods, wares or merchandise, the right to which is in dispute in the suit, which may be of a perishable nature, or likely to depreciate from keeping, or which, for any other just and sufficient reason, it may be desirable to have sold at once.

### **[MC 10,840] Detention and inspection of property in dispute**

4 It shall be lawful for the court, upon the application of any party to a suit, and upon such terms as may seem just, to make any order for the detention, preservation or inspection of any property being the subject of such suit, and, for all or any of the purposes aforesaid, to authorise any person or persons to enter upon or into any land or building in the possession of any party to such suit; and, for all or any of the purposes aforesaid, to authorise any samples to be taken, or any observations to be made or experiments to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

### **[MC 10,845] Orders to restrain breaches of contract or torts**

5 In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied by any claim for damages or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the court for an injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising

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out of the same contract, or relating to the same property or right, and such injunction may be granted by the court on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as to the court shall seem reasonable and just, provided always that any order for an injunction may be discharged, varied or set aside by the court, on application made thereto by any party dissatisfied with such order.

**[MC 10,850] Notice of application**

6 The court may, in every case, before making an order or appointment as aforesaid, direct such reasonable notice of the application for the same to be given to the opposite party, as it shall see fit.

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**ORDER 23 — EQUITABLE RELIEF, COUNTERCLAIM,  
SET-OFF**

**[MC 10,860] Counterclaim, Set-off**

1 A defendant in an action may set off, or set up by way of counterclaim against the claim of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a statement of claim in a cross action so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court may, if, in the opinion of the court, such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself or herself thereof, and the court shall refuse permission in respect of any counterclaim for an amount or value exceeding the maximum amount or value of the subject-matter in respect of which a claim may be heard in such court.

**[MC 10,865] Notice of counterclaim or set-off**

2 (1) No defendant shall be allowed to set up any such counterclaim or set-off, unless he or she shall have lodged with the clerk of the court, 4 clear days before the return day, a notice in original, and as many duplicates thereof as there are plaintiffs, containing his or her name and address and a concise statement of the grounds of such counterclaim or set-off, and shall have paid the same court and service fees as would be payable if he or she were claiming by writ of summons, provided that the court may, in its discretion and on such terms as may seem just, allow the defendant to set up a counterclaim or set-off, notwithstanding that such notice has not been duly lodged.

(2) On receipt of notice of counterclaim or set-off, and on due payment of the fees, the clerk of the court shall cause a duplicate of such notice to be served on the plaintiff.

(3) The provisions of Order 9, as to particulars of claim shall apply, as far as they are applicable, to counterclaim and set-off.

**[MC 10,870] Defendant may have judgment for balance due on counterclaim**

3 Where, in any action, a set-off or counterclaim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he or she may be entitled to upon the merits of the case.

**[MC 10,875] Payment into court where partial set-off. Costs**

4 The court, if it sees fit, may order that a defence of partial set-off shall be accompanied by payment into court of the amount to which, on the defendant's showing, the plaintiff is entitled, unless the plaintiff's claim to that amount is resisted on some other ground of defence; and, in default of such payment, the defendant shall be liable to bear the costs of the suit, even if he or she succeed in his or her defence to the extent of the set-off on which he or she relies.

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**ORDER 24 — TENDER**

**[MC 10,885] Payment into court of the amount tendered**

**1** A defence alleging tender by the defendant must be accompanied by payment into court of the amount alleged to have been tendered.

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## ORDER 25 — INTERROGATORIES, DISCOVERY AND PRODUCTION OF DOCUMENTS

### **[MC 10,895] When interrogatories may be delivered. Appendix A. Form 13**

1 Any party may, by leave of the court (but, if he or she is required to deliver any pleading, not until he or she has delivered a sufficient pleading), deliver interrogatories in writing for the examination of the opposite party, upon any matter as to which discovery may be sought.

### **[MC 10,900] Amendment**

2 The court may strike out or permit to be amended any interrogatory which, in the opinion of the court, is scandalous or irrelevant, or not put *bona fide* for the purposes of the action, or not sufficiently material, or in any other way objectionable.

### **[MC 10,905] Answer**

3 The party interrogated shall answer the interrogatories subject to just exceptions.

### **[MC 10,910] If answer insufficient**

4 If any party interrogated omits to answer or answers insufficiently, without having just cause, the party interrogating may apply to the court for an order requiring him or her to answer or to answer further. Thereupon, or upon the court's own motion, if the court thinks fit, an order may be made requiring him or her to answer, or to answer further, either by affidavit or by *viva voce* examination, as the court may direct.

### **[MC 10,915] Discovery of documents**

5 The court may order any party to the suit to make discovery, upon oath, of the documents which are or have been in his or her possession or power relating to any matter directly relevant to the suit.

[r 5 am LN 10 of 2000 r 4, opn 11 Feb 2000]

### **[MC 10,920] Production of documents. Appendix A. Forms 14 and 15**

6 The court may, at any time during the pendency therein of any suit or proceeding, order the production by any party thereto, upon oath, of any documents in his or her possession or power relating to any matter in question in such suit or proceeding, and the court may deal with such documents, when produced, as shall appear just.

### **[MC 10,925] Inspection of documents**

7 The court may, in its discretion, on the application of any of the parties to any suit or proceeding, compel any other party to allow the applicant to inspect all or any documents in the custody or under the control of such other party relative to such suit, and, if necessary, to take examined copies of the same.

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**[MC 10,930] Notice to produce. Appendix A. Form 16**

8 Whenever any of the parties to a suit is desirous that any document or other thing which he or she believes to be in the possession or power of another of the parties thereto should be produced at any hearing of the suit, he or she shall, at the earliest opportunity, serve the party in whose possession or power he or she believes the document or other thing to be with a notice in writing calling upon him or her to produce the same.

**[MC 10,935] Order for production**

9 In case it shall appear to the court that there is reasonable ground to believe that such document or thing will not be produced pursuant to such notice, the court may make an order for the production of the same at the hearing of the suit by the party served with the notice, subject to just exceptions.

**[MC 10,940] Where right to production depends on questions in dispute**

10 If the party from whom discovery of any kind or production or inspection is sought objects to the same or any part thereof, the court, if satisfied that the right to the discovery or production or inspection sought depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

**[MC 10,945] Penalty on failure to comply with order to answer or for discovery**

11 If any party fails to comply with any order to answer interrogatories, or for discovery or production or inspection of documents, he or she shall be liable to attachment. He or she shall also, if a plaintiff, be liable to have his or her action dismissed for want of prosecution, and, if a defendant, to have his or her defence, if any, struck out, and to be placed in the same position as if he or she had not defended, and the party interrogating may apply to the court for an order to that effect, and an order may be made accordingly.

[The next page is 827,411]

## ORDER 26 — MOTIONS

### A — GENERAL

#### [MC 10,955] Motion may be made at any time

1 Interlocutory applications may be made by motion at any stage of a cause or matter.

#### [MC 10,960] Motion paper

2 Unless the court shall otherwise order, no motion shall be entertained until the party moving has filed a motion paper distinctly stating the terms of the order sought.

#### [MC 10,965] Motion list

3 The clerk of the court shall make up, for each day on which the court appoints motions to be heard, a motion list, on which he or she shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought by him or her.

#### [MC 10,970] Affidavits

4 There shall be filed with the motion paper all affidavits on which the person moving intends to rely.

#### [MC 10,975] Hearing of motions

5 The motion shall be made on such days and at such times as are, by the regulations of the court, appointed for hearing motions. In cases of urgency the motion may, by leave of the court, be made at any time while the court is sitting.

#### [MC 10,980] Adjournment

6 The hearing of any motion may, from time to time, be adjourned upon such terms as the court may deem fit.

#### [MC 10,985] Motions *ex parte* or on notice

7 Motions may be made either *ex parte* or after notice to the parties to be affected thereby, but no motion can be made without previous notice to the parties affected unless the court is satisfied that the delay caused by proceeding in the manner provided by Rule 17 would or might entail serious mischief.

[r 7 am LN 10 of 2000 r 5, opn 11 Feb 2000]

### B — EX PARTE MOTIONS

#### [MC 10,990] Absolute order, or order to show cause

8 On a motion *ex parte*, the party moving shall apply for either an immediate absolute order of the court, in the terms of the motion paper, on his or her own showing and evidence, or an order on the other party to appear on a certain day and show cause why an order should not be made in terms of the motion paper.

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Service 0

**[MC 10,995] Argument on motion**

9 Any party moving in court *ex parte* may support his or her motion by argument addressed to the court on the facts put in evidence; and no party to the suit or proceeding, although present, other than the party moving, shall be entitled to be then heard, except by leave of the court.

**[MC 11,000] Orders on *ex parte* motions**

10 When a motion is made *ex parte*, the court may refuse to make the order sought, or may grant an order to show cause why the order sought should not be made, or may allow the motion to be made on notice to the parties to be affected thereby.

**[MC 11,005] Court may vary or discharge order**

11 Where an order is made on a motion *ex parte*, any party affected by it may, within 7 days after service of it, or within such further time as the court shall allow, apply to the court by motion to vary or discharge it; and the court, on notice to the party obtaining the order, either may refuse to vary or discharge it, or may vary or discharge it, with or without imposing terms as to costs or security, or otherwise, as seems just.

## C — ORDERS TO SHOW CAUSE

**[MC 11,010] Return day to be specified**

12 An order to show cause shall specify a day when cause is to be shown, to be called the return day to the order, which shall ordinarily be not less than 3 days after service.

**[MC 11,015] Counter-evidence**

13 A person served with an order to show cause may, before the return day, produce evidence to contradict the evidence used in obtaining the order, or set forth other facts on which he or she relies to induce the court to discharge or vary such order.

**[MC 11,020] Further service in certain cases**

14 On the return day, if the person served does not appear, and it appears to the court that the service on all proper parties has not been duly effected, the court may enlarge the time and direct further service, or make such other order as seems just.

**[MC 11,025] Appearance or proof of service**

15 If the person served appear, or the court is satisfied that service has been duly effected, the court may proceed with the matter.

**[MC 11,030] General powers as to orders**

16 The court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

## D — NOTICE OF MOTION

**[MC 11,035] Notice of motion**

17 Unless the court gives special leave to the contrary, there shall be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

**[MC 11,040] Service on legal practitioner**

18 Where a party acts by a legal practitioner, service of notice of motion on such legal practitioner shall be deemed good service on such party.

**[MC 11,045] Copy of affidavit to be served with notice**

19 Along with the notice of motion there shall be served a copy of any affidavit on which the party moving intends to rely at the hearing of such motion.

**[MC 11,050] Where all parties not served**

20 If, at the hearing of the motion, the court shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice the court may either dismiss the motion, or adjourn the hearing thereof in order, that such notice may be given, upon such terms as to the court may seem fit.

**[MC 11,055] Service with writ of summons**

21 The plaintiff may, by leave of the court, cause any notice of motion to be served upon a defendant with the writ of summons.

## E — EVIDENCE IN INTERLOCUTORY PROCEEDINGS

**[MC 11,060] Oral evidence**

22 Oral evidence shall not be heard in support of any motion, unless by leave of the court.

**[MC 11,065] Evidence in addition to or in lieu of affidavits**

23 In addition to or in lieu of affidavits, the court may, if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it, in like manner as at the hearing of a suit.

**[MC 11,070] Notice to parties**

24 Such notice as the court, in each case according to the circumstances, considers reasonable shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the court considers entitled, to inspect the documents to be produced, or to examine the persons summoned, or to be present at their examination, as the case may be.

**[MC 11,075] Evidence how taken**

25 The evidence of a witness, on examination, shall be taken in like manner, as nearly as may be, as at the hearing of a suit.

**[MC 11,080] Affidavit not filed with motion paper**

26 Upon the hearing of any motion, the court may, on such terms as it may deem fit, allow any affidavit to be used, although such affidavit has not been filed with the motion paper, and although a copy thereof has not been served on the opposite side along with the notice of motion.

[The next page is 827,611]

Service 0

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## ORDER 27 — LISTING OF CIVIL CAUSES FOR HEARING

### [MC 11,090] Causes to be placed on the cause list

1 It shall not be necessary for the defendant to enter a formal appearance, but, on the return day marked on the writ of summons, the cause shall be placed on the cause list for that day.

### [MC 11,095] Order of causes on list

2 Subject to the discretion of the court, causes shall be placed on the cause list in the order of the date of the issue of their respective writs of summons.

### [MC 11,100] Causes to be taken in order

3 Causes shall be taken for hearing in the order in which they stand on the cause list for the day, provided that the court may direct any cause to be heard out of its ordinary turn.

### [MC 11,105] Adjournment of causes

4 Any cause on the cause list not disposed of during the course of the day may be adjourned to a future day. Any causes not so adjourned shall be placed on the cause list of the following day before all causes returnable for hearing on that day, and in the same order as they stood on the cause list of the previous day. No further notice to either party of any such adjournment, or of any cause being placed on the cause list of the following day, shall be requisite, unless otherwise ordered by the court.

### [MC 11,110] Partly-heard proceedings — Appendix Form 39

5 (1) During the hearing of a cause the court may not allow any adjournment other than from day to day consecutively until the proceedings have reached their conclusion, unless for good cause which must be stated in the record.

(2) An adjournment of proceedings must be to a date, time and place stated in the presence and hearing of the parties or their respective legal practitioners.

(3) A notice of adjournment in Form 39, setting out the matters referred to in paragraph (2) must be issued to the parties or their respective legal practitioners.

[r 5 insrt LN 10 of 2000 r 6, opn 11 Feb 2000]

[The next page is 827,811]

Service 0

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## ORDER 28 — POSTPONEMENT OF HEARING

### [MC 11,120] In what cases

1 The court may postpone the hearing of any civil cause or matter, on being satisfied that the postponement is likely to have the effect of better ensuring the hearing and determination of the questions between the parties on the merits, and is not made for the purpose of mere delay. The postponement may be made on such terms as to the court seem just.

### [MC 11,125] Absence of witness

2 Where such an application is made on the ground of the absence of a witness, the court shall require to be satisfied that his or her evidence is material, and that he or she is likely to return and give evidence within a reasonable time.

### [MC 11,130] Witness out of Fiji

3 Where an application is made for the purpose of enabling the party applying to obtain the evidence of a witness resident out of Fiji, the court shall require to be satisfied that the evidence of the witness is material, and that he or she is permanently residing out of Fiji, or does not intend to come within Fiji within a reasonable time.

827,811

Service 0

[The next page is 828,011]

Service 0

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## ORDER 29 — SITTINGS OF COURT

### [MC 11,140] Days of sitting

1 Subject to the provisions of the Act, the court may, in its discretion, appoint any day or days, from time to time, for the hearing of causes and matters, as circumstances require.

### [MC 11,145] Order of business at sittings

2 Subject to special arrangements for any particular day, the business of the day shall be taken, as nearly as circumstances permit, in the following order—

- (a) Judgments standing over for delivery.
- (b) *Ex parte* motions.
- (c) Motions on notice, and arguments on showing cause against orders.
- (d) Civil causes and matters for hearing.

The above shall be taken in the order in which they stand in the lists, unless the court sees fit to vary the order.

### [MC 11,150] Interlocutory matter may be heard in chambers

3 The court may, if it thinks fit, hear any interlocutory matter in chambers.

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Service 0

[The next page is 828,211]

Service 0

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## **ORDER 30 — NON-ATTENDANCE OF PARTIES AT HEARING**

### **[MC 11,160] Non-appearance of both parties**

1 Where a civil cause on the cause list has been called, if neither party appears, the court shall, unless it sees good reason to the contrary, strike the cause out of the cause list.

### **[MC 11,165] Of plaintiff**

2 If the plaintiff does not appear, the court shall, unless it sees good reason to the contrary, strike out the cause (except as to any counterclaim by the defendant), and make such order as to costs, in favour of any defendant appearing, as seems just, provided that, if the defendant shall admit the cause of action to the full amount claimed, the court may, if it thinks fit, give judgment as if the plaintiff had appeared.

### **[MC 11,170] Of defendant**

3 If the plaintiff appears, and the defendant does not appear or sufficiently excuse his or her absence, or neglects to answer when duly called, the court may, upon proof of service of the summons proceed to hear the cause and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the defendant.

### **[MC 11,175] Counterclaim where plaintiff does not appear**

4 Where the defendant to a cause which has been struck out under Rule 2 has a counterclaim, the court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counterclaim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counterclaim and direct notice of such postponement to be given to the plaintiff.

### **[MC 11,180] Setting aside of judgment made in absence of party**

5 Any judgment obtained against any party in the absence of such party may, on sufficient cause shown, be set aside by the court, upon such terms as may seem fit.

### **[MC 11,185] Re-listing of cause struck out**

6 Any civil cause struck out may, by leave of the court, be replaced on the cause list, on such terms as to the court may seem fit.

[The next page is 828,411]

Service 0

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## ORDER 30A — POWER TO STRIKE OUT

[Order 30A insrt LN 10 of 2000 r 7, opn 11 Feb 2000]

### [MC 11,195]

1 (1) If the court is satisfied that there has been unreasonable delay in the conduct of any civil proceedings, the court may give notice to the parties to show cause why the proceedings should not be struck out.

(2) Any party to a civil proceeding mentioned in paragraph (1) must, within 14 days of receiving the notice from the court, file with the Chief Registrar—

- (a) a written statement of the grounds for the proceedings not to be struck out; and
- (b) an affidavit or a statutory declaration verifying the facts contained in the written statement.

### [MC 11,200]

2 If the court is satisfied that the cause shown by any party to a civil proceeding under Rule 1(2) is not satisfactory, the court may strike out the proceedings and make any further order it considers just.

### [MC 11,205]

3 Any proceeding struck out under Rule 2(2) may be restored by the court on such terms and conditions the court considers just.

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Service 0

[The next page is 828,611]

Service 0

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## ORDER 31 — PROCEEDINGS AT THE HEARING

### [MC 11,215] Procedure

1 The order of proceedings at the hearing of a civil cause or matter, in cases in which statements of claim and of defence have been filed, shall be in accordance with Rules 2 to 6, inclusive.

### [MC 11,220] Plaintiff's case

2 Subject to Rule 6, the plaintiff shall state his or her case. He or she shall then produce his or her evidence and examine his or her witnesses.

### [MC 11,225] Witnesses

3 The defendant shall have the right to cross-examine any witness and the plaintiff may then re-examine the witness with regard to any matter arising out of the cross-examination.

### [MC 11,230] Procedure where defendant produces no evidence

- 4 At the conclusion of the plaintiff's evidence,
- (a) if the defendant decides to produce no evidence, oral or documentary, the plaintiff shall be at liberty to sum up his or her case; the defendant shall be entitled to state his or her defence and reply generally;
  - (b) if the defendant decides to produce evidence, the plaintiff shall have no right to address the court at the conclusion of his or her own evidence; the defendant shall then state his or her defence and produce his or her evidence. At the conclusion of the defendant's evidence, he or she shall be entitled to sum up his or her defence and comment upon the evidence generally; and the plaintiff shall then be entitled to reply generally upon the whole case.

### [MC 11,235] Defendant's witnesses

5 Any witness called by the defendant shall be subject to cross-examination by the plaintiff, and may be re-examined by the defendant in respect of any matter arising out of the cross-examination.

### [MC 11,240] Right to begin

6 Where by reason of the nature of the issues between the parties the burden of proof is thrown upon the defendant, he or she shall, if the court shall so determine, have the right to begin. In such cases Rules 2, 3, 4 and 5 shall be applied as though the word "defendant" were substituted therein for the word "plaintiff", and the word "plaintiff" were substituted for the word "defendant".

### [MC 11,245] Documentary evidence

- 7 Documentary evidence must be put in and read, or taken as read by consent.

**[MC 11,250] Marking documents**

8 Every document put in evidence shall be marked by the clerk of the court at the time, and shall be retained by the court during the hearing, and returned to the party who put it in, or from whose custody it came, immediately after the judgment, unless it is impounded by order of the court.

**[MC 11,255] Where written pleadings not filed or parties are illiterate**

9 In cases where written pleadings have not been filed, or the parties or either of them are incapable of understanding their effect with sufficient accuracy, the preceding Rules respecting the order of proceedings at the hearing shall be varied by the court so far as may be necessary. In particular, the statement of the defendant in defence, where he or she does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his or her claim and of the grounds thereof, and before any witnesses are examined, unless, in any case, the court shall see reason to direct otherwise.

**[MC 11,260] Disallowance of vexatious questions in cross-examination**

10 The court may, in all cases, disallow any question put in cross-examination to any party or other witness, which may appear to it to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter.

**[MC 11,265] Avoidance of delay**

11 The court must exercise reasonable control over the presentation of evidence with a view to avoiding wastage of time.

[r 11 insrt LN 10 of 2000 r 8, opn 11 Feb 2000]

[The next page is 828,811]

## ORDER 32 — JUDGMENT

### [MC 11,275] Delivery of judgment

1 The decision or judgment in any suit shall be delivered in open court, unless the court otherwise directs.

### [MC 11,280] Notice when reserved

2 If the court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the court, at the hearing, states the day on which judgment will be delivered, in which case there shall be no further notice.

### [MC 11,285] When parties deemed to have notice

3 All parties shall be deemed to have notice of the decision or judgment, if pronounced at the hearing, and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

### [MC 11,290] Contents of judgment

- 4 Every judgment or decision must—
- (a) be written by the presiding Magistrate in the English language;
  - (b) contain the points for determination;
  - (c) contain the decisions and the reasons for those decisions; and
  - (d) be signed by the Magistrate before delivery.

[r 4 subst LN 10 of 2000 r 9, opn 11 Feb 2000]

### [MC 11,295] Where set-off allowed

5 If the defendant shall have been allowed to set off any demand or counterclaim against the claim of the plaintiff, the judgment shall state what amount, if any, is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The judgment with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

### [MC 11,300] Decree to be obeyed without demand

6 A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and, if no time is therein expressed, he or she is bound to do so immediately after the decree or order has been made (except as to costs, the amount whereof may require to be ascertained by taxation), unless the court shall enlarge the time by any subsequent order.

### [MC 11,305] Court may direct time for payment or performance

7 The court, at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment or order, or from some other point of time, as the court thinks fit.

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**[MC 11,310] Interest**

8 Where a judgment or order is for a sum of money, interest at 5% per annum shall be payable thereon, unless the court otherwise orders.

**[MC 11,315] Payment by instalments**

9 Where any judgment or order directs the payment of money the court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest. Such order may be made at the time of giving judgment, or at any time afterwards, and may be rescinded, upon sufficient cause, at any time. Such order may state that, upon failure of any instalment, the whole amount remaining unpaid shall forthwith become due.

**[MC 11,320] Judgment by consent**

10 If the plaintiff and defendant shall agree as to the terms and conditions on which judgment shall be entered, the court, unless it sees good reason to the contrary, shall enter judgment on such terms and conditions.

**[MC 11,325] Setting aside default judgments**

11 Any judgment by default may be set aside by the court or a Magistrate upon such terms as to costs or otherwise as the court or Magistrate may think fit.

[r 11 insrt LN 72 of 1966 r 5, opn 3 June 1966]

[The next page is 829,011]

## ORDER 33 — COSTS

### [MC 11,335] What included in costs

1 Under the denomination of costs is included the whole of the expenses necessarily incurred by either party on account of any cause or matter, and in enforcing the decree or order made therein, including the expenses of summoning and of the attendance of the parties and witnesses, and of procuring copies of documents, the fees of court, and the remuneration of referees.

### [MC 11,340] How amount of costs determined

2 All questions relating to the amount of costs shall, unless specially referred for taxation, be summarily determined by the court. Any costs referred for taxation shall, after notice of taxation to the parties, be ascertained by the Magistrate as taxing master.

Any party who may be dissatisfied with the certificate or *allocatur* of the taxing master as to any item or part of any item which may have been objected to before the taxing master may, within 7 days from the date of the certificate or *allocatur*, or such other time as the taxing master, at the time he or she signs his or her certificate or *allocatur*, may allow, apply to the Chief Registrar for an order to review the taxation as to the said item or part of an item, and the Chief Registrar may thereupon make such order as the Chief Registrar may think fit; but the certificate or *allocatur* of the taxing master, subject to the proviso to this Rule, shall be final and conclusive as to all matters which shall not have been objected to before the taxing master. Such application shall be heard and determined by the Chief Registrar upon the evidence which shall have been brought in before the taxing master, and no further evidence shall be heard on the hearing thereof, unless the Chief Registrar shall otherwise direct, provided always that, where any party fails to appear at the taxation after notice, and the taxation has been proceeded with in his or her absence, such party may apply to the Magistrate for a review of taxation within 7 days from such taxation, and the Magistrate, if satisfied that the non-appearance is due to no default of such party, may set aside or review such taxation.

### [MC 11,345] Costs in discretion of court

3 The costs of every suit or matter and of each particular proceeding therein shall be in the discretion of the court; and the court shall have full power to award and apportion costs, in any manner it may deem just, and, in the absence of any express direction by the court, costs shall abide the event of the suit or proceeding, provided that the court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit; although the court may order the successful party, notwithstanding his or her success in the suit, to pay the costs of any particular proceeding therein.

### [MC 11,350] Security for costs

4 (1) Where a plaintiff does not, or does not ordinarily, reside in Fiji, the court may, either on its own motion or on the application of any defendant, require any plaintiff in any suit, either at the commencement or at any time during the progress thereof, to give security for costs, to the satisfaction of the court by deposit or otherwise, or to give further or better security.

829,011

Service 0

(2) The court may direct that security for costs shall be given in any cause or matter in which a similar direction could be given had the action been taken in the High Court.

**[MC 11,355] Stay of proceedings pending payment or security for costs**

5 Where the court orders costs to be paid, or security to be given for costs by any party, the court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceeding, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such orders shall not supersede the use of any other lawful method of enforcing payment.

**[MC 11,360] Costs out of fund in suit**

6 The court may order any costs to be paid out of any fund or property to which a suit or matter relates.

**[MC 11,365] Discretion of taxing master**

7 Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of court, to the skill, labour and responsibility involved.

**[MC 11,370] Taxation**

8 In taxation of costs between party and party, nothing shall be allowed in respect of fees paid to the court beyond what was necessary having regard to the amount recovered on judgment.

**[MC 11,375] Folio to be 72 words**

9 A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word.

**[MC 11,380] Liability of legal practitioner to pay costs**

10 Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the legal practitioner for any party having neglected to attend personally, or by some proper person on his or her behalf, or having omitted to deliver any paper necessary for the use of the court, and which according to the practice ought to have been delivered, such legal practitioner shall personally pay to all or any of the parties such costs as the court shall think fit to award.

[r 19 am LN 10 of 2000 12, opn 11 Feb 2000]

[The next page is 829,211]



## ORDER 34 — ENFORCEMENT OF ORDERS

### [MC 11,390] Orders in general

1 Any order of the court made in any civil cause or matter may be enforced in the same manner as a decree to the same effect.

### [MC 11,395] Interlocutory orders

2 Any interlocutory order may be enforced by any of the methods applicable thereto by which a final order is enforceable.

### [MC 11,400] Staying proceedings and judgment by default

3 Interlocutory orders may also be enforced according to the following provisions—  
If a plaintiff in a suit makes default or fails in fulfilling any interlocutory order, the court may, if it thinks fit, stay further proceedings in the suit until the order is fulfilled, or may give a judgment of non-suit against such plaintiff, with or without liberty of bringing any other suit on the same grounds of action, or may make such other order on such terms as to the court shall seem fit.

If a defendant in any suit makes such default or failure, the court may give judgment by default against such defendant, or make such other order as to the court may seem just, provided that any such judgment by default may be set aside by the court, upon such terms as to costs or otherwise as the court may think fit.

[The next page is 829,411]

Service 0

829,212

## ORDER 35 — INTERPLEADER OTHER THAN UNDER EXECUTIONS

[O 35 insrt LN 86 of 1958 r 2, opn 5 Sep 1958; am LN 138 of 1961 r 2, opn 3 Nov 1961]

### [MC 11,410] Relief by interpleader

1 Where any person (in this Order called the applicant) is under a liability for any debt or other thing in action or any money or goods for or in respect of which adverse claims have been made upon him or her by 2 or more claimants he or she may apply to the court for relief by way of interpleader.

### [MC 11,415] Affidavit to be filed. Appendix A. Forms 18 and 19

2 (1) Where the applicant is a defendant in an action he or she shall file in the court in which he or she is sued an affidavit in Form 18 in Appendix A.

(2) **Appendix A. Form 19** — Where the applicant is not a defendant in an action he or she shall file in the court in which he or she might be sued an affidavit in Form 19 in Appendix A.

### [MC 11,420] Time for filing

3 Where the applicant is a defendant the affidavit shall subject as hereinafter provided, be filed within 21 days of the service of the writ of summons upon him or her inclusive of the day of service and in any event on or prior to the day originally appointed for the hearing of such writ of summons.

### [MC 11,425] Claims may be adverse

4 The applicant shall not be disentitled to relief by reason only that the claims of the claimants are adverse to and independent of each other.

### [MC 11,430] Procedure

5 On the filing of the affidavit the applicant,

(a) if a defendant in the action, shall—

(i) **Appendix A. Form 20** — prepare and take out an interpleader summons in Form 20 set out in Appendix A or to the like effect; and

(ii) serve the interpleader summons on each claimant together with a copy of the writ of summons and a copy of the affidavit referred to in the interpleader summons; and

(iii) **Appendix A. Form 21** — serve on the plaintiff a notice in Form 21 set out in Appendix A or to the like effect together with a copy of such affidavit.

(b) **Appendix A. Form 22** — if not a defendant in an action, shall—

(i) prepare and take out an interpleader summons, directed to each claimant, in Form 22 set out in Appendix A or to the like effect; and

(ii) serve the interpleader summons and a copy of such affidavit on each claimant.

### [MC 11,435] Magistrate may postpone trial

6 If the application is made by a defendant in an action the Magistrate shall, if necessary, postpone the trial of the action.

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**[MC 11,440] Magistrate may order subject matter to be brought into court**

7 A Magistrate may, before or after the issue of the interpleader summons, direct the applicant to bring the subject matter into court or to dispose of it in such manner as the Magistrate thinks fit pending such order as the court might make.

**[MC 11,445] Service of summons**

8 An interpleader summons shall be served, not less than 14 clear days before the day fixed for the hearing of such summons, in accordance with the Rules for the service of a writ of summons.

**[MC 11,450] Claimant to file notice or particulars**

9 A claimant shall within 8 days of the service on him or her of the interpleader summons inclusive of the day of service, file in the court either—

- (a) one copy of a notice that he or she makes no claim; or
- (b) one copy of particulars stating the grounds of his or her claim to the subject matter,

and shall serve a copy of the notice upon each of the other parties; provided that the Magistrate may, if he or she thinks fit, hear the proceedings although no particulars have been filed.

**[MC 11,455] Procedure on leaving of proceedings**

10 On the day fixed for the hearing of the proceedings—

- (a) where the applicant is a defendant—
  - (i) if the plaintiff does not appear, the action including the interpleader proceedings shall be struck out; or
  - (ii) if the claimant does not appear, the Magistrate shall hear and determine the action as between the plaintiff and the defendant and may make an order dismissing the claim of the claimant; or
  - (iii) if both the plaintiff and the claimant appear, the Magistrate shall, whether the defendant appears or not, hear the proceedings and give judgement finally determining the rights and claims of all parties;
- (b) where the applicant is not a defendant—
  - (i) if any claimant does not appear, the Magistrate shall make an order finally determining the claim as between the applicant and any claimant who appears and may make an order barring the claim of the absent claimant; or
  - (ii) if all the claimants appear, the Magistrate shall, whether the applicant appears or not, hear the proceedings and make an order finally determining the rights and claims of all parties;
- (c) in any such case as is referred to in paragraphs (a) and (b) a Magistrate may make such order as to costs as to him or her shall seem just.

**[MC 11,460] Shortening hardship period**

11 (1) If the Magistrate is satisfied that the period fixed by Rule 8 may result in exceptional hardship for the applicant, the period may be shortened to not less than 5 days.

(2) If the period fixed by Rule 8 is shortened under paragraph (1), the period prescribed by Rule 9 is shortened to 3 days.

[para (2) insrt LN 10 of 2000 r 10, opn 11 Feb 2000]

DFLRC (RT) - 17/12/24

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Service 0

[The next page is 829,611]

Service 0

829,414

## ORDER 36 — EXECUTION

### A — WRITS OF *FIERI FACIAS* AND SALE

#### [MC 11,470] Execution

1 A party in whose favour any judgment of a court for the payment of money is given may sue out of the office of the clerk of that court execution for the same, if the same is not satisfied.

#### [MC 11,475] Execution by writ of *feri facias*. Appendix A. Form 23

2 The process for the execution of any judgment shall be by writ of *feri facias* under the hand of the Magistrate of the court in which the judgment was given, and shall be directed to the sheriff, who shall be empowered to levy, by distress and sale of the personal property, wherever found within Fiji, of the person against whom the judgment was given (hereinafter in this Order called the judgment debtor) such sum as shall be specified in the writ, together with the costs of execution, and all police officers shall aid in the execution.

#### [MC 11,480] Property liable to execution

3 All personal property belonging to a party against whom execution is to be enforced, and whether held in his or her own name or by another party in trust for him or her or on his or her behalf (except the wearing apparel and bedding of himself or herself or his or her family and the tools and implements of his or her trade, if any, to the value of \$10) is liable to attachment and sale in execution of the decree.

#### [MC 11,485] Fourteen days' grace after judgment

4 Subject to Rule 5, a writ of execution shall not be issued until 14 days after the day of the date of the order or judgment.

#### [MC 11,490] Immediate execution

5 Notwithstanding anything contained in Rule 4, the court may, if it sees fit, order immediate execution.

#### [MC 11,495] Procedure on execution

6 No sale of goods taken in execution shall be made until the end of 5 days next after such goods were seized, unless such goods are perishable, or on the request of the party whose goods are seized. Where the property seized is of a value estimated to exceed \$40, the sale shall be by public auction after such advertisement as the court shall direct.

#### [MC 11,500] Sale in execution

7 Any property sold in execution of the process of the court shall be sold publicly and for ready money by the sheriff or his or her agent to the highest bidder; and the said sheriff shall cause a notice of the sale and of the day and place thereof to be fixed on the door of the court house or some other like public building where the said court is holden, and

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also where or as near as may be to the place where the said sale is actually to take place, 3 days at least before the day appointed for the said sale.

### **[MC 11,505] Payment before sale**

8 If the party against whom such execution has issued shall, before actual sale, pay or tender to the court or to the sheriff or his or her agent the amount specified on the writ or so much thereof as the person entitled thereto shall agree to accept in full discharge, together with the costs of the execution, the execution shall be superseded and the property discharged.

## **B — JUDGMENT SUMMONS AND COMMITMENT**

### **[MC 11,510] Judgment summons to be served personally. Appendix A. Form 24**

9 (1) No order of commitment under section 16(g) of the Act shall be made unless a summons to appear and be examined on oath (hereinafter in this Order called a judgment summons) has been personally served upon the judgment debtor.

(2) A judgment summons shall be served not less than 10 clear days before the day fixed for the hearing.

[para (2) insrt LN 72 of 1966 r 6, opn 3 June 1966]

### **[MC 11,515] Application in writing for issue**

10 A person entitled to enforce a judgment or order, and requiring a judgment summons to issue, shall apply in writing to the clerk of the court for the issue of the same. Such application shall be signed by the applicant or by his or her legal practitioner, on his or her behalf and shall give the full names and addresses of, or otherwise sufficiently identify, every person against whom the judgment summons is to be issued.

### **[MC 11,520] When 2 or more defendants**

11 Where a judgment has been given or an order made against 2 or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more of the persons liable under the judgment or order.

### **[MC 11,525] Against a firm or person not trading in his or her own name. Appendix A Form 25**

12 Where a judgment or order is against a firm, or against a person not in his or her own name but in some other name in which he or she is carrying on business, and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he or she alleges to be liable under the judgment or order as a partner in or the sole member of the firm, or as the person carrying on business in a name other than his or her own as aforesaid, he or she shall file an affidavit, together with a copy thereof, stating the grounds upon which the person against whom the judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief, and thereupon a judgment summons may issue directed to the person alleged to be liable as aforesaid, and there shall be annexed to such judgment summons and served therewith a copy of the said affidavit.



If, on the return day, such person denies his or her liability, the court may decide the question on the evidence then before it, or may order the question to be tried and determined in an action to be commenced by summons in the ordinary way.

**[MC 11,530] Evidence as to means**

13 Witnesses may be summoned to prove the means of a judgment debtor in the same manner as witnesses are summoned to give evidence upon the hearing of an action, and their expenses may be allowed.

**[MC 11,535] Compelling attendance of witnesses**

14 A person served with a judgment summons and who has been paid or tendered his or her reasonable travelling expenses to and from the Magistrates Court, and any person summoned under Rule 13, shall be deemed a person duly summoned to give evidence within the meaning of section 53 of the Act.

[r 14 am LN 16 of 1958 r 2, opn 28 Feb 1958]

**[MC 11,540] Adjournment**

15 The hearing of a judgment summons may, by leave of the court, be adjourned from time to time.

**[MC 11,545] Where judgment summons applied for at a court in which judgment was not obtained**

16 Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he or she shall obtain from the clerk of the last mentioned court a certified copy of the judgment or order in the action and file the same with his or her application. The certificate shall, where the amount to be paid was directed to be paid into court either forthwith or at a specified time or by instalments, state the date on which the last payment into court, if any, under such judgment or order was made, or, if no payment into court has been made, the date upon which default was made.

**[MC 11,550] Evidence by affidavit**

17 Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summoned to appear by a judgment summons, does not reside within the Division of the court in which the summons is to be heard, he or she may forward to the court from which the summons is issued an affidavit setting forth any facts which he or she may wish to be before the court prior to any order being made on the summons. And the court may, if it thinks fit, on the hearing of the judgment summons, admit the affidavit as evidence of the person by whom the same is made.

**[MC 11,555] Where judgment summons heard in a court other than that in which judgment was obtained**

18 (1) Where a judgment summons is heard in a court other than that in which the original judgment or order was obtained, a certified copy of the order (if any) made on such hearing shall be sent by the clerk of the court to the clerk of the court in which the original judgment or order was obtained, and shall be entered by such last mentioned clerk of the court on the minute of the original judgment or order.

(2) If, on such hearing, an order of commitment or an order altering the terms of the original judgment or order is made, the proceedings shall be thereby transferred to the court in which such order is made; and execution or other process for enforcing either the order of commitment or the original judgment or order, or the new order, shall be issued by the court making such order of commitment or new order.

(3) If, on such hearing, no order is made, the judgment or order shall remain in the court in which it was obtained, and the certified copy thereof, filed in conformity with Rule 16, shall be returned to that court; and subsequent proceedings for the enforcement thereof may be taken in such last mentioned court.

### **[MC 11,560] Provisions if receiving order has been made**

**19** (1) Where, upon the return day of a judgment summons, the judgment debtor satisfies the Magistrate that a receiving order has been made for the protection of his or her estate, or that he or she has been adjudicated bankrupt, or that a composition order has been made against him or her, and that the debt was provable therein, no order of commitment shall be made.

(2) Where an order of commitment has been made, and the Magistrate making the same shall thereafter be satisfied that a receiving order has been made for the protection of the estate of the judgment debtor against whom such order was made, or that he or she has been adjudicated bankrupt, or that a composition order has been made against him or her, and that the debt in respect of which the order was made was provable therein, the order of commitment shall not issue, and, if issued and not executed, shall be recalled. If such order has been executed, the Magistrate, on being satisfied as to the aforesaid facts, shall order the judgment debtor to be discharged.

### **[MC 11,565] Order on judgment summons**

**20** (1) On the hearing of a judgment summons, the Magistrate, if he or she is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time or by instalments.

(2) If an order of commitment is made, the Magistrate may direct that the execution of such order be suspended to enable the debtor to pay the amount in respect of which such order is made, by instalments or otherwise. When such direction is given, notice thereof shall be sent to the debtor, unless he or she be present in court when such direction is given.

The Magistrate may, from time to time, upon the application of either party after reasonable notice to the other party of the time and place when such application will be heard, vary the amount of such instalments by such amount as will in his or her opinion meet the ability of the judgment debtor to pay the same.

(3) Subject to the provisions of Rules 22 and 23, all payments under a fresh order or order of commitment shall be paid into court.

(4) An order of commitment shall be according to such one of the forms in Appendix A as shall be applicable to the circumstances of the case, and shall, on whatever date it may be issued from the office of the clerk of the court, bear date on the day on which the order of commitment was made, and shall, if unexecuted remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided; but the Magistrate may, at any time before or after the expiration of such year, and so on from time to time, extend the time within which the order may be executed, for any time not exceeding one year from the date upon which it would otherwise have ceased to be in

force. An order of extension may be made either before or after the order of commitment is issued, and the fact of an extension having been made shall be endorsed on the order of commitment.

Costs may be allowed on the renewal of an order of commitment.

(5) An order of commitment shall be executed by the sheriff or a bailiff or police officer acting under his or her direction (hereinafter in this Order referred to as the sheriff).

(6) If no order of commitment or fresh order for payment is made on the hearing of a judgment summons, but the Magistrate considers that under the circumstances the action of the judgment creditor in applying for a judgment summons was justified, the Magistrate may, instead of dismissing the summons, adjourn the same.

### **[MC 11,570] Commitment order in respect of instalments**

21 Where a judgment or order has been given or made for payment by instalments, and an order of commitment is made in respect of the non-payment of one or more of such instalments before the whole of such instalments have become due, then, if the Magistrate orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise, he or she may, if he or she thinks fit, order that the judgment or order for payment of instalments shall also be suspended for so long as the execution of the order of commitment is suspended, or for any less period. If the Magistrate makes such order as last mentioned, he or she may, at any subsequent time, order that the suspension of the judgment or order for payment of instalments shall cease; and, if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments shall cease to operate on such withdrawal or abandonment.

### **[MC 11,575] Debtor may pay amount endorsed on commitment order at any time**

22 When an order of commitment for non-payment of money is issued, the debtor may, at any time before the body is delivered into the custody of the officer in charge of the prison, pay to the sheriff the amount endorsed on the order as that on the payment of which he or she may be discharged; and, on receiving such amount, the sheriff shall discharge the debtor, and shall, within 24 hours after receiving such amount, pay over the same to the clerk of the court.

### **[MC 11,580] How and where amount may be paid**

23 (1) After the making of an order of commitment for non-payment of money, money in respect of the amount due may be paid into the court making the order. Instead of being paid into court as aforesaid, such money, prior to the person against whom the order of commitment has been made being delivered into the custody of the officer in charge of the prison, may be paid to the sheriff holding the order of commitment, and, after delivery into the custody of the officer in charge of the prison, to such officer

(2) Where payment is made into court, the clerk of the court shall notify the fact and amount of such payment to the sheriff holding such order, if the judgment debtor has not yet been delivered into the custody of the officer in charge of the prison, and to such officer, if the judgment debtor has been delivered into custody as aforesaid.

### **[MC 11,585] Discharge of debtor on payment**

24 (1) The sheriff holding an order of commitment, on receipt of the amount or the balance of the amount in respect of which the order of commitment was made, or the

notice mentioned in Rule 23, shall liberate the judgment debtor, if in his or her custody, and return the order to the court from which it was received.

(2) The officer in charge of the prison in whose custody the judgment debtor has been lodged shall, on receipt of the amount or the balance of the amount in respect of which the order of commitment was made, or of the notice mentioned in Rule 23, forthwith liberate the judgment debtor.

### **[MC 11,590] Receipt of moneys**

25 All moneys received by the sheriff or the officer in charge of the prison shall be paid forthwith to the clerk of the court, who shall, subject to the deduction of all proper costs, charges and expenses, pay the same to the judgment creditor.

### **[MC 11,595] Judgment creditor may obtain discharge of debtor**

26 Upon the judgment creditor lodging with the clerk of the court a request in writing that the judgment debtor, if in prison, may be discharged from custody, the clerk of the court shall notify the officer in charge of the prison in whose custody the judgment debtor is, and such officer shall forthwith liberate the judgment debtor.

### **[MC 11,600] Costs of abortive execution not to be included in judgment summons**

27 Costs incurred in endeavouring to enforce a judgment or order by way of execution against the property of the judgment debtor, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purposes of a judgment summons, or of an application for a fresh order for payment, nor shall money paid into court, otherwise than under execution, be attributed to payment of such costs.

### **[MC 11,605] Writ of execution to be lodged in court upon issue of judgment summons**

28 Upon the issue of a judgment summons against a party upon a judgment or order of the court out of which the judgment summons is issued, the sheriff shall lodge in court any writ of execution against the property of such party which may have been issued in the action, whether executed or not; but any such writ, if not fully executed, may be re-issued by leave of the Magistrate.

### **[MC 11,610] Safeguards in respect of certified copies of judgments**

29 Where a certified copy of a judgment or order is obtained from a clerk of a court for the purpose of taking proceedings thereon in any other court, such clerk shall make on the minute of the judgment or order a memorandum of such certified copy having been given, and the sheriff shall lodge in court any writ of execution or judgment summons or order of commitment which may have been issued by such court upon such judgment or order; and no such writ, summons or order shall be re-issued, nor shall any subsequent writ of execution or judgment summons upon such judgment or order be issued by the court, unless it is shown, to the satisfaction of the court, that no order has been made against the person liable under such judgment or order in any other court upon such certified copy.

[The next page is 829,637]

**[MC 11,615] Proceedings against garnishee. Appendix A. Form 28.  
Appendix A. Form 29**

**30** (1) Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after any oral examination of the debtor liable under such judgment or order, upon lodging with the clerk of the court in which the judgment or order was given or made an affidavit by himself or herself or his or her legal practitioner in the form in Appendix A, apply for a summons to obtain payment to him or her of the amount of any debt due to the debtor from any other person (hereinafter called the garnishee) who is indebted to such debtor, or so much thereof as may be sufficient to satisfy the said judgment or order, together with the costs of the garnishee proceedings; and thereupon a summons in the form in Appendix A calling upon the garnishee to show cause why he or she should not pay to the person who has obtained such judgment or order (hereinafter called the judgment creditor) the debt due from him or her to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid, shall be issued by the clerk of the court; and the name and address of the applicant, or of his or her legal practitioner, shall be entered on the summons. In this Rule, the expression “debtor” includes a married woman against whom judgment has been obtained in respect of her separate estate.

[para (1) am LN 10 of 2000 r 12, opn 11 Feb 2000]

(2) For the purposes of this Rule, the garnishee shall be deemed to be within the jurisdiction of the court in respect of the debt due from him or her to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings, notwithstanding the fact that the debt due from him or her to the debtor, or the amount thereof required to satisfy the judgment or order and the costs of the garnishee proceedings, exceeds the sum in respect of which the court has jurisdiction.

**[MC 11,620] Where garnishee not within jurisdiction**

**31** Where the garnishee is not, in respect of such debt, within the jurisdiction of the court in which the judgment or order was obtained, the judgment creditor, upon lodging with the clerk of the court in the Division in which the garnishee resides or carries on business a certified copy of the judgment or order, and also an affidavit similar to that prescribed by Rule 30, may apply for a summons against the garnishee in such other court; and thereupon a summons shall be issued and all proceedings shall be had and taken thereon as if the judgment or order had been obtained in that court.

**[MC 11,625] Service and effect of garnishee summons**

**32** (1) The summons shall be served on the garnishee not less than 8 clear days before the return day of the summons, and, when so served, it shall bind in the hands of the garnishee all debts due and payable from him or her to the debtor liable under the judgment or order.

(2) When the garnishee is a firm or a person carrying on business in a name or style other than his or her own, or a company or other corporation, the summons may be served in the same manner as a writ of summons.

(3) If and so often as service of the summons shall not be effected upon the garnishee within the time hereinbefore prescribed the clerk of the court shall from time to time fix

a new date of hearing to enable such service to be effected and shall from time to time amend the summons and all issued copies thereof accordingly.

### **[MC 11,630] Affidavit of service. Appendix A. Form 3**

33 An affidavit of service of the summons upon the garnishee in the form (*mutatis mutandis*) provided in Appendix A for an affidavit of service of a writ of summons shall, unless the garnishee shall have made a payment into court in accordance with Rule 35, be filed with the clerk of the court by the judgment creditor at any time before the return day of the summons; and the costs of such affidavit may be included in the costs entered on the summons.

### **[MC 11,635] Notice to judgment debtor. Appendix A. Form 30**

34 (1) At the time of issue of the garnishee summons, the clerk of the court shall issue a copy of the summons for service on the debtor liable under the judgment or order, with a notice according to the form in Appendix A, that, if he or she has any cause to show why the court should not order the garnishee to pay to the judgment creditor the debt alleged to be due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the sum due from the judgment debtor to the judgment creditor, with the costs of the garnishee proceedings, he or she must appear at the court on the return day of the summons and show cause accordingly.

(2) The copy and notice mentioned in paragraph (1) shall be served on the judgment debtor after the garnishee shall have been served with the summons in accordance with Rule 32 and at least 5 clear days before the return day of the summons, and, if necessary, the clerk of the court shall adjourn the hearing of the garnishee summons to enable such service to be effected, and shall enter in the notice to be served on the judgment debtor the day of the adjourned hearing as the day on which he or she must appear, and shall give notice of such adjournment to the judgment creditor and to the garnishee. An affidavit of service of the copy and notice shall be filed with the clerk of the court in the manner provided in Rule 33.

### **[MC 11,640] Payment into court by garnishee**

35 (1) The garnishee may, at any time before the return day of the summons, pay into court the amount admitted by him or her to be due from him or her to the debtor liable under the judgment or order, or, if the amount so admitted is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied and the fees and costs (if any) endorsed on the garnishee summons, the garnishee may pay into court a sum sufficient to satisfy such amount, fees and costs.

(2) The clerk of the court shall send notice by post or otherwise of any payment into court to the judgment creditor or to his or her legal practitioner as endorsed on the summons, and to the judgment debtor, warning the latter that the money paid into court will be ordered to be paid out to the judgment creditor, unless the judgment debtor appears on the return day of the summons, and shows cause to the contrary.

(3) If the judgment creditor elects to accept the money paid into court in satisfaction of his or her claim against the garnishee, he or she shall send notice of such acceptance to the clerk of the court and the garnishee, and thereupon all further proceedings against the garnishee shall abate, except as herein provided, and the judgment creditor shall not be liable to any costs incurred by the garnishee after receiving such notice.

(4) If payment into court is made by the garnishee 5 clear days before the return day, he or she shall not be liable for any further costs incurred by the judgment creditor; but

if it is made less than 5 clear days before the return day, the court may, in its discretion, order the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the judgment creditor may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order for the same; and, if the judgment creditor intends to apply for such costs, he or she shall give notice of his or her intention in his or her notice of acceptance of the sum paid in; or, where the time of payment into court by the garnishee does not permit of notice of acceptance being given, he or she may apply for such costs without giving such notice.

(5) Where the judgment creditor has not given notice of acceptance in accordance with paragraph (3), he or she may, nevertheless, accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the garnishee since the date of payment into court, and which may be allowed by the court.

(6) In default of acceptance by the judgment creditor, the proceedings against the garnishee may proceed.

### **[MC 11,645] Payment out of court of money paid in by garnishee**

**36** Subject to the following provisions, money paid into court by the garnishee and accepted by the judgment creditor shall, on application made by the judgment creditor on the return day of the summons, be ordered to be paid out to him or her—

- (a) Before such money is paid out, the court shall be satisfied, by evidence on oath or affidavit or otherwise, that the judgment creditor has not received payment of the amount payable under the judgment or order from any other source, and has not obtained an order for payment of such amount under any other garnishee proceedings; and, if it appears that he or she has received payment or obtained an order for payment of any part of such amount, so much only of the money paid into court shall be paid out to him or her as will, with the amount so received, or for payment whereof an order has been obtained, make up the full amount payable under the judgment or order, and any fees or costs allowed to the judgment creditor in the garnishee proceedings; and the balance of the money paid into court shall be dealt with as the court shall direct.
- (b) If the judgment debtor appears and shows cause, according to the notice sent to him or her, why the money should not be paid out to the judgment creditor, the court may thereupon make such order as to the money paid into court, and as to costs, as may be just.
- (c) If the judgment debtor alleges, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge on it, the court may proceed in accordance with Rule 40.
- (d) If the judgment creditor does not intend to apply for an order against the garnishee for payment of any further costs, and obtains the consent in writing of the judgment debtor to the payment out of the money paid into court, he or she may apply for an order for payment out on any day earlier than the return day, and, on the production of such consent to the clerk of the court, the money shall, subject to paragraph (c) and to Rule 40, be ordered to be paid out accordingly.
- (e) The costs of any application for payment out under this Rule, including the costs of any affidavit required under paragraph (a), or of obtaining any consent under

paragraph (d), may be allowed as costs in the garnishee proceedings, and may be retained by the judgment creditor out of the money recovered by him or her in accordance with Rule 42.

(f) [Repealed]

[r 36 am LN 176 of 1968 r 4, opn 16 Dec 1968]

### **[MC 11,650] Order on return day, if garnishee does not appear or dispute liability**

37 If the garnishee does not, before the return day of the summons, pay into court the amount admitted by him or her to be due from him or her to the judgment debtor or so much thereof as shall be sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and legal practitioner costs (if any) endorsed on the garnishee summons, and does not, on the return day dispute the debt due or claimed to be due from him or her to the judgment debtor, or if he or she does not appear on the return day, the Magistrate may, if the judgment debtor does not appear and show cause to the contrary, give judgment for the judgment creditor against the garnishee for the amount due from him or her to the judgment debtor, or so much thereof as shall be sufficient to satisfy the judgment or order, and any costs allowed, and, in default of payment, execution may issue to levy such amount; or, if the judgment debtor appears and shows cause, the Magistrate may make such order in the garnishee proceedings, and as to the party by whom the costs of the proceedings shall be paid, as may be just.

[r 37 am LN 10 of 2000 r 12, opn 11 Feb 2000]

### **[MC 11,655] Proceedings on return day, if garnishee disputes liability**

38 If no amount is paid into court, or the amount (if any) paid into court under Rule 35 is not accepted, and the garnishee appears on the return day and disputes his or her liability, the Magistrate may, after hearing the judgment creditor and the garnishee, and the judgment debtor, if he or she appears, determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed to be due from him or her to the judgment debtor, and as to the party by whom the costs of the garnishee proceedings shall be paid, and make such order as may be in accordance with such determination; or he or she may, instead of giving judgment, order that any issue or question necessary for determining the liability of the garnishee to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined.

### **[MC 11,660] Certificate where garnishee sued in court other than that in which judgment obtained**

39 Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he or she is garnished was given or made, the clerk of such first mentioned court shall send forthwith a certificate of the order of his or her court to the court in which such judgment or order was given or made, and shall also send notice, from time to time, of any payment made on, before or after the return day.

### **[MC 11,665] Where debt is stated to belong to a third person, or there is a lien thereon**

40 Whenever, in proceedings to obtain an attachment of debts, it is alleged by the garnishee or the debtor liable under the judgment or order, or it is otherwise made to



appear to the Magistrate, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the Magistrate may order such third person to appear and state the nature and particulars of his or her claim upon such debt. After hearing the allegations of such third person, and of any other person whom the Magistrate, by the same or any subsequent order, may order to appear, or in case of such person not appearing when ordered, the Magistrate may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between such third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as he or she may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Magistrate may think just and reasonable.

**[MC 11,670] Payment by or execution levied on garnishee a discharge against debtor**

41 Payment made by or execution levied upon the garnishee, under any proceedings as aforesaid, shall be a valid discharge to him or her, as against the debtor liable under the judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he or she is by these Rules or by order of court allowed to deduct from the amount due from him or her to the judgment debtor) although such proceedings may be set aside, or the judgment or order reversed.

**[MC 11,675] Costs**

42 The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court. Any costs allowed to the judgment creditor which are not ordered to be paid by the garnishee personally shall, unless otherwise directed, be taxed and retained by the judgment creditor out of the money recovered by him or her in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him or her against the debtor.

**[MC 11,680] Magistrate may refuse to interfere**

43 In proceedings to obtain an attachment of debts, the Magistrate may, in his or her discretion, refuse to interfere, where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

**[MC 11,685] Attachment of wages**

44 No order shall be made for the attachment of the wages of any servant, labourer or workman.

D — INTERPLEADER SUMMONS

**[MC 11,690] Interpleader proceedings**

45 If any claim shall be made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, by any person, it shall be lawful for a Magistrate, upon application of the sheriff, to issue a summons calling before the court as well the party issuing process of execution as the party making such claim, and the court shall hear and determine such claim, and make such order between the parties

in respect thereof, and of the costs of the proceedings, as it shall think fit, and shall also adjudicate between such parties, or either of them and the sheriff, with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process, and make such order in respect thereof, and of the costs of the proceedings, as to him or her shall seem fit; and such orders shall be enforced in like manner as any order in any action brought in such court, and have a like force and effect; and upon the issue of the summons, any action which shall have been brought in any court in respect of such claim, or of any damages arising out of the execution of such process, shall be stayed.

### [MC 11,695] Interpleader summons

46 A summons issued pursuant to the provisions of Rule 45 shall be in 2 parts.

The respective parts of such summons shall be according to the forms set out in Appendix A. The form entitled "Interpleader Summons (1)" shall be served upon the party issuing process of execution, and the form entitled "Interpleader Summons (2)" shall be served upon the party making a claim. No fee shall be payable upon the issue of an interpleader summons on the application of the sheriff but the Magistrate, at the hearing, shall order by which party the court fees shall be paid and may assess the value of the goods for the purpose of any calculation of the court fees which depends on such value. Any order made under this Rule may be enforced in the like manner as a judgment debt.

E — GENERAL

### [MC 11,700] Property in the custody of a public officer or in *custodia legis*

47 Property in the custody or under the control of any public officer in his or her official capacity shall be liable to attachment in execution of a decree with the consent of the Attorney-General, and property *in custodia legis* shall be liable to attachment by leave of the court. In such cases the order of attachment must be served on such public officer, or on the clerk of the court, as the case may be.

[The next page is 829,837]

## ORDER 37 — CIVIL APPEALS

### A — NOTICE OF INTENTION TO APPEAL

#### [MC 11,710] Notice of intention to appeal

1 Every appellant shall within 7 days after the day on which the decision appealed against was given, give to the respondent and to the court by which such decision was given (hereinafter in this Order called “the court below”) notice in writing of his or her intention to appeal, provided that such notice may be given verbally to the court in the presence of the opposite party immediately after judgment is pronounced.

[r 1 am LN 101 of 1950 r 2, opn 17 Nov 1950]

### B — SECURITY FOR PAYMENT OF COSTS

#### [MC 11,715] Security for payment of costs. Appendix A. Form 35

2 (1) Upon receiving notice of intention to appeal the court below may in its discretion order the appellant to give security, to the satisfaction of the court if the parties differ, in such sum as the court shall direct, either by deposit, or by bond in Form 35 of Appendix A, for the payment of all such costs as may be awarded to any respondent by the appellate court.

(2) Where the security is by bond—

- (a) the bond shall, unless the court otherwise directs, be given to the respondent;
- (b) if the appellant is unrepresented, the bond shall be prepared by the court.

[para (2) subst LN 101 of 1950 r 2, opn 17 Nov 1950]

### C — GROUNDS OF APPEAL

#### [MC 11,720] Grounds of appeal to be filed

3 (1) The appellant shall within one month from the date of the decision appealed from, including the day of such date, file in the court below the grounds of his or her appeal, and shall cause a copy of such grounds of appeal to be served on the respondent.

(2) At the time the appellant files the grounds of his or her appeal he or she shall deposit with the clerk of the court below such sum as the clerk shall consider sufficient to cover the fees prescribed in Appendix B for the preparation, certification and copying of the record.

[para (2) insrt LN 176 of 1968 r 4, opn 16 Dec 1968]

#### [MC 11,725] Effect of failure to file grounds of appeal

4 On the appellant failing to file the grounds of appeal within the prescribed time, he or she shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time.

#### [MC 11,730] Amendment of grounds of appeal

5 The appellant may, at any time, by leave of the appellate court, amend or add to the grounds of his or her appeal upon such terms, as to payment of costs or otherwise, as the appellate court may prescribe.

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Service 0

## D — EXECUTION PENDING APPEAL

**[MC 11,735] Appeal not to operate as stay of execution**

6 Neither notice of intention to appeal nor an appeal shall operate as a stay of execution or of proceedings under the judgment or decision appealed from, except so far as the court below or the appellate court may order, and no intermediate act or proceeding shall be invalidated except so far as the court below may direct.

## E — TRANSMISSION OF RECORD

**[MC 11,740] Contents of record of appeal**

7 Within 7 days from the filing of grounds of appeal, the court below shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, the pleadings (if any), all documents admitted as evidence or tendered as evidence and rejected, the notes of the evidence, the judgment or order of the court below and the grounds of appeal. The record of appeal, when completed, shall be forwarded to the Chief Registrar or clerk of the appellate court as the case may be.

**[MC 11,745] Editing of record of appeal**

7A (1) The court making up the record must restrict the record to documents or other matters relevant to the appeal and must exclude any document or matter the inclusion of which would result in unnecessary expense or delay.

(2) A note describing any document or matter omitted under paragraph (1) must be attached to and form part of the record of appeal.

[para (2) insrt LN 10 of 2000 r 11, opn 11 Feb 2000]

**[MC 11,750] Copies of the record of appeal**

8 (1) The Chief Registrar or clerk of the appellate court, as the case may be, shall cause a copy of the record of appeal to be made at the cost of the appellant for the use of the appellate court and shall, on the application and at the cost of any party to the appeal, furnish such party with a like copy or any part thereof.

(2) The copy of the record of appeal for the use of the appellate court shall be certified by the trial Magistrate or, in his or her absence, by another Magistrate.

[para (2) insrt LN 176 of 1968 r 6, opn 16 Dec 1968]

## F — PROCEEDINGS IN THE APPELLATE COURT

**[MC 11,755] Control by appellate court while appeal pending**

9 After the record of appeal has been transmitted, until the appeal is disposed of, the appellate court shall be in possession of the whole proceedings as between the parties to the appeal. Every application in the proceedings shall be made to the appellate court, and not to the court below, but any application may be made through the court below, provided that, in cases of urgency, the court below may make any interim order to prevent prejudice to the claims of any party pending an appeal, but every such order may be discharged or varied by the appellate court.

**[MC 11,760] Additional security**

10 The appellate court may, where necessary, require security for costs or for performance of the orders to be made on appeal, in addition to what the court below has

thought fit to direct, and may make any interim order or grant any injunction which the court below is authorised to make or grant, and which may be necessary.

**[MC 11,765] Notice to parties in interlocutory appeals**

11 If the appeal is from an interlocutory order, the appellate court shall not cause notice to be given to the parties of the day when the appeal shall be disposed of, unless, in the special circumstances, it thinks fit to do so; but, where a party to the appeal notifies to the appellate court his or her desire to attend, he or she shall be at liberty to do so, and to be heard, at such time as the appellate court directs.

**[MC 11,770] Notice to parties in appeals from final judgments**

12 If the appeal is from a final judgment or decision, the Chief Registrar or clerk of the court of the appellate court, as the case may be, shall give notice of the date of hearing to the parties to the appeal.

**[MC 11,775] Failure of appellant to appear**

13 (1) If the appellant fails to appear, in person or by legal practitioner, when his or her appeal is called on for hearing, the appeal shall, on proof of service upon him or her of the notice of the hearing, stand dismissed with costs.

[para (1) am LN 10 of 2000 12, opn 11 Feb 2000]

(2) When an appeal has been dismissed owing to the non-appearance of the appellant or his or her legal practitioner, the appellate court may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

[para (2) am LN 10 of 2000 12, opn 11 Feb 2000]

**[MC 11,780] Failure of respondent to appear**

14 If the respondent fails to appear, in person or by legal practitioner, when the appeal is called on for hearing, the appellate court shall, on proof of the service upon him or her of notice of the hearing, proceed to hear the appeal *ex parte*.

[r 14 am LN 10 of 2000 12, opn 11 Feb 2000]

**[MC 11,785] Hearing in absence of parties**

15 Notwithstanding anything in Rules 13 and 14 contained, if any party to the appeal is desirous that the appeal should be disposed of without his or her attendance, either in person or by his or her legal practitioner, he or she shall notify the court below, and the court below shall so inform the Chief Registrar or clerk of the court of the appellate court, as the case may be, at the time of transmitting the record; and thereupon, if the appellate court sees fit, it may determine the appeal in the absence of that party.

If any party so notifies the court below, it shall not be necessary for the Chief Registrar or clerk of the court of the appellate court, as the case may be, to give him or her notice in accordance with Rule 12.

[r 15 am LN 10 of 2000 12, opn 11 Feb 2000]

**[MC 11,790] New evidence on appeal**

16 It is not open, as of right, to any party to an appeal to adduce new evidence in support of his or her original case; but, for the furtherance of justice, the appellate court may, where it thinks fit, allow or require new evidence to be adduced. A party may, by

leave of the appellate court, allege any facts essential to the issue that have come to his or her knowledge after the decision of the court below, and adduce evidence in support of such allegations.

**[MC 11,795] Interlocutory order not to prejudice decision on appeal**

17 No interlocutory order from which there has been no appeal shall operate so as to bar or prejudice the appellate court from giving such decision upon the appeal as may seem just.

**[MC 11,800] General powers of appellate court**

18 The appellate court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs.

**[MC 11,805] Power of appellate court to give any decision or make any order**

19 The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

G — ENFORCEMENT OF JUDGMENTS, DECREES OR ORDERS ON APPEAL

**[MC 11,810] Execution to be as directed by appellate court**

20 Any judgment, decree or order given or made by the appellate court may be enforced by the appellate court or by the court below, according as the appellate court may consider most expedient and may direct.

**[MC 11,815] Execution by court below in terms of certificate**

21 When the appellate court directs any judgement, decree or order to be enforced by the court below, a certificate under seal of the appellate court and the hand of the Chief Registrar or clerk of the court of the appellate court, as the case may be, setting forth the judgment, decree or order of the appellate court shall be transmitted to the court below and the latter shall enforce the judgement, decree or order made by the appellate court in terms contained therein or in the certificate of the Chief Registrar or clerk of the court of the appellate court, as the case may be.

[r 21 subst LN 165 of 1959 r 2, opn 6 Oct 1959]

H — FEES PAYABLE

**[MC 11,820] Fees. Appendix B. Part 2**

22 The fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned, and shall be paid to the Chief Registrar or the clerk

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of the court of the appellate court or the court below, as the case may be. The appellate court or the court below may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, or for other sufficient reasons, dispense, if it sees fit, with payment of any fees.

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[The next page is 830,037]

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**ORDER 38 — RECOVERY OF COSTS BY LEGAL  
PRACTITIONERS**

**[MC 11,830] Bill to be sent before suit**

1 Subject to Rule 11, no practitioner shall commence any suit for the recovery of any costs for any business done by him or her until the expiration of one month after he or she shall have delivered to the party to be charged therewith or sent by registered letter to or left for him or her at his or her office, place of business, dwelling house or last known place of abode, a bill of such costs, such bill either being signed by such practitioner (or, in the case of a partnership, by any of the partners, either in his or her own name or in the name of the partnership) or being enclosed in or accompanied by a letter signed in like manner referring to such bill.

**[MC 11,835] Party charged may apply to court to tax bill**

2 Upon the party to be charged applying to the court, within such month as in Rule 1 mentioned, it shall be lawful for the court to refer the bill and the demand of the practitioner to be taxed and settled by the taxing master of the court, and the court shall restrain such practitioner from commencing any suit touching such demand pending such reference.

**[MC 11,840] Where no application to tax made within one month**

3 In case no application shall be made within one month, as in Rule 2 provided, it shall be lawful for such reference as aforesaid to be made, either upon the application of the practitioner making the demand, or upon the application of the party to be charged, with such directions and subject to such conditions as the court making the reference shall think proper, and the court may restrain such practitioner from commencing or prosecuting any suit touching such demand pending such reference, upon such terms as shall be thought proper.

**[MC 11,845] When application not to be granted**

4 No such reference as aforesaid shall be directed, upon application made by the party to be charged, after judgment shall have been obtained in any suit for the recovery of the demand of such practitioner as aforesaid, or after the expiration of 12 months after any bill as aforesaid shall have been delivered, sent or left as aforesaid, except under special circumstances to be proved to the satisfaction of the court to which application for such reference shall be made.

**[MC 11,850] Non-attendance of party at taxation**

5 Upon any reference as aforesaid, if either the practitioner or the party to be charged, having due notice, shall refuse or neglect to attend the taxation, the taxing master may proceed to tax and settle the bill and demand *ex parte*.

**[MC 11,855] Cost of taxation**

6 If, on any reference as aforesaid, the party to be charged shall attend on taxation, the cost of the reference shall (except as in Rule 7 provided) be paid according to the event

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of such taxation; that is to say, if such bill, when taxed, be less by a sixth part than the bill delivered, sent or left, then such practitioner shall pay such costs, and if such bill, when taxed, shall not be less by a sixth part than the bill delivered, sent or left, then the party to be charged making such application or so attending shall pay such costs.

#### **[MC 11,860] Form of order to be made, special cases**

7 Every order to be made for any reference as aforesaid shall direct the taxing master to certify what shall be found to be due to or from such practitioner in respect of the bill and demand referred, including the costs of the reference, provided that—

- (a) the taxing master may certify specially any circumstances relating to such bill or reference, and the court may make any such order as it may think right respecting the costs of such reference;
- (b) where any reference is made under Rule 4, the court may, if it thinks fit, give any special directions relative to the cost of such reference.

#### **[MC 11,865] Proof of compliance with Rules**

8 It shall not in any case be necessary in the first instance for any practitioner, in proving a compliance with these Rules, to prove the contents of the bill he or she may have delivered, sent or left, but it shall be sufficient to prove that a bill for costs signed in the manner provided or enclosed in or accompanied by such letter as provided was duly delivered, sent or left.

#### **[MC 11,870] Completion of taxation**

9 Upon the completion of the taxation of any bill referred as aforesaid, the result of the taxation, including the costs thereof, shall be final and conclusive as to the amount of the bill and costs. And it shall be lawful for the court to order that judgment be entered for the amount submitted, unless the retainer is disputed, or to make such other order therein as the court may deem proper.

#### **[MC 11,875] Court may order delivery of bill**

10 It shall be lawful for the court to make an order for the delivery by any practitioner of any bill of costs for business done by him or her.

#### **[MC 11,880] Where practitioner may begin suit within month of delivery of bill**

11 It shall be lawful for the court to authorise any practitioner to commence a suit for the recovery of his or her costs against the party chargeable therewith, and also to refer his or her bill of costs and the demand of the practitioner thereupon to be taxed and settled by the taxing master of the court, although one month shall not have expired from the delivery of such bill, on proof, to the satisfaction of the court, that there is probable cause for believing that the party chargeable is about to leave Fiji or to become a bankrupt or to take any other steps or to do any other act which, in the opinion of the court, would tend to defeat or delay such practitioner in obtaining judgment.

#### **[MC 11,885] Applications to be by motion**

12 All applications made under this Order to refer any bill to be taxed and settled shall be by motion in the matter of the practitioner concerned.

**[MC 11,890] Definitions**

13 In this Order, unless the context otherwise requires “practitioner” includes legal practitioner and notary public, and the executor, administrator and assignee of a legal practitioner or notary public; and “costs” include charges and disbursements.

[r 13 am LN 10 of 2000 r 12, opn 11 Feb 2000]

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[The next page is 830,237]

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APPENDIX A  
(Order 1, Rule 2)  
LIST OF FORMS

1. General Title of Writs and Other Documents in a Suit.
2. Writ of Summons. (O 6, r 2.)
3. Affidavit of Service.
4. Summons to a Witness.
5. Subpoena *Duces Tecum*.
6. Notice to Admit and Inspect. (O 15, r 2.)
7. Notice to Admit Facts. (O 15, r 2.)
8. Affidavit on Making Application for Security from Defendant (O 20, r 1.)
9. Warrant to Arrest an Absconding Defendant. (O 20, r 2.)
10. Order on Defendant to Find Bail. (O 20, r 3.)
11. Bail Bond by Defendant and Sureties. (O 20, r 3.)
12. Warrant to Attach Property before Judgment. (O 21, r 4.)
13. Order for Delivery of Interrogatories. (O 25, r 1.)
14. Order for Affidavit as to Documents. (O 25, r 6.)
15. Affidavit as to Documents. (O 25, r 6.)
16. Notice to Produce (General Form). (O 25, r 8.)
17. Formal Decree. (O 32, r 4.)
18. Affidavit by Defendant in Support of an Interpleader Summons in an Action. (O 35, r 2.)
19. Affidavit by Applicant in Support of an Originating Interpleader Summons. (O 35, r 2.)
20. Interpleader Summons in an Action. (O 35, r 5.)
21. Notice to Plaintiff of Interpleader Summons. (O 35, r 5.)
22. Originating Interpleader Summons. (O 35, r 5.)
23. Writ of *Fieri Facias*. (O 36, r 2.)
24. Judgment Summons. (O 36, r 9.)
25. Judgment Summons on Firm. (O 36, r 12.)
26. Order of Commitment on a Judgment or Order (O 36, r 20.)
27. Order of Commitment on a Judgment or Order against a Firm. (O 36, r 20.)
28. Affidavit for Leave to Summon Garnishee. (O 36, r 30.)
29. Summons to Garnishee. (O 36, r 30.)
30. Notice to Judgment Debtor of Issue of Garnishee Summons. (O 36, r 34.)
31. Notice to Judgment Creditor of Payment into Court by Garnishee. (O 36, r 35.)
32. Notice to Judgment Debtor of Payment into Court by Garnishee. (O 36, r 35.)

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33. Interpleader Summons (1). (O 36, r 46.)
34. Interpleader Summons (2). (O 36, r 46.)
35. Bond for Costs on Appeal. (O 37, r 2.)
36. Warrant for Prisoner to Give Evidence.
37. Certified Copy of Proceedings.
38. Default Judgment. (O 6 r 10.)
39. Notice of Adjournment

Service 0

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[MC 11,990]

FORM 1

GENERAL TITLE OF WRITS AND OTHER DOCUMENTS IN A SUIT

In the \_\_\_\_\_ Magistrates Court at \_\_\_\_\_  
 C.A.No. \_\_\_\_\_ of 20 \_\_\_\_\_  
 Between \_\_\_\_\_ } A.B.,Plaintiff,  
 and  
 CD., Defendant.  
 or  
 In the matter of G.H.,etc

[MC 11,995]

FORM 2

WRIT OF SUMMONS  
(General Title)

To \_\_\_\_\_ of \_\_\_\_\_  
 the above-named Defendant. You are hereby commanded by the State to attend this Court at  
 the Court House, \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_,  
 at \_\_\_\_\_ o'clock in the forenoon then and there to answer a suit by \_\_\_\_\_ of \_\_\_\_\_  
 against you.

ISSUED at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

.....  
Signature of Magistrate or Clerk  
of the Court.

PARTICULARS OF CLAIM

The Plaintiff Claims

Sum claimed ..... \$ c.  
 Court Fees .....  
 Bailiffs Fees .....  
 Solicitors Costs (undefended scale) .....  
 Total ..... \_\_\_\_\_

N.B. — If the above amount is paid \_\_\_\_\_ days before the return day, you will have no further costs to pay

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Signature of Plaintiff or his/her Solicitor

Memorandum to be endorsed on the Writ

N.B. — This writ shall be served clear days before the date of hearing. If the defendant wishes to contest this claim he or she must comply with the provisions of Order 6 Rules 6, 7 and 8.

ORDER 6

Filing of notice of intention to defend

6. If the party served with the writ of summons deliver to the Clerk of the Court, and serve on the plaintiff, not less than 3 days before the day fixed for hearing, a notice in writing that he or she intends to defend the suit, then and in such case the suit shall be entered for hearing on the aforesaid date for hearing.

Special leave to defend, where foregoing Rule not complied with

7. When any defendant neglects to deliver and serve the notice of defence, as prescribed by Rule 6, within the time limited by the said Rule, the Court may, at any time before judgment is entered, on an affidavit or, if the Court sees fit, on oral evidence disclosing a defence on the merits and satisfactorily explaining his or her neglect, let in the defendant to defend, upon such terms as the Court may think just.

Disposal of undefended suit in action for liquidated demand

8. In the case of liquidated demands only, where any defendant neglects to deliver and serve the notice of defence prescribed by Rule 6 within the time limited by the said Rule, and is not let in to defend in accordance with the provisions of Rule 7, then and in such case the plaintiff may enter final judgment against that defendant.

AFFIDAVIT OF SERVICE

Plaintiff

v.

Defendant

I, make oath and say as follows—

1. I did on the day of 20, at (a) personally serve (b) the within-named defendant (or as the case may be) with a true copy of the within writ of summons in this action which appeared to me to have been regularly issued out of the said court against the within-named defendant (or defendants) and which was dated the day of 20.

2. At the time of the said service the writ and a copy thereof were subscribed in the manner and form prescribed by the rules of the said court.

20

Service 0

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SWORN by the said

at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_ 20 \_\_\_\_\_

} .....  
}

Before me

.....  
Magistrate or Commissioner for Oaths.

- (a) Place where service effected.
- (b) Name of defendant or person served.

No. \_\_\_\_\_ of \_\_\_\_\_  
In the \_\_\_\_\_ Magistrates Court

.....  
v.

WRIT OF SUMMONS

This writ was issued by

[MC 12,005]

FORM 4

SUMMONS TO A WITNESS

(General Title)

To

You are hereby commanded by the State to attend in person before this Court at on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ and so from day to day till the above cause be tried, to testify all that you know in the said cause.

You are summoned at the instance of \_\_\_\_\_

Issued at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

(Signature of Clerk of the Court)

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Service 0

[MC 12,010]

FORM 5

SUBPOENA DUCES TECUM

(General Title)

To

You are hereby commanded by the State to attend in person before this Court at on the day of 20 and so from day to day till the above cause be tried, to testify all that you know in the said cause and also to bring with you and produce at the time and place aforesaid

Issued at the day of 20 .

(Signature of Clerk of the Court.)

[MC 12,015]

FORM 6

NOTICE TO ADMIT AND INSPECT

(General Title)

Take notice that the plaintiff (or defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff) or his/her barrister and solicitor at on the day of 20 , between the hours of and , and the defendant (or plaintiff) is hereby required within 48 hours from the last mentioned hour to admit, saving all just exceptions to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively.

Dated at the day of 20 .

(Signature of Plaintiff or his/her Barrister and Solicitor or of Defendant or his/her Barrister and Solicitor.)

To

Originals

Description of Document	Date

Copies

Description of Document	Date	Original or Duplicate served, sent or delivered, when, how and by whom

Service 0

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[MC 12,020]

FORM 7

NOTICE TO ADMIT FACTS

(General Title)

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified, and the defendant (or plaintiff) is hereby required, not later than 3 clear days before the return day, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated at the day of 20 .

(Signature of Plaintiff or his/her Barrister and Solicitor or of Defendant or his/her Barrister and Solicitor)

To

The facts the admission of which are required are:

[MC 12,025]

FORM 8

AFFIDAVIT ON MAKING APPLICATION FOR SECURITY FROM DEFENDANT

(General Title)

I of , the above-named plaintiff, make oath, and say as follows—

1. , the above-named defendant, is justly and truly indebted to me in , dollars for (state ground of action).

2. I have caused a writ of summons to be issued out of this Court at my suit against the said defendant.

3. The said defendant is about to leave Fiji, if he or she is not immediately apprehended, as appears from the following circumstances (state the circumstances from which the defendant's intention to abscond is inferred) (or The said defendant with intent to obstruct or delay execution of any decree that may be passed against him/her in the said suit has disposed of (or removed) his property from Fiji as follows) (state particulars respecting the property removed or disposed of, and the manner of disposal):

SWORN by the said at on the day of 20 . }

Before me

[MC 12,030]

FORM 9

WARRANT TO ARREST AN ABSCONDING DEFENDANT

(General Title)

To the Sheriff.

You are hereby commanded by the State to take and arrest the body of \_\_\_\_\_ of \_\_\_\_\_, the above-named defendant, and him or her to deliver to the keeper of the prison at \_\_\_\_\_ there to be kept until he or she shall have given bail or security by deposit or otherwise to the satisfaction of the said Court, for his or her appearance at any time when called upon while the above suit is pending, and until execution or satisfaction of any decree that may be passed therein against him or her, or until he or she shall otherwise be lawfully delivered from custody under the said arrest, and also that you bring and have the said \_\_\_\_\_ before the Court forthwith after the execution of this writ, in order that he or she may show cause touching the matter of such bail or security, and have there then this writ.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

(Signature of Magistrate.)

[MC 12,035]

FORM 10

ORDER ON DEFENDANT TO FIND BAIL

(General Title)

Whereas \_\_\_\_\_ of \_\_\_\_\_, the above-named plaintiff, hath proved that there is probable cause for believing that \_\_\_\_\_ of \_\_\_\_\_ is about to leave Fiji (or that he or she has removed from Fiji his or her property, or part thereof), and that by reason thereof the execution of any decree which may be made against the said \_\_\_\_\_ is likely to be obstructed or delayed;

And whereas the said \_\_\_\_\_, having been allowed and required to show cause why he or she should not give bail as afterwards herein ordered, has failed to show any such sufficient cause:

I do hereby order that the said \_\_\_\_\_ do find security, by deposit or otherwise, to the satisfaction of the Court, for his/her appearance at any time when called upon while the above suit is pending, and until execution or satisfaction of the decree of the Court, in case judgment be given against him or her, and further that the said \_\_\_\_\_ be committed to the prison at \_\_\_\_\_ until the decision of the abovementioned suit or execution of the decree, if judgment shall be given against the said \_\_\_\_\_, or until he or she comply with this order.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

(Signature of Magistrate.)

Service 0

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[MC 12,040]

FORM 11

BAIL BOND BY DEFENDANT AND SURETIES

(General Title)

Know all men by these presents, that we (the defendant arrested) of , of , and of , are held and firmly bound to of in the sum of dollars of lawful money, to be paid to the said , his or her executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself or herself, in the whole, our and every of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the day of 20 .

Whereas a suit has been brought in the said Court at , wherein is plaintiff, and the above-bounden is defendant;

And whereas the said hath been ordered to give bail to the satisfaction of the Court for his or her appearance at any time when called upon while the suit is pending, and until execution or satisfaction of the decree of the Court in case judgment therein be given against him or her;

And whereas the above-named and , at the request of the said , have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the said shall appear when called upon as aforesaid, or if in default of such appearance as aforesaid, the said and , any or either of them, shall pay unto the said or his or her executors, administrators or assigns, any sum of money that may be adjudged against the said , the defendant in the suit, with costs, then this obligation shall be void, otherwise shall remain in full force.

Signed, sealed and delivered in the presence of

(LS)
(LS)
(LS)

(Signature of the Clerk of the Court)

[The next page is 830,257]

Service 0

830,246

[MC 12,045]

**FORM 12**

## WARRANT TO ATTACH PROPERTY BEFORE JUDGMENT

*(General Title)*

To the Sheriff

Whereas it has been shown to the satisfaction of this Court that \_\_\_\_\_ of \_\_\_\_\_, the defendant in the above suit, with intent to obstruct or delay the execution of, the defendant in the above suit, with intent to obstruct or delay the execution of out of Fiji his or her goods and chattels:

You are hereby commanded to seize, attach and take into your hands the real and personal property of the defendant (*or* certain property specified to the value of \$ \_\_\_\_\_), and to hold the same until the further order of the Court; and you are also commanded forthwith after the execution of this writ to return the same into the Court, with the place, time and particulars of execution endorsed thereon.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

*(Signature of Magistrate)*

[MC 12,050]

**FORM 13**

## ORDER FOR DELIVERY OF INTERROGATORIES

*(General Title)*

Upon hearing \_\_\_\_\_ it is ordered that the \_\_\_\_\_ on payment of the sum of \$ \_\_\_\_\_ into court (*or* without giving security) be at liberty within \_\_\_\_\_ days from the date of this order to deliver to the interrogatories in writing and that the said do answer the interrogatories by affidavit and return such answer to me for filing and deliver a copy thereof to the \_\_\_\_\_ within \_\_\_\_\_ days from the service of this order (*add, where payment into court ordered, and a copy of the receipt for payment into court*) upon him or her and that the costs of this application be \_\_\_\_\_.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

*(Signature of Magistrate)*

[MC 12,055]

**FORM 14**

## ORDER FOR AFFIDAVIT AS TO DOCUMENTS

*(General Title)*

Upon hearing \_\_\_\_\_ it is ordered that on payment by the \_\_\_\_\_ of the sum of \$ \_\_\_\_\_ into court (*or* without security given by the \_\_\_\_\_) the \_\_\_\_\_ do within days from the service of this order [*add, where payment into court ordered, and a copy of the receipt for the payment into court*] upon him/her, answer on affidavit stating what documents are or have been in \_\_\_\_\_ possession or power relating to the matters in question in this action and return such affidavit to me for filing and deliver a copy thereof to the \_\_\_\_\_ and that the costs of this application be \_\_\_\_\_.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

*(Signature of Magistrate)*

830,257

Service 0

[MC 12,060]

FORM 15

AFFIDAVIT AS TO DOCUMENTS

(General Title)

I, the abovementioned, make oath and say as follows—

- 1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of Schedule 1 hereto.
- 2. I object to produce the said documents set forth in the second part of the said Schedule 1 hereto.
- 3. That [here state upon what grounds the objection is made and verify the facts as far as may be].
- 4. I have had but have not now in my possession or power the documents relating to the matters in question in this action set forth in Schedule 2 hereto.
- 5. The last mentioned documents were last in my possession or power on [state when].
- 6. That [here state what has become of the last mentioned documents and in whose possession they now are].
- 7. According to the best of my knowledge, information and belief I have not now, and never had in my possession, custody or power or in the possession, custody or power of my barrister and solicitor or of any other person on my behalf any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document or any other document whatsoever relating to the matter in question in this action or any of them of wherein any entry has been made relative to such matters or any of them other than and except the documents set forth in the said Schedule 1 and Schedule 2 hereto.

Sworn by the  
 said at on  
 the day } .....  
 20 .  
 Before me

Schedule 1  
 Schedule 2

[MC 12,065]

FORM 16

NOTICE TO PRODUCE (GENERAL FORM)

(General Title)

Take notice that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this and particularly [specify them].

Dated at the day of 20 .

(Signature of Plaintiff or his/her Barrister and Solicitor or of Defendant or his/her Barrister and Solicitor)



[MC 12,070]

FORM 17

FORMAL DECREE  
(General Title)

To

It is decreed in the above suit that the above-named plaintiff do recover from the above-named defendant the sum of \$ together with \$ for costs, and the said defendant is hereby ordered to pay the sum of \$ forthwith (or by the following instalments).

Dated at the day of 20 .

Debt..... \$ : .  
Costs..... \$ : .

(Signature of Magistrate)

[MC 12,075]

FORM 18

AFFIDAVIT BY DEFENDANT IN SUPPORT OF AN INTERPLEADER SUMMONS IN AN ACTION

[Form 18 subst LN 138 of 1961, r 2, opn 3 Nov 1961]

(General Title)

I, of (a person in the employment of) the above-named defendant make oath and say as follows—

- 1. This action has been brought by the plaintiff for
- 2. Claims adverse to that of the above-named plaintiff have been received by the defendant from of and of to the subject matter of this action.
- 3. The defendant claims no interest in the subject matter in dispute other than for costs and charges and does not collude with either or any of the said claimants.
- 4. The defendant is willing to bring into court or to pay or dispose of the subject matter in dispute as the Court may direct.

Sworn by the said  
at  
this  
of 20 . day

Before me

A Commissioner for Oaths.

[MC 12,080]

FORM 19

AFFIDAVIT BY APPLICANT IN SUPPORT OF AN ORIGINATING INTERPLEADER SUMMONS

[Form 19 subst LN 138 of 1961, r 2, opn 3 Nov 1961]

830,259

Service 0

(General Title)

I, \_\_\_\_\_ of (a person in the employment of) the above named applicant make oath and say as follows—

1. Claims have been received by the applicant from

- (i) \_\_\_\_\_ of \_\_\_\_\_
- and
- (ii) \_\_\_\_\_ of \_\_\_\_\_

to (a)

2. The applicant claims no interest in the subject matter in dispute other than for costs and charges and does not collude with either of the said claimants.

3. The applicant is willing to bring into court or to pay or dispose of the subject matter in dispute as the Court may direct.

Sworn by the said \_\_\_\_\_  
at \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Before me

A Commissioner for Oaths

(a) Give brief description of the property together with its value.

INTERPLEADER SUMMONS IN AN ACTION

[Form 20 insrt LN 86 of 1958 r 5, opn 5 Sep 1958; LN 138 of 1961, opn 3 Nov 1961]

(General Title)

WHEREAS the defendant in this action (copy of the summons and particulars wherein is hereto annexed) has filed an affidavit (copy whereof is also hereto annexed) stating that he or she has received a claim from you to the subject matter of this action, (or, to \_\_\_\_\_ part of the subject matter of this action).

You are therefore summoned to appear at a court to be holden at \_\_\_\_\_ on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon when judgment will be given determining the rights and claims of the plaintiff, the defendant and yourself.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Clerk of the Court.

To \_\_\_\_\_ of (here insert name, address and occupation of the person to be summoned).

Note. — You are required within 8 days after the service of this summons on you, inclusive of the day of service, to file in the Court either a notice that you make no claim, or particulars stating the grounds of your claim to the subject matter of the action and to serve a copy upon each of the parties to this action.

[MC 12,090]

FORM 21

NOTICE TO PLAINTIFF OF INTERPLEADER SUMMONS

[Form 21 insrt LN 86 of 1958 r 5, opn 5 Sept 1958]

(General Title)

Whereas the defendant in this action has filed an affidavit (copy whereof is hereto annexed) stating that he or she has received a claim from of to the subject matter in this action (or, to part of the subject matter of this action).

Take notice that a summons has been issued to the said to appear at a court to be holden at on the day of 20, at the hour of in the noon, (and that the hearing of this action has been adjourned to the same place, day and hour) when judgment will be given determining the rights and claims of yourself, the defendant and the said .

To the Plaintiff

Note. — The claimant is required within 8 days after the service of the said summons on him or her, inclusive of the day of service, to file in the Court and to serve a copy upon you and the defendant either a notice that he or she makes no claim, or particulars stating the grounds of his or her claim to the subject matter in the action, (and upon the filing of such notice or particulars a copy will be sent to you and a copy to the defendant).

[MC 12,095]

FORM 22

ORIGINATING INTERPLEADER SUMMONS

[Form 22 insrt LN 86 of 1958 r 2, opn 5 Sept 1958]

(General Title)

Whereas of has filed an affidavit (a copy whereof is hereto annexed) stating that he or she has received adverse claims from of and of to (here state the debt or other thing in action, money or goods to which the adverse claims are made).

You are therefore summoned to appear at a court to be holden at on the day of 20, at the hour of in the noon when judgment will be given determining the rights and claims of the said and the said.

Dated at the day of 20 .

Clerk of the Court.

To the Claimants.....

Note. — You are each required within 8 days after the service of this summons on you, inclusive of the day of service, to file in the Court either a notice that you make no claim, or particulars stating the grounds of your claim and serve a copy upon each of the other parties.

WRIT OF *FIERI FACIAS*

(General Title)

To the Sheriff of Fiji, Greeting:

You are commanded that of the goods and chattels of C.D. within Fiji you cause to be made the sum of \$ and also interest thereon at the rate of per cent per annum from the day of , (a) which said sum of money and interest were lately in the said Court in a certain suit (or in a certain matter there depending intituled "In the matter of E.F., etc or as the case may be) wherein A.B. is plaintiff and C.D. is defendant by a decree (or order as the case may be) of the said Court bearing date the day of , adjudged (or ordered, as the case may be) to be paid by the said C.D. to A.B. together with \$ for costs. And that of the goods and chattels of the said C.D. within Fiji you further cause to be made the said sum of \$ costs together with interest thereon at the rate of 5% per annum from the day of , (a) and that you have that money and interest before the said Court immediately after the execution hereof to be paid to the said A.B. in pursuance of the said decree (or order, as the case may be). And in what manner you shall have executed this writ make appear to the Court immediately after the execution thereof. And have there then this writ.

Dated at the day of 20 .

(Signature of Magistrate.)

Indorsement

Levy \$ and \$ for costs of execution etc and also interest on \$ at 5% per annum from the day of, 20 , (b) until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses

This writ was issued by of . The is a and resides at .

Items

Amount for which Judgment was obtained.....	\$
Costs awarded by Court.....	\$
Costs of writ of execution.....	\$
Interest.....	\$
Sheriff's fees (received and entering writ of execution, precept to bailiff and seizure fee).....	\$
	<hr/>
	\$
	<hr/>

N.B. — The goods are not to be sold until after the end of days next following the day on which they are seized unless they are of a perishable nature or on the request of the party whose goods are seized.

- (a) Day of decree or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.
- (b) Date of issue of writ of *feri facias*.

Service 0

830,262

DFLRC (RT) - 17/12/24



[MC 12,105]

FORM 24

JUDGMENT SUMMONS

(General Title)

Whereas the plaintiff obtained a judgment (or order) against the above-named defendant in this Court (or in the Magistrates Court at ) on the day of 20 , for the payment of \$ and costs, forthwith (or on the day of 20 , or by instalments of \$ for every days), and subsequent costs have been incurred in pursuance thereof amounting to \$ ;

And whereas default has been made in payment of the sum of \$ payable in pursuance of the said judgment (or order), and the plaintiff has required this judgment summons to be issued against you the defendant:

You are hereby summoned to appear personally in this Court at on the day of 20 , at o'clock in the noon to be examined on oath by the Court touching the means you have or have had since the date of the said judgment (or order) to satisfy the sum payable in pursuance of the said judgment (or order), and also to show cause why you should not be committed to prison for such default.

Dated at the day of 20 .

(Signature of Magistrate or Clerk of the Court)

To the Defendant.

\$ c \$ c

Amount of judgment (or order) and costs

Add: Costs of previous judgment summonses, hearings and commitments (if any) since date of judgment (or order) allowed by the Magistrate.....

Deduct:

Paid into court:

Otherwise than under execution .....
Under execution (After deducting costs of execution).....
Amounts in respect of which an order of commitment has been made since date of judgment (or order), and in respect of which defendant has been or may be imprisoned.....
Amounts which were not required to have been paid before the date of this summons.....
Sum in payment of which defendant has made default .....
Costs of this summons .....

Note: — In default of your attendance you will be liable to be proceeded against by warrant to compel your attendance and to pay the costs of the warrant whether it be executed or not.

[MC 12,110]

FORM 25

JUDGMENT SUMMONS ON JUDGMENT OR ORDER AGAINST A FIRM, OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN HIS/HER OWN

(General Title)

To (a) of .

830,263

Service 0

Whereas the plaintiff obtained judgment (or an order) against the defendant in the name of (b) of above described in this Court (or in the Magistrates Court at ) on the day of 20 , for the sum of \$ (and costs) and there is now due and payable under the said judgment (or order) from the said (b) to the said plaintiff the sum of ;

And whereas the plaintiff has filed an affidavit in this Court a copy whereof is hereto annexed wherein it is alleged that you the above-named (a) are liable as one of the partners in (or sole member of) the said firm of (b) (or as the person carrying on business on your own behalf in the name of (b) ) to pay the sum payable under the said judgment (or order):

You are hereby summoned to appear personally in this Court at on the day of 20 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the said judgment (or order) to pay the said sum of \$ now due and payable under the said judgment (or order); and also to show cause why you should not be committed to prison for default in payment of the said sum;

And take notice that if you deny that you are liable as one of the partners in (or the sole member of) the said firm of (or as the person carrying on business on your own behalf in the name of ) to pay the sum payable under the said judgment (or order) you must appear at this Court on the day and at the hour abovementioned, and that in default of your so appearing you will be deemed to admit your liability as aforesaid to pay the amount due and payable under the said judgment (or order).

Dated at the day of 20 .

(Signature of Magistrate or Clerk of the Court.)

\$ c

Amount remaining due under judgment (or order) .....
Costs of this summons .....
Total sum due .....

- (a) Insert the name of person alleged to be a partner in the firm or sole member thereof or of the person alleged to be carrying on business in a name other than his/her own.
(b) Insert name as in the original summons with any amendment made by the court.

[The next page is 830,277]



[MC 12,115]

FORM 26

ORDER OF COMMITMENT ON A JUDGMENT OF ORDER OF A COURT

(General Title)

To the Sheriff and the Controller of Prisons.

Whereas the plaintiff obtained judgment (or an order) against the defendant in this Court (or in the Magistrates Court at ) on the day of 20 , for the payment of \$ for debt (or damages) and costs, and subsequent costs have been incurred in pursuance thereof amounting to \$ ;

And whereas the defendant has made default in payment of \$ payable in pursuance of the said judgment (or order);

And whereas a summons was at the instance of the plaintiff duly issued out of this Court by which the defendant was required to appear personally at this Court on the day of 20 , to be examined on oath touching the means he or she then had or since the date of the said judgment (or order) to satisfy the sum then due and payable in pursuance of the said judgment (or order) and to show cause why he or she should not be committed to prison for such default, which summons has been proved to this Court to have been personally and duly served on the defendant;

And whereas at the hearing of the said summons it has been proved to the satisfaction of the Court that the said defendant now has (or has had since the date of the said judgment (or order)) the means to pay the sum due and payable in pursuance of the said judgment (or order) and refuses (or neglects or has refused or neglected) to pay the same, and the said defendant has shown no cause why he/she should not be committed to prison:

Now therefore it is ordered that for such default as aforesaid the said defendant shall be committed to prison for , unless he/she shall sooner pay the sum stated below as that upon payment of which he or she is to be discharged or an order for his or her discharge shall be granted pursuant to Rule 19 of Order 36.

These are therefore to require you the said to take the said defendant and to deliver him or her to the officer in charge of the prison and you instruct the said officer to receive the said defendant and safely keep him/her in the said prison for from the arrest under this order or until he or she shall be sooner discharged by due course of law.

Dated at the day of 20 .

(Signature of Magistrate.)

\$ c

Sum in payment of which defendant had made default at time of issue of judgment summons.....
Fees and costs on issue and hearing of judgment summons.....
Deduct amount paid into court since issue of judgment summons.....
Fee on issue of this order.....
Sum on payment of which the debtor is to be discharged.....

830,277

Service 0

[MC 12,120]

FORM 27

ORDER OF COMMITMENT ON A JUDGMENT SUMMONS ON A JUDGMENT OR ORDER  
AGAINST A FIRM, OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN  
HIS/HER OWN*(General Title)*

To the Sheriff and the Controller of Prisons.

Whereas the plaintiff obtained a judgment (*or order*) against the defendant by and in the name of (a) \_\_\_\_\_ above described in this Court (*or in the Magistrates Court at* \_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, for the sum of \$ \_\_\_\_\_ (and costs), and there is now due and payable under the said judgment (*or order*) from the said defendant to the said plaintiff the sum of \$ \_\_\_\_\_;

And whereas the said plaintiff having filed an affidavit in this Court, wherein it was alleged that (b) \_\_\_\_\_ was liable as one of the partners in (*or the sole member of*) the said firm of \_\_\_\_\_ (*or as the person carrying on business on his or her own behalf in the name of* \_\_\_\_\_) to pay the sum payable under the said judgment (*or order*) a summons was, at the instance of the said plaintiff, duly issued out of this Court, by which the said \_\_\_\_\_ was required to appear personally at this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, to be examined on oath touching the means he/she had then or had had since the date of the said judgment (*or order*) to pay the sum due and payable under the said judgment (*or order*), and also to show cause why he/she should not be committed to prison for default in payment of the said sum, and notice was thereby given to the said \_\_\_\_\_ that if he/she denied that he/she is liable was one of the partners in (*or the sole member of*) the said firm of \_\_\_\_\_ (*or as the person carrying on business on his/her own behalf in the name of* \_\_\_\_\_) to pay the sum payable under the said judgment (*or order*) he/she must appear at this Court on the day abovementioned, and that in default of his/her so appearing he or she would be deemed to admit his or her liability as aforesaid to pay the amount due and payable under the said judgment (*or order*);

And whereas the said summons came on for hearing this day, and the said summons has been proved to this Court to have been personally and duly served on the said \_\_\_\_\_;

And whereas the said \_\_\_\_\_ did not appear at the hearing of the said summons; (or And whereas the said \_\_\_\_\_ appeared at the hearing of the said summons, and admitted his or her liability as one of the partners in (*or the sole member of*) the said firm of \_\_\_\_\_ (*or as the person carrying on business on his or her own behalf in the name of* \_\_\_\_\_) to pay the sum payable under the said judgment (*or order*); (or And whereas the said \_\_\_\_\_ appeared at the hearing of the said summons, and denied liability but proof has been made to the satisfaction of the Court that the said \_\_\_\_\_ is liable as one of the partners in (*or the sole member of*) the said firm of \_\_\_\_\_ (*or as the person carrying on business on his/her own behalf in the name of* \_\_\_\_\_) to pay the said sum;)

And whereas at the hearing of the said summons it has now been proved to the satisfaction of the Court that the said \_\_\_\_\_ now has (*or has had since the date of the said judgment (or order) the means to pay the sum due and payable under the said judgment (or order)*), and refuses (*or neglects or has refused or neglected*) to pay the same and the said \_\_\_\_\_ has shown no cause why he/she should not be committed to prison:

Now therefore it is ordered that for such default as aforesaid the said \_\_\_\_\_ shall be committed to prison for \_\_\_\_\_, unless he or she shall sooner pay the sum stated below as that upon payment of which he/she is to be discharged or an order for his or her discharge shall be granted pursuant to Rule 19 of Order 36.

These are therefore to require you the said \_\_\_\_\_ and others to take the said \_\_\_\_\_ and to deliver him/her to the officer in charge of the \_\_\_\_\_ prison and you instruct the said \_\_\_\_\_

Service 0

830,278

officer to receive the said and safely keep him/her in the said prison for from, the arrest under this order or until he or she shall be sooner discharged by due course of law.

Dated at the day of 20 .

(Signature of Magistrate.)

\$ c

Amount remaining due under judgment (or order) at time of issue of judgment summons

Fees and costs on issue and hearing of judgment summons.....

Deduct amount paid into court since issue of judgment summons.....

Fee on issue of this Order.....

Sum on payment of which the debtor is to be discharged

- (a) Insert name, address and description as in the original summons with any amendment made by the court.
(b) Insert name, address and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof or of the person alleged to be carrying on business in a name other than his or her own.

[MC 12,125]

FORM 28

AFFIDAVIT FOR LEAVE TO SUMMON GARNISHEE

(General Title)

and

Garnishee.

I, A.B. of (or I, C.D. of , barrister and solicitor to) the above-named plaintiff, make oath and say:

1. That I (or A.B.) on the day of recovered judgment (or obtained an order) in the court holden at in this action (or matter) against the above-named defendant, for the sum of \$ , for debt (or damages) and costs.

2. That the said judgment (or order) is still wholly unsatisfied (or is unsatisfied as to the sum of \$ ).

3. That I am informed and verily believe that the above-named garnishee of is indebted to the defendant in the sum of (about) \$ .

4. That the garnishee is in respect of the said debt to the defendant within the jurisdiction of this Court and could be (or has been) sued in respect thereof in this Court on the following ground [state grounds of jurisdiction].

Sworn by the said at on the day of 20 . Before me }

830,279

Service 0

SUMMONS TO GARNISHEE

(General Title)

and

Garnishee.

Whereas the plaintiff at a court holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, recovered judgment (or obtained an order) against the defendant who resides at \_\_\_\_\_ and is a [description of trade or calling] for the sum of \$ \_\_\_\_\_ for debt (or damages) and costs which judgment (or order) remains unsatisfied as to the sum of \$ \_\_\_\_\_.

And whereas the plaintiff has filed an affidavit stating that you are indebted to the defendant in the sum of \$ \_\_\_\_\_.

You are hereby summoned to appear at a court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at the hour of \_\_\_\_\_ in the noon, to show cause why an order should not be made upon you for the payment to the plaintiff, of the amount of the debts due and payable from you to the defendant, or so much thereof as will satisfy the debt due under the said judgment (or order) and the plaintiff's costs of this proceeding;

And take notice that from and after the service of this summons upon you all such debts are attached to answer the said judgment (or order);

And further take notice that if you pay to the Clerk of the Court the amount of such debts, or so much thereof as will satisfy the debts due under the said judgment (or order) (and the fees and barrister and solicitor's costs endorsed on this summons), 5 clear days before the day upon which you are required to appear, you will incur no further costs.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Signature of Clerk of the Court.)

To	\$	c
Amount remaining due under judgment (or order).....		
Court fees, including hearing fee .....		
Barrister and solicitor's costs .....		_____
Total amount.....		_____

This summons is issued at the instance of \_\_\_\_\_, the above-named plaintiff (or barrister and solicitor for the above-named plaintiff).

Service 0

830,280

[MC 12,135]

FORM 30

NOTICE TO JUDGMENT DEBTOR OF ISSUE OF GARNISHEE SUMMONS

(General Title)

and

Garnishee.

Take notice that the garnishee summons, a copy of which is hereunto annexed, was issued on the day of , and that if you have any cause to show why the Court should not order , the garnishee named in the said summons, to pay to the judgment creditor the debt alleged to be due from the garnishee to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs of the garnishee proceedings, you must appear at this Court on the day of at the hour of in the noon, and show such cause accordingly.

Dated at the day of 20 .

(Signature of Clerk of the Court.)

[MC 12,140]

FORM 31

NOTICE TO JUDGMENT CREDITOR OF PAYMENT INTO COURT BY GARNISHEE

(1)

WHERE WHOLE CLAIM PAID IN

(General Title)

and

Garnishee.

Take notice that the garnishee has paid into court the full amount of your claim in these proceedings, together with your costs therein.

The amount paid into court will on application made by you on the day of at the hour of in the noon be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

Dated at the day of 20 .

(Signature of Clerk of the Court.)

To

(2)

WHERE PART OF CLAIM PAID IN

(General Title)

and

Garnishee.

830,281

Service 0

Take notice that the garnishee has paid into court the sum of \$ \_\_\_\_\_ in respect of your claim in these proceedings, and the sum of \$ \_\_\_\_\_ in respect of fees and costs.

If you elect to accept the sum paid in in full satisfaction of your claim against the garnishee and the costs you have incurred, and send to the Clerk of the Court and to the garnishee a written notice of such acceptance forthwith, by post, or by leaving the same at the office of the Clerk of the Court and at the garnishee's residence or place of business, the proceedings against the garnishee will abate, and you will not be liable to any costs incurred by the garnishee after receiving such notice, and the amount paid into court will on application made by you on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

In default of such notice the proceedings will proceed; and if you do not appear at the hearing you will be liable to pay to the garnishee such costs as he or she may incur for appearing at the hearing, or such other sum of money as the Magistrate may order for expenses subsequent to the payment into court.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

(Signature of Clerk of the Court.)

To \_\_\_\_\_ .

[MC 12,145]

FORM 32

NOTICE TO JUDGMENT DEBTOR OF PAYMENT INTO COURT BY GARNISHEE

(General Title)

and \_\_\_\_\_

Garnishee.

Take notice that M.N., the garnishee named in the proceedings herein, has paid into court the sum of \$ \_\_\_\_\_ .

And further take notice that the said sum will be ordered to be paid out to the judgment creditor, A.B., unless you appear at this Court on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and show cause to the contrary.

Dated at \_\_\_\_\_ the day of \_\_\_\_\_ 20 \_\_\_\_\_ .

(Signature of Clerk of the Court)

To \_\_\_\_\_ .

[MC 12,150]

FORM 33

INTERPLEADER SUMMONS (1)

(To be served on Execution Creditor)

(General Title)

WHEREAS \_\_\_\_\_ has made a claim to certain property (or to the proceeds of sale (or value) of certain property) taken in execution under process issuing out of this

Service 0

830,282

Court at your instance (*or* certain rent alleged to be due to him or her in respect of and issuing out of the premises upon which certain property was taken in execution under process issuing out of this Court at your instance):

You are hereby summoned to appear at a court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, when the said claim will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(*Signature of Magistrate or Clerk of the Court*)

To \_\_\_\_\_.

[MC 12,155]

**FORM 34**

INTERPLEADER SUMMONS (2)

(To be served on the Claimant.)

(*General Title*)

To \_\_\_\_\_.

You are hereby summoned to appear at a court to be holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon to support a claim made by you to certain property (or to the proceeds of sale (or value) of certain property) taken in execution under process issuing out of this Court at the instance of (a) \_\_\_\_\_; and in default of your then establishing such claim the said property will then be sold and the proceeds thereof paid over (or the said proceeds of sale (or value) will be paid over) according to the exigency of the said process.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(*Signature of Magistrate or Clerk of the Court.*)

(a) Here insert name of execution creditor.

[MC 12,160]

**FORM 35**

BOND FOR COSTS OF APPEAL

[Form 35 subs Rules of 6 November 1950]

(*General Title*)

Know all men by these presents that we [*Name and address of appellant and surety or sureties*] of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ are jointly and severally held and firmly bound to [*Name and address of respondent*] of \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars of lawful money to be paid to the said his or her executors, administrators or assigns, for which payment well and truly to be made we bind ourselves and each of us for himself or herself, in the whole, our and each of our executors and administrators, firmly by these presents sealed with our seals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Whereas \_\_\_\_\_ of \_\_\_\_\_ the plaintiff/defendant in the above suit has given notice of his or her intention to appeal from the judgment of the Court in the said suit given on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

830,283

Service 0

And whereas by an order of the Court dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, the aforesaid appellant was ordered to find security in the sum of \_\_\_\_\_ dollars for payment of all such costs as may be awarded to the respondent by the appellate court.

Now the condition of this obligation is such that if the above bounden [Name and address of appellant and surety or sureties] and \_\_\_\_\_ or any of them or their executors or administrators shall pay unto the said [Name and address of respondent] his or her executors, administrators or assigns, all such costs as may be awarded to the respondent by the appellate court, then this obligation shall be void, but otherwise to remain in full force and effect.

Signed, sealed and delivered by the said \_\_\_\_\_ [LS] \_\_\_\_\_ [LS] in the presence of \_\_\_\_\_

[MC 12,165]

FORM 36

WARRANT FOR PRISONER TO GIVE EVIDENCE

(General Title)

To the Officer in charge of the \_\_\_\_\_ Prison.

You are hereby commanded to have \_\_\_\_\_ a prisoner under your custody, before the Court at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ next at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to give evidence in the above-named cause, and immediately after he or she has there and then given his or her evidence to return.

Issued at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Signature of Magistrate.)

[MC 12,170]

FORM 37

CERTIFIED COPY OF PROCEEDINGS

(General Title)

I, \_\_\_\_\_, Clerk of the Court of \_\_\_\_\_, hereby certify and declare that the attached is a true copy of the proceedings in the above case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Signature of Clerk of the Court.)

[MC 12,175]

FORM 38

DEFAULT JUDGMENT IN ACTION FOR LIQUIDATED DEMAND

(General Title)

No notice of defence having been served by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff \$ \_\_\_\_\_ and \$ \_\_\_\_\_ costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Service 0 \_\_\_\_\_ 830,284



(Signature of Clerk of the Court)

[MC 12,180]

FORM 39

NOTICE OF ADJOURNMENT IN THE MAGISTRATES COURT

CASE No \_\_\_\_\_

NOTICE OF ADJOURNMENT

[Form 39 insrt LN 10 of 2000, r 13]

Your case has been put off to another day.

You must come back to this Magistrates Court on \_\_\_\_\_ the day  
of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ a.m/p.m.

You should also—

- see your lawyer
- bring the following documents
- bring your witnesses

If you do not—

- your case may be weakened
- the case may have to be put off again

Clerk to the Court

\_\_\_\_\_ (date)

[Court Assistant to insert or delete as necessary]

DFLRC (RT) 17/12/24

830,285

Service 0

[The next page is 830,307]

Service 0

830,286

FEES

[Appendix B insrt LN 29 of 1994 r 3, opn 1 Mar 1994]

PART 1 — GENERAL FEES

The fees prescribed in this Part shall be taken in all causes except where separate fees are prescribed.

1.	On the Filing and issue of a Writ of Summons—	\$
	(a) for the recovery of a sum of money, for damages or for specific performance—	
	(i) where the amount claimed, or the relevant consideration does not exceed \$100 .....	10
	(ii) where the amount claimed, or the relevant consideration exceeds \$100 .....	20
	(b) for the recovery of possession of land or premises .....	20
	(c) for the recovery of both a sum of money and the possession of land or premises—	
	(i) where the amount of money claimed does not exceed \$100 .	30
	(ii) where the amount of money claimed exceeds \$100 .....	40
	(d) in any other case .....	20
2.	(a) On filing any application originating any proceedings in Magistrates Court unless a fee is otherwise provided .....	40
	(b) On filing any motion in interlocutory proceedings .....	15
3.	On filing a defence or an affidavit setting out the grounds of defence or a statement of defence or an answer .....	10
4.	On filing a formal decree, order or judgment .....	5
5.	On filing a counterclaim.....	Fees as in 1(a)
6.	On filing any affidavit or any other document for which no fee is specially provided .....	5
7.	On issuing witness summons or subpoena <i>duces tecum</i> .....	5
8.	On issuing an order or reference (O 17) .....	5
9.	A commission to take evidence (O 5) .....	5
10.	On issuing a writ of possession, or a combined writ of <i>feri-facias</i> and possession .....	10
11.	On issuing a judgment summons (including cost of praecipe) .....	10
12.	On issuing bench warrant, committal order or absconding debtor warrant or any writ, warrant or order for which no fee is specially prescribed herein (including the cost of application) .....	5
13.	On issuing a garnishee summons (including notice thereof to the judgment debtor) .....	10
14.	On issuing interpleader summons or otherwise than under an execution .....	Fees as in 1(a)
15.	For supplying a typed, carbon or duplicated copy of any record of court proceedings per page, with a minimum of \$5 .....	5

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Service 0

16. For supplying a photocopy of any other document, per page. ....	0.50
17. For marking any document as an office copy or a true copy .....	1
18. For certifying a true copy of the record per page (with a maximum fee of \$10.00) .....	0.50
19. For search in any one matter .....	2
20. On filing a bill of costs for taxation—	
For a bill not exceeding \$50 (including taxation) .....	10
For a bill exceeding \$50 (including taxation) .....	5
21. On administering any oath or declaration (except in court) or taking any affidavit or an affirmation for each deponent .....	1
And in addition thereto for each exhibit therein referred to and required to be marked .....	0.50
22. On filing notice of intention to appeal .....	10
23. On filing grounds of appeal .....	25
24. On filing every bond or deposit as security .....	10
25. On sealing an order made on the hearing of an appeal by a Resident Magistrate .....	5
26. On application for leave to appeal out of time .....	20

PART 2 — FEES IN ADOPTION PROCEEDINGS

27. On filing an application for an adoption order .....	10
28. On filing an application for appointment of a guardian <i>ad litem</i> .....	5
29. Order appointing a guardian ad litem .....	5
30. On filing every consent .....	5
31. On sealing an order for adoption .....	10
32. For notice to Registrar-General .....	5

PART 4 — FEES IN SEPARATION, MAINTENANCE AND AFFILIATION PROCEEDINGS

33. For taking a complaint and issuing commence proceedings .....	5
34. For taking a complaint of non-payment and issuing a warrant for defendant to be brought before the court (whether the warrant be executed or not) .....	10
35. For issuing and serving a warrant of distress (whether the warrant be executed or not)—	
(a) served within 3 km of the nearest court house .....	5
(b) served beyond 3 km from the nearest court house, in addition to (a), for every km in excess of 3 km .....	0.50
36. For expenses of sales: for every \$2 or part of \$2 realised .....	0.50
37. For issuing a warrant of commitment .....	10
38. On filing grounds of appeal .....	20

PART 5 — FEES IN FAMILY CAUSES, PROCEEDINGS AND MATTERS

39. On filing a petition or answer (this fee includes filing petition with supporting affidavit, issue of summonses, filing of affidavit of service, appointment of guardian <i>ad litem</i> as necessary, issue of decree nisi, the filing of the application for decree absolute and issue of certificate of no cause and the decree absolute) .....	20
40. On motion for substituted service (this fee includes filing of affidavit in support and the sealing of any order made) .....	10
41. On filing any pleading or application not otherwise provided for .....	10
42. For service of any summons or any pleading—	
(a) within 3 km of the nearest court house .....	5
(b) exceeding 3 km from the nearest court house for every additional km in addition to (a) .....	0.50

PART 6 — FEES ON APPLICATION UNDER DISTRESS FOR RENT ACT 1961

43. On the issue of a bailiff's certificate:	
(a) for a special certificate .....	10
(b) for a general certificate .....	20
(c) for the renewal of a general certificate .....	10
(d) for approving security by bond or guarantee .....	5
(e) for receiving a deposit as security .....	5

PART 7 — FEES IN CRIMINAL CAUSES, APPEALS PROCEEDINGS AND MATTERS

44. On filing any complaint or information on oath .....	10
45. On drawing up and signing a formal charge .....	10
46. On drawing summons .....	5
47. On issuing summons to defendant .....	10
48. For each duplicate summons issued for service .....	2
49. On the issue of a witness summons .....	5
50. On filing affidavit of service .....	5
51. For search in any one matter .....	5
52. On the issue of a warrant to arrest a defendant or a witness at the first instance .....	10
53. On the issue of a warrant of commitment in default of payment of a fine, or costs, or of other moneys payable under an order of the court (whether the warrant be executed or not) excluding a warrant of commitment in default or in lieu of distress .....	15
54. On application for a search warrant .....	5
55. On the issue of a search warrant .....	5
56. Service of any document:	
(a) within 3 km of the nearest court house .....	5
(b) exceeding 3 km from the nearest court house, for every additional km, in addition to (a) .....	0.50

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Service 0

57. Subject to the provisions of the Criminal Procedure Act 2009, supplying a certified copy of record, per page or part thereof (with a minimum fee of \$5) .....	0.40
58. On filing a complaint to show cause under the Criminal Procedure Act 2009 .....	10
59. On the issue of an order to show cause .....	10
60. For issuing a warrant of distress (whether the warrant be executed or not) .....	10
61. Upon the issue of a warrant of a commitment (whether the . . . warrant be executed or not) .....	10
(NOTE— This fee is to be endorsed on the warrant and is recoverable in addition to any amount distrained for and costs)	
62. On filing grounds of appeal or cross appeal (this fee includes the fees for setting down notice of hearing and hearing) .....	20
63. On an application for leave to appeal and enlargement of time .....	20
64. On filing any motion .....	5

PART 8 — SHERIFF’S FEES SERVICE

65. For receiving and entering process for service .....	5
66. For service of any process:	
(a) within 3 km from the nearest deputy sheriff’s office .....	5
(b) exceeding 3 km from the nearest deputy sheriff’s office, for every additional km in addition to (a) .....	0.50

*Fieri-Facias*

67. Receiving and entering writ of execution .....	5
68. Receiving and entering order of suspension of execution .....	2
69. On every enlargement of return .....	2
70. Poundage per \$1.00 or part thereof .....	0.20
71. Precept to bailiff .....	5
72. Seizure, or collection of the sum endorsed on the writ of execution without seizure:	
(a) within 3 km of nearest deputy sheriff’s office .....	5
(b) exceeding 3 km from the nearest deputy sheriff’s office for every additional km, in addition to (a) .....	0.50
73. For man—	
(a) in actual physical possession, <i>per diem</i> .....	20
(b) in walking possession, <i>per diem</i> .....	10
74. For <i>nulla bona</i> return .....	10
75. Commission on sale per \$1.00 or part thereof .....	0.10
76. Delivery of goods in replevin—	
(a) within 3 km of the nearest deputy sheriff’s office .....	10
(b) exceeding 3 km from the nearest deputy sheriff’s office, for every additional km, in addition to (a) .....	5
77. For taking a replevin bond .....	10
78. For assignment of replevin bond .....	10
79. For taking a bond of indemnity .....	15

Service 0

830,310

80. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals) \$0.05 for each dollar or part thereof of the value of the goods or animals removed or of the sum endorsed on the writ of execution whichever is the less. No fee for keeping possession of the goods or animals is to be charged after they have been removed .....	
81. For work done by Sheriff's officer in inquiring into any claim for rent or claim to the goods .....	15
82. For preparing notice to execution creditor to admit or dispute title to claim and sending same by post .....	10
83. For taking and handing over possession of property specified in writ of possession—	
(a) per man, <i>per diem</i> .....	20
and	
(b) travelling expenses, per km .....	0.50

*Arrest/Commitment*

84. Receiving and entering a writ of warrant .....	10
85. Precept to bailiff .....	5
86. For every arrest or collection of the amount endorsed on the warrant, by way of payment or a deposit without arrest—	
(a) within 3 km of deputy sheriff's office .....	10
(b) exceeding 3 km from the nearest deputy sheriff's office, for every additional km, in addition to (a) .....	0.50
87. For conveying to court or to prison from place of arrest not exceeding <i>per diem</i> , besides reasonable travelling expenses actually incurred .....	20
88. For release on bail or a bond when authorised and filing the bail bond .....	5
89. For assignment of a bail bond .....	10

GENERAL

90. Receiving and entering any process not otherwise provided for .....	5
91. For executing process for possession, attachment or committal or for collecting any sum entered on any process without execution:	
(a) within 3 km from the nearest deputy sheriff's office .....	10
(b) exceeding 3 km from the nearest deputy sheriff's office, for every additional km, in addition to (a) .....	0.50
92. For any duty not herein provided for: such sum as the court may allow .....	5
93. Reasonable expenses, additional or otherwise, necessarily incurred in all matters, including subsistence allowance payable to bailiff .....	5
94. For sheriff or his or her deputy attending court on the hearing of interpleader proceedings: per hour or .....	
part thereof .....	5

[The next page is 830,333]

Service 0

830,312



**[MC 12,190]**                      SCHEDULE 1 — SCALE OF LEGAL  
PRACTITIONERS' COSTS

[Sch 1 subst LN 77 of 2006 r 2, opn 7 July 2006]

		Where the sum recovered or the value of property recovered or, in landlord and tenant cases, the annual value of the land or the rent amounts to—	
		Over \$4,000 and not exceeding \$8,000	Over \$8,000
		\$	\$
SUMMONSES ETC—			
1.	Preparing writ of summons, claim, defence (other than a general denial), counterclaim, including all particulars annexed or 50 00 .....	75	125
2.	For each copy required for service .....	3	3
3.	Preparing request for further particulars claim or counterclaim, and fair copy .....	15	15
4.	Preparing further particulars, and fair copy .....	20	20
5.	For each copy required for service .....	3	3
6.	Preparing witness summons or subpoena (If <i>duces tecum</i> discretion to taxing masters to allow higher fee) .....	20	20
7.	Copy for service, each witness (If <i>duces tecum</i> , discretion to taxing master as under Item (6) ...	5	5
NOTICES—			
8.	Preparing notice to produce or admit facts (if necessarily long, such additional allowance as taxing master shall think proper not exceeding \$3 per page) .....	10	20
9.	Preparing motion paper or any other necessary notice, and fair copy .....	20	30
10.	Preparing notice of discontinuance fair copy .....	10	10
11.	Preparing notice of appointment to tax costs, and fair copy .....	10	10
INSTRUCTIONS—			
12.	To sue or defend in any proceedings .....	50	100
13.	For interrogatories .....	25	40
14.	For Affidavit .....	40	60
15.	For interlocutory application .....	50	75
16.	For trial .....	100	175
17.	For proof of each witness allowed on taxation ..	50	100
18.	To admit facts or answer interrogatories .....	30	60

830,333

Service 0

DRAWING—

19.	Admission of facts, and fair copy .....	20	40
20.	Interrogatories or answers thereto, and fair copy or per page .....	30	50
21.	Affidavit, and fair copy or .....	25	40
	per page .....	15	
22.	Accounts, statements and other documents when required by the court or the opposing party, per page .....	10	10
23.	Bill of costs for taxation, and fair copy or per ..	20	20
	page .....	10	10
24.	Writ of fieri-facias, committal order or warrant and fair copy .....	40	60

COPIES—

25.	Of all documents for which no special provisions made herein, per page .....	5	5
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ATTENDANCE—

26.	To enter summons, judgement summons or motion or to file counterclaim, further particulars, answer to interrogatories admission of facts, affidavit of documents, particulars of claim in interpleader proceedings etc .....	20	40
27.	On adverse party or his or her legal practitioner with copy of any such documents taxing master to take time and distance into account .....	10	15
28.	To issue subpoena or to discontinue action .....	10	10
29.	To apply for costs on receiving notice of discontinuance .....	5	5
30.	To inspect documents or produce same for inspection .....	30	50
31.	To obtain or give any necessary consent or admission, or to swear an affidavit .....	10	10
32.	On hearing of judgment summons .....	80	100
33.	On an interlocutory application or any other application not otherwise provided for .....	100	150
34.	On trial:		
	(a) When case adjourned, not part heard .....	30	60
	(b) When judgement given in default .....	40	40
	(c) When case defended for each hour .....	75	100
	but not exceeding per diem .....	300	400
35.	To hear reserved judgment .....	30	60
36.	To obtain appointment for taxation .....	10	10
37.	To tax bill of cost .....	30	40
38.	To issue writ of fieri facias .....	15	15
	But not to exceed a total of .....	250	300

39.	For any other attendances upon the Magistrate or clerk or court, or upon the opposite party, or upon the bailiff or court messenger in interpleader proceedings, not otherwise provided for, or, where, in consequence of done by opposite party during the progress of an action or matter, it becomes necessary to advise or receive instructions from a client; for each attendance the taxing master may deem necessary and not for a purpose which could have been effected at any previous or subsequent attendance allowed .....	40	50
<i>LETTERS ETC—</i>			
40.	Letter before action .....	30	30
41.	Letter in lieu of attendance which could properly be allowed under Item 39 .....	20	20
42.	Pursuing any necessary documents, per page ...	10	10
43.	Inclusive sum to cover— Instructions, for commons, Instructions for affidavit. Drawing affidavit and fair copy; Attending, swearing; Copy to serve; Preparing summons and fair copy; Copy to serve .....	150	200
44.	For attending to apply for payment out of money paid into court, or to obtain a judgment or against the garnishee where the garnishee does not dispute the debt and judgment debtor does not oppose .....	30	60
NOTE: Any step or attendance not specifically provided for by Items 43 and 44 shall be according to the general scale;			
<i>TRAVELLING ALLOWANCES AND EXPENSES—</i>			
45.	For every day or portion of a day during which, in the opinion of taxing master, a legal practitioner is necessarily engaged in travelling from his or her place of business within Fiji to the place of trial and returning therefrom, and for everyday which, in the opinion of the taxing master, a legal practitioner is necessarily detained at the place of trial, prior to or subsequent to the trial, such an amount <i>per diem</i> as the taxing master may think reasonable, not exceeding .....	175	200

830,335

Service 0

46. In respect of travelling expenses, a legal practitioner shall be entitled to charge a reasonable sum for expenses of conveyance to and from the court, when he or she resides more than 3 miles from the court. If a legal practitioner attends in more than one cause, he or she will be entitled to a proportionate allowances, under this and the preceding item, in each cause only.

NOTE: No allowance shall be made in respect of Item 45 or 46 if another legal practitioner has his or her place of business at the place of trial and his or her services were available, unless special circumstances are shown.

GENERAL—

Where the work done is non-contentious business or judgement is given for some relief other than any of those specifically provided for in this scale, such costs shall be allowed under this scale as the court or Magistrate may direct.

(Exclusive of Court Fees)

PART 1 — DEFENDED CASE

Where the subject matter or amount recovered does not exceed \$2,000 . . . . .	300
Where the subject matter or amount recovered exceeds \$2,000 but does not exceed \$3,000 . . . . .	450
Where the subject matter or amount recovered exceeds \$3,000 but does not exceed \$4,000 . . . . .	600

PART 2 — UNDEFENDED CASES

Where the subject matter or amount recovered does not exceed \$2,000 . . . . .	40
Where the subject matter or amount recovered exceeds \$2,000 but does not exceed \$5,000 . . . . .	60
Where the subject matter or amount recovered exceeds \$5,000 but does not exceed \$10,000 . . . . .	80
Where the subject matter or amount recovered exceeds \$10,000 but does not exceed \$15,000 . . . . .	100

PART 3 — FAMILY LAW ACT 2003

On an undefended petition, an amount not exceeding . . . . .	100
On a defended petition, an amount not exceeding . . . . .	400

830,337

Service 0

Service 0

830,338

On taking an affidavit, affirmation or declaration for each person making the same .....	5
And in addition, for each exhibit therein referred to and required to be marked .....	1

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830,339

Service 0

[The next page is 832,339]

Service 0

830,340



# Magistrates Courts (Justices of the Peace) Rules 1950

## TABLE OF PROVISIONS

<i>Rule</i>	<i>Title</i>	<i>Paragraph</i>
1	Short Title .....	[MC 12,890]
2	Exercise of powers under section 56 of the Criminal Procedure Act 2009 .....	[MC 12,895]
3	Affidavits .....	[MC 12,900]
4	Complaints .....	[MC 12,905]

832,339

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[The next page is 832,439]

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# Magistrates Courts (Justices of the Peace) Rules 1950

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## TABLE OF AMENDMENTS

Magistrates Courts (Justices of the Peace) Rules (LN 100 of 1950) commenced on 17 November 1950, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
Magistrates' Courts (Justices of the Peace) (Amendment) Rules 1953 (LN 146 of 1953)	20 November 1953
Magistrates' Courts (Justice of the Peace) (Amendment) Rules 1963 (LN 1 of 1963)	4 January 1963

832,439

Service 0

[The next page is 832,539]

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832,440

**[MC 12,890] Short Title**

1 These Rules may be cited as the Magistrates Courts (Justices of the Peace) Rules 1950.

**[MC 12,895] Exercise of powers under section 56 of the Criminal Procedure Act 2009**

2 A justice of the peace may, if specifically authorised in writing in that behalf under the hand of the Chief Registrar of the High Court, perform the duties and exercise the powers imposed or conferred upon a Magistrate by section 56 of the Criminal Procedure Act 2009 in cases where a formal charge is presented by a police or other public officer and owing to the absence of the Magistrate unreasonable delay would otherwise occur.

**[MC 12,900] Affidavits**

3 Affidavits of service to be used in civil proceedings before a Magistrates Court may be sworn before a Justice of the Peace.

**[MC 12,905] Complaints**

4 A Justice of the Peace may, if specifically authorised in writing in that behalf under the hand of the Chief Registrar of the High Court, take a complaint, in the prescribed form, by a person entitled to receive payments under an order made by a Magistrates Court under the provisions of the Family Law Act 2003, for the enforcement of arrears of payments due under any such order.

[r 4 insrt LN 1 of 1963, r 3 opn 4 Jan 1963]

[The next page is 850,001]

Service 0

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