

# NATIONAL COURT RULES 1983

## Explanatory Notes

The *National Court Rules* were made by the Judges in 1983. Though amended on a number of occasions, the Rules have not been repealed and replaced (unlike the *Supreme Court Rules* 1984, which were repealed and replaced by the *Supreme Court Rules* 2012).

The *National Court Rules* are divided into eight Parts:

Part 1 – Preliminary (Orders 1 and 2);

Part 2 – Civil jurisdiction (Orders 3 to 17);

Part 3 – Appellate jurisdiction (Order 18);

Part 4 – Probate jurisdiction (Order 19);

Part 5 – Family matters jurisdiction (Order 20);

Part 6 – Admiralty (Order 21);

Part 7 – Costs (Order 22); and

Part 8 – Human rights (Order 23).

Within the eight Parts are 24 Orders, numbered 1 to 23 (including Order 10A (*National Court (Commercial List) Rules*), and some of the Orders are divided into Divisions.

It is customary, when referring to a provision of the Rules, to refer to only the Order number and rule number, without referring to the Part or Division in which the rule is located, eg you would refer to Order 12 rule 40, without mentioning that it is in Part 2 or in Division 12.4 of the Rules.

The *National Court Rules* were substantially amended in 2005 when the Judges made a “package” of new Rules: the *National Court Appeal Rules* 2005, the *National Court Commercial List Rules* 2005, the *National Court Judicial Review Rules* 2005, the *National Court Listing Rules* 2005 and the *National Court Motions Rules* 2005. None of these Rules created a new set of Rules. They each amended the *National Court Rules* 1983. Likewise with the *Human Rights Rules* 2010. Though often referred to as the *Human Rights Rules*, they are not a separate set of Rules; they are more correctly referred to as Order 23 (*human rights*) of the *National Court Rules*.

Special care should be taken when referring to the rules relating to listing of trials, introduced by the *Listing Rules* 2005. They are found in Order 10, in the new rule 9A, and are rather complex. For example, if you need to refer to the jurisdictional basis of

an application by a defendant for summary disposal of a matter for want of prosecution, you would refer to Order 10 rule 9A(15)(1)(a) and (2)(a) of the *National Court Rules*. You would *not* refer to rule 9A(15)(1)(a) and (2)(a) of the *Listing Rules*.

The *National Court Rules* have been made by the Judges under s 184 (*rules of court*) of the *Constitution*. Other Rules made by the Judges under that provision, which exist as separate sets of Rules of Court, are:

the *ADR Rules* 2022;

the *Bail Rules* 2021;

the *Court Reporting Rules* 2022;

the *Criminal Practice Rules* 2022;

the *Defence Force Proceedings Rules* 2021;

the *Election Petition Rules* 2017;

the *Matrimonial Causes Rules* 2022; and

the *Supreme Court Rules* 2012.

Note that the *Companies Rules* Chapter No 146 of Revised Laws, also exist as a separate set of Rules, however, they have not been made by the Judges under s 184 of the *Constitution*. The *Companies Rules* are derived from the *Companies Act* Chapter 146; and though that Act was repealed by the *Companies Act* 1997, the *Companies Rules* continue in force by virtue of s 440(3) of the *Companies Act* 1997.

The most recent amendments to the *National Court Rules* were made by the *National Court (Miscellaneous Amendments) Rules* 2021, which commenced operation on 1 November 2021. Those Rules amended Order 12 rule 6(2) to reflect the changes in interest rates applicable to the State effected by the *Judgments (Interest on Debts and Damages) Act* 2015 and introduced a new Division 2.8 (*court dress*) and a new Division 2.9 (*practice directions*). Those amendments are included in the Rules published in this volume.

This consolidation states the *National Court Rules* 1983 as at 17 May 2024.

A hard copy of these Rules, which has been published in “the National Court Book”, is available for purchase from the Waigani Court Library. Please contact Mr Johannes Fege on email [jfege@pngjudiciary.gov.pg](mailto:jfege@pngjudiciary.gov.pg).

JUSTICE CANNINGS  
CHAIR, RULES COMMITTEE  
17 May 2024

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# INDEPENDENT STATE OF PAPUA NEW GUINEA

## *National Court Rules.*

### **PART I.—PRELIMINARY.**

#### **ORDER 1.—INTERPRETATIVE MATTERS.**

##### ***Division 1.—Repeal and Interpretation.***

###### **1. Citation.**

These Rules may be cited as the *Rules of the National Court of Justice* or by the shorter form *National Court Rules*.

###### **2. Application.**

These Rules shall apply to all proceedings commenced or instituted on or after the commencement date, with the exception of Order 21.

###### **3. Repeal and saving.**

(1) All Rules of Court of the National Court other than Rules created by legislation dealing with specific areas of jurisdiction are repealed on the commencement date but subject to any exception specified in the Notice of Commencement.

(2) Subject to Rule 4 of this Order, the repeal effected by Sub-rule (1) does not affect the validity of any proceedings taken under the rules so repealed, or a right, privilege, obligation or liability acquired, accrued or incurred under any of those rules, or a legal proceeding or remedy in respect of such a right, privilege, obligation or liability.

###### **4. Pending proceedings.**

A proceeding pending and a judgement, decree or order given or made before the commencement date, being of a kind to which these Rules apply, shall be treated as if pending, given or made under these Rules, and may be proceeded with, enforced, varied, revised or otherwise dealt with accordingly, subject to any special order or direction made or given by the Court in a particular case.

###### **5. Parts.**

These Rules are divided into Parts, Orders, Divisions and Rules as follows:—

### **PART I.—PRELIMINARY.**

ORDER 1—Interpretative Matters.

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*Division 2—General rr. 7-12*

*Division 3—Time rr 13—16*

ORDER 2—Administrative Matters.

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Division 4—Service in Papua New Guinea of External  
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**6. Interpretation.**

(1) In these Rules, unless the contrary intention appears—

"Act" means a Constitutional Law or an Act of the Parliament as those terms are defined in Sch. 1.2 of the *Constitution*;

"the Administration" means the Administration or Government of Papua New Guinea;

"barrister" means a person admitted to practice as a lawyer under the *Lawyers Act* 1986;

"the commencement date" means 4 July 1983, being the date on which (with the exception of Order 21) these Rules came into force;

"convention" means a convention made on behalf of Papua New Guinea with the King or other Head of State of a foreign country regarding legal proceedings in civil and commercial matters;

"convention country" means a foreign country to which a convention applies;

"corporation" includes any artificial person;

"counsel" means a person admitted to practice as a lawyer under the *Lawyers Act* 1986;

"Court" means a Judge or acting Judge of the National Court;

"the Court" means the National Court of Justice of Papua New Guinea and includes a Judge or two or more Judges when exercising the jurisdiction of the Court or his or their jurisdiction, powers or functions as a Judge or Judges under any Act or under these Rules;

"disabled person" means a minor or a mentally disordered person;

"document" includes any record of information, whether legible by eye or not;

"examiner" means an officer of the Court or other person appointed under Order 11 Division 2 for the examination on oath before him of any person;

"folio" means 100 words, five figures being counted as one word;

"funds" includes money, debentures, stock, shares and other securities and investments;

"guardian at law" means the guardian of a defendant who is a disabled person,

## Order 1, Rule 6

"Minister for Justice" means the Minister for Justice for Papua New Guinea and includes an acting Minister for Justice;

"next friend" means a person who is a plaintiff on behalf of a disabled person;

"notice" means notice in writing;

"office of the Registrar" means the offices of the Court, and includes a sub-registry of the Court;

"officer", in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation;

"originating process" means a writ of summons, or an originating summons or, where a cross-claim is made against a person not previously a party to the proceedings in which the cross-claim is made, the cross-claim;

"pay", in relation to funds, includes transfer, deposit and delivery;

"person bound", in relation to judgement or order, means a person required by the judgement or order—

- (a) to pay money; or
- (b) to give possession of land; or
- (c) to deliver goods (with or without the alternative of paying the assessed value of the goods); or
- (d) to do any other act; or
- (e) to abstain from doing any act;

"pleading" does not include a writ of summons, an originating summons or a notice of motion;

"probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person, or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business;

"Registrar"—

- (a) means the Registrar of the Court; and
- (b) includes an acting, deputy or assistant Registrar;

## **Order 1, Rule 9**

"Registrar's office" means the offices of the Court, and includes a sub-registry of the Court;

"Registry" means the offices of the Court, and includes a sub-registry of the Court;

"the Sheriff" means the Sheriff of Papua New Guinea;

"solicitor" means a person admitted to practice as a lawyer under the *Lawyers Act* 1986;

"State Solicitor" means the State Solicitor for Papua New Guinea and includes any person acting in that position for the time being;

"taxing officer" means the person whose duty is to tax costs in the Court;

"to file" means to file in the Registrar's office;

"writing" includes, subject to Order 2 Division 3 (which relates to documents generally), any mode of representing or reproducing words in a visible form.

(2) For the purpose of these Rules, a claim for a liquidated demand together with interest is a claim for a liquidated demand, whether or not—

- (a) the claim includes interest accruing after the date of the claim; or
- (b) a rate of interest is specified.

### ***Division 2.—General.***

#### **7. Relief from Rules. (1/12)**

The Court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

#### **8. Non-compliance with Rules not to render proceedings void.**

Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void, unless the Court so directs, but the proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with, in such a manner, and on such terms, as the Court thinks fit.

#### **9. Application to set aside for irregularity.**

An application to set aside any proceeding for irregularity shall not be allowed unless it is made within a reasonable time, or if made after the party applying has taken any fresh step with knowledge of the irregularity.

## **Order 1, Rule 10**

### **10. Objection of irregularity.**

Where an application is made to set aside any proceeding for irregularity the several objections intended to be insisted on shall be stated in the notice of motion.

### **11. Forms. (1/11)**

(1) Subject to Sub-rule (2), the forms in Schedule 1 shall be used where applicable.

(2) It shall be sufficient compliance with any requirement of an Act or these Rules as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

(3) A form in these Rules shall be completed in accordance with the directions, (if any), contained in that form.

(4) Where the citation in a form of an Act is subsequently altered, the citation as altered may be substituted for the citation of that Act in the form.

### **12. Procedure wanting or in doubt. (1/13)**

(1) Where a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by an Act or these Rules or that person is in doubt as to the manner or form of procedure, the Court may, on application by that person, give directions.

(2) Proceedings commenced in accordance with the directions of the Court shall be well commenced.

(3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

(4) In respect of proceedings to be commenced for directions under Sub-rule (1) application may be made by originating summons.

## ***Division 3.—Time.***

### **13. "Month". (2/1)**

In any judgement or order and in any document in any proceedings, unless the context or subject matter otherwise indicates or requires "month" means calendar month.

### **14. Reckoning. (2/2)**

(1) Any period of time fixed by these Rules or by any judgement or order, or by any document in any proceedings, shall be reckoned in accordance with this Rule.

## **Order 1, Rule 16**

(2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Where, apart from this sub-rule, the period in question, being a period of five days or less, would include a day on which the Registry is closed, that day shall be excluded.

(4) Where the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.

### **15. Extension and abridgement. (2/3)**

(1) The Court may, on terms, by order extend or abridge any time fixed by the Rules or by any judgement or order.

(2) The Court may extend time under Sub-rule (1) as well after as before the time expires whether or not an application for the extension is made before the time expires.

(3) The period within which a person is required by these Rules or by any order to serve, file or amend any pleading may be extended by consent without an order for extension.

### **16. Fixing times. (2/4)**

Where no time is fixed by these Rules or by any judgement or order of the Court for the doing of anything in or in connection with any proceedings, the Court may, by order, fix the time within which the thing is to be done.

## **Order 2, Rule 1**

### **ORDER 2.—ADMINISTRATIVE MATTERS.**

#### ***Division 1.—Sittings and Vacations.***

##### **1. Sittings of Court.**

The sittings of the Court shall be held at such time or times as may be determined by the Court.

##### **2. Postponement of sittings in Judge's absence.**

(1) If, at the time of any sitting of the Court, a Judge is not present at the place of sitting, a Judge may direct that the hearing be postponed to another time or another place.

(2) Any direction given under Sub-rule (1) may be communicated to the parties or their representatives by telephone or telegram.

##### **3. Vacation.**

(1) There shall be a vacation in each year from 20 December to the following 31 January, both inclusive.

(2) Any Judge may sit in vacation for another and may in vacation exercise any authority which any other Judge might exercise if he were present and sitting in Court.

(3) The time of the vacation shall not be reckoned in the times appointed or allowed by these Rules for filing, delivering or amending any pleading unless so directed by a Judge nor shall a pleading be delivered or amended, nor judgement be entered in default, unless under the direction of a Judge.

#### ***Division 2.—The Registry.***

##### **4. Custody of seal and stamp.**

The seal and stamp of the Court shall be in the custody of the Registrar and shall, when not in use, be kept under lock and key.

##### **5. Affixing of seal and stamp.**

The seal or the stamp shall be affixed by the Registrar to such documents as are by these Rules authorized to be sealed or stamped.

##### **6. Custody of records.**

The Registrar shall have the custody of all records of the Court and of all documents filed in the Registry or ordered to be deposited in the Registry for safe custody or to be impounded.

**7. Supervision of officers.**

The Registrar shall have the general supervision of the officers employed in the Registry.

**8. Duties of Registrar.**

All acts and things which by these Rules are required to be performed and done in the Registry shall be done by the Registrar or officers employed in the Registry.

**9. Judge may direct Registrar. (61/2)**

A Judge may direct the Registrar to do, in any proceedings, any Act relating to the duties of his office.

**10. Signing and filing of documents.**

Documents may be signed for the Registrar and documents may be received or filed by any clerk in the Registry to whom such duties are assigned.

**11. Registry hours. (2/6)**

(1) The Registry shall be open to the public for business every day of the year except Saturdays, Sundays and Court holidays.

(2) The Registry shall be open from 8.00 a.m. to 12.00 noon and 1.00 p.m. to 3.30 p.m.

**12. Opening of Registry outside business hours. (2/6)**

Where any party or practitioner or any person having any interest in any proceedings pending or about to be commenced has any proper business to transact with the Registrar at any time when his office is not open to the public which business for any reason could not be transacted when the office is next to be opened in the normal course or which might if so transacted involve the person concerned or any other person in serious risk of prejudice that person may, on payment of a fee of K4.00, require the Registrar to open his office to transact the business in question at some proper and convenient time.

**13. Judge may direct Registrar to open Registry.**

A Judge may, on sufficient cause being shown to him, direct the Registrar to open his office for the transaction of business at any specified time and for any specified period when it would not otherwise be open for business and may if he sees fit fix a special fee to be paid by any person to be specified in the order.

**14. Court holidays.**

For the purpose of this Rule, Court holidays include—

## **Order 2, Rule 15**

- (a) any day observed as a public holiday as defined in Section 3 of the *Interpretation Act 1975*; and
- (b) any day specified by these Rules or by resolution of the Judge to be a Court holiday; and
- (c) any part of a day during vacation when the Registry is closed.

### **15. Register of documents filed.**

There shall be kept in the Registry a register of all documents filed and all proceedings taken in any cause or matter showing the dates on which such documents are filed or such proceedings taken.

### **16. Searches.**

A person may search the records of the Court and obtain from the Registrar a certified copy of record of the Court on satisfying the Registrar that he has good and sufficient reason for so doing, and on payment of the prescribed fee.

### **17. Records, etc., not to be removed.**

An original record of the Court or document or thing produced under summons shall not be taken from the Registry without the order of a Judge

### **18. Review of Act or decision by Registrar.**

Any Act or decision of the Registrar may be reviewed by a Judge who may make an order by way of confirmation, variation or otherwise as he thinks fit.

### **19. Date of filing.**

The date of filing shall be written by the Registrar on every document which is filed.

### **20. Serial number.**

(1) The first document filed in any proceedings shall have a serial number assigned to it in the Registry and that and each other document in the proceedings shall bear that number together with a reference to the calendar year in which the first document is filed.

(2) A new series of numbers shall be commenced at the beginning of each calendar year.

### **21. Distinguishing marks on documents.**

Every judgement, order, certificate, petition, affidavit, or document made, presented, filed or used in any cause or matter shall be distinguished by having plainly written or stamped on its first page the year and the number by which the cause or matter is distinguished in the Cause Book.

***Division 3.—Documents.***

**22. Heading.(65/1)**

A document in any proceedings shall be headed "In the National Court of Justice" and shall show the year and serial number of the proceedings.

**23. Title.**

A document in any proceedings between parties shall be entitled between the parties, and not otherwise.

**24. Title where there is no defendant.**

Subject to any rule to the contrary, a document in any proceedings in which there is no defendant shall be entitled "The Application of" together with the name of the plaintiff, and not otherwise.

**25. Abbreviation of title.**

Except in the case of an originating process, a document to be served on a person not a party to the proceedings or a minute of a final judgement or final order, may bear an abbreviation of the title of the proceedings sufficient to identify the proceedings.

**26. Paper and writing. (65/2)**

(1) This Rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

(2) A document shall be on paper of good and durable quality, capable of receiving ink writing, and of the size known as international paper size A4, that is to say, measuring approximately 297 mm long by 210 mm wide.

(3) The writing on a document shall be on one face of the paper only and a margin of not less than 51 mm shall be kept clear on the left-hand side.

(4) There shall be a space of not less than 3mm between the lines of writing.

(5) The writing shall be clear, sharp, legible and permanent.

(6) A carbon copy shall not be filed.

(7) A document shall not be filed if it bears any blotting, erasure, or such alteration as to cause material disfigurement.

(8) The document shall be folded lengthwise.

**27. Backsheet. (65/3)**

(1) A document prepared by a party for use in the Court shall have a backsheet—

## **Order 2, Rule 28**

- (a) headed "In the National Court of Justice", and
- (b) showing—
  - (i) the year and serial number of the proceedings; and
  - (ii) the title of the proceedings or an abbreviation of a title of the proceedings sufficient to identify the proceedings; and
  - (iii) a description of the document; and
  - (iv) the name, address and telephone number of the solicitor for the party and, if the solicitor acts in the proceedings by an agent, the name, address and telephone number of the agent.

(2) Where a party preparing a document for use in the Court is not represented by a solicitor, Sub-rule (1)(b)(iv) does not apply, but the backsheet shall show the name and address for service of the party and the telephone number of the party.

(3) The backsheet of an affidavit shall be endorsed with the name of the deponent and the date of swearing.

### **28. Numbers. (65/4)**

Dates, sums and other numbers shall be expressed in figures and not in words.

### **29. Scandal, etc. (65/5)**

The Court may order to be struck out of any document any matter which is scandalous, frivolous, vexatious, irrelevant or otherwise oppressive.

### **30. Signing of documents. (65/8)**

A copy of or a pleading, summons, notice of intention to defend, notice of motion, notice of appeal, statement, request, requisition, undertaking, list, account, note or other notice to be filed or served by a party or other person in any proceedings shall be signed by his solicitor or by him, if he has no solicitor.

## ***Division 4.—Sheriff.***

### **31. Default. (62/4)**

(1) Where the Sheriff defaults by not executing any process according to its tenor, he shall be liable to punishment as if in contempt of Court.

(2) Order 14 Division 6 (contempt) applies to the punishment of the Sheriff under this Rule as if his default were contempt of Court.

### **32. Security for costs.**

In every action against the Sheriff for anything done or omitted to be done by him in the intended execution of his duty, the plaintiff shall be compelled to give security for costs.

***Division 5.—Solicitors.***

**33. Power to act by solicitors. (66/1)**

(1) Every matter or thing which under an Act or these Rules is required or allowed to be done by a party may be done by his solicitor.

(2) Sub-rule (1) does not apply where the context or subject matter otherwise indicates or requires.

**34. Adverse parties. (66/2)**

Where a solicitor or his partner acts as solicitor for any party to any proceedings, or is a party to any proceedings, that solicitor shall not, without leave of the Court, act for any other party to the proceedings not in the same interest.

**35. Change of solicitor. (66/3)**

(1) Where a solicitor acts for a party in any proceedings, the party may change his solicitor.

(2) Where a party changes his solicitor, he shall file notice of the change and serve the notice on the other parties and, where practicable, his former solicitor.

**36. Change of agent. (66/4)**

Where a solicitor (in this Rule called the principal solicitor) acts for a party in any proceedings and another solicitor acts as agent for the principal solicitor in the proceedings and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve the notice on the other parties and on the former agent solicitor.

**37. Appointment of solicitor. (66/5)**

Where a party acts for himself in any proceedings and afterwards appoints a solicitor to act for him in the proceedings, the party shall file notice of the change and serve the notice on the other parties.

**38. Removal of solicitor. (66/6)**

(1) Where a solicitor acts for a party in any proceedings and afterwards the party determines the authority of the solicitor to act for him in the proceedings—

- (a) the party shall file notice of the change and serve the notice on the other parties and on his former solicitor; and
- (b) the former solicitor may file notice of the change and serve the notice on the parties.

(2) Sub-rule (1) does not apply to a case to which Rule 35 applies.

## **Order 2, Rule 39**

### **39. Withdrawal of solicitor. (66/7)**

(1) Where a solicitor acts for a party to any proceedings and afterwards ceases to act, the solicitor may, subject to Sub-rule (2), file notice of the change and serve the notice on the parties.

(2) A solicitor shall not file or serve notice of a change under Sub-rule (1) without leave of the Court unless he has, not less than seven days before doing so, served on his former client notice of his intention to file and serve the notice of change.

(3) A solicitor filing a notice of change under Sub-rule (1) shall, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with Sub-rule (2).

(4) A solicitor may serve a notice under this Rule on his former client by posting it to the former client at the residential or business address of the former client last known to the solicitor.

### **40. Effects of change. (66/8)**

A change of which notice is required or permitted to be filed under any of Rules 35, 36, 37, 38 and 39 shall not have effect as between a party or solicitor to which the change relates on the one hand and the Court or any other party on the other hand until notice of the change is filed and, as regards any other party, served on that other party.

## ***Division 6.—Fees.***

### **41. Fees.**

(1) The fees prescribed by Schedule 2 shall, in respect of the matters to which they relate, be taken—

- (a) in the Court, or
- (b) by the several officers of the Court, or
- (c) by a Commissioner or other person appointed to take evidence,

as the case may be.

(2) Subject to the succeeding Rules of this Order, a document shall not be filed, issued, sealed or otherwise dealt with unless all fees chargeable on or in respect of that document, or in respect of filing, issuing, sealing, or dealing with that document, have been paid.

(3) The Registrar shall, immediately on payment of any fee on or in respect of any document, or in respect of the filing, issuing, sealing, or dealing with any document, mark in the margin of the document the amount of the fee paid and the date of payment, and the person paying that fee shall see that the marking is duly made.

**42. Reduction, waiver or deferral of fees.**

Where it appears to the Registrar that the payment of any fee referred to in Rule 41 would, owing to the circumstances of the particular case, involve undue hardship, the Registrar may reduce, waive or defer the fee in that particular case.

**43. Conventions.**

Where by any convention it is provided that no fee shall be required to be paid in respect of any proceedings, the fees referred to in Rule 41 shall not be taken in respect of those proceedings.

***Division 7.—Funds in Court.***

**44. Deposit. (50/1,2)**

(1) Subject to Rule 47, where money is paid into Court, the Registrar shall, within two days after the date of payment into Court, deposit the money to the credit of an account appointed by the Minister for Justice.

(2) Money deposited under Sub-rule (1) shall not be withdrawn or paid from the account except by the authority of these Rules or of a judgement or order.

**45. Withdrawal. (50/3)**

(1) Money deposited under Rule 44 shall not be withdrawn or paid from the bank except by authority of a direction in accordance with Sub-rule (2).

(2) A direction under Sub-rule (1)—

- (a) may be in the form of a cheque; and
- (b) shall be for payment to a specified person; and
- (c) shall bear the title (or a shortened title) and serial number of the proceedings in which the order is made; and
- (d) shall be signed by the Registrar and by such officer as the Minister for Justice may appoint for that purpose.

(3) Notwithstanding Sub-rules (1) and (2), a bank shall not be bound to inquire whether the requirements of Rule 44 or of Sub-rule (2)(c) and (d) have been satisfied.

## **Order 2, Rule 46**

### **46. Account. (50/4)**

Where money is deposited in a bank under Rule 44 in any proceedings, the Registrar shall keep an account in the proceedings of the deposit and of all withdrawals (including withdrawals of interest) from the bank in the proceedings.

### **47. Investment. (50/5)**

The Court may direct that funds paid into Court be invested in such funds or securities as are from time to time authorized by a law of Papua New Guinea as funds or securities in which a trustee may invest trust funds.

### **48. Interest. (50/6)**

(1) Where money is paid into Court as security for costs or as security on an appeal, or is paid into Court pursuant to Order 8 Division 6 interest on the money shall not be paid to any party.

(2) Where money is paid into Court pursuant to an order to abide the decision in the proceedings, interest on the money shall not be paid to any party unless the Court otherwise orders.

(3) Where the Registrar collects interest on funds invested under Rule 47, the Court may direct to whom the interest shall be paid.

### **49. Authority of recipient. (50/7)**

Subject to these Rules, funds in Court shall not be paid out of Court except to the party entitled or, on his written authority or by order of the Court, to his solicitor.

### **50. Discharge of Registrar. (50/8)**

(1) Any direction, cheque or other document for the payment of money out of Court shall, when signed by the payee, be a discharge to the Registrar for the money.

(2) Sub-rule (1) does not prevent the Registrar from requiring a receipt for any payment by him.

### **51. Death of payee. (50/9)**

(1) Where, by any judgement or order, the Court directs the payment to any person of any funds in Court, and it appears to the Registrar that that person has died after the date on which the judgement or order took effect and that probate of his will or letters of administration of his estate have been granted to an executor or administrator, then, unless the judgement or order otherwise directs, the Registrar may pay the funds in Court to the executor or administrator.

(2) Where the person to whom the funds in Court are payable is entitled under a direction for payment to creditors, shareholders or debenture holders as such, the Registrar may pay under Sub-rule (1) notwithstanding that it appears to him that that person died on or before the date on which the judgement or order took effect.

(3) Subject to Sub-rule (4), this Rule does not authorize payment where the person to whom payment is directed appears to the Registrar to have been entitled as trustee, executor, administrator or otherwise not in his own right and for his own use.

(4) The Registrar may, under this Rule, pay funds in Court to an executor of the will of the person to whom payment is directed if it appears to the Registrar that that person was entitled as sole or sole surviving executor.

**52. Payment to partners. (50/10)**

Where by any judgement or order, the Court directs the payment of money in Court to any persons described in the order as partners, or as trading or carrying on business in the name of a company or firm, the Registrar may, unless the judgement or order otherwise directs, pay the money to any one or more of those persons or to the survivor of them.

**53. Payment to executors or administrators. (50/11)**

Where, by any judgement or order, the Court directs the payment of funds in Court to persons described in the judgement or order as executors or administrators, the Registrar may, unless the judgement or order otherwise directs—

- (a) if it appears to him that any of them died after that date on which the judgement or order took effect—pay the funds in Court to the survivor of them, and
- (b) if it appears to him that any of them died on or before the date on which the judgement or order took effect, but they are described in the judgement, order or certificate as executors of the will or administrators of the estate of a creditor, shareholder or debenture holder—pay the funds in Court to the survivor of them, and
- (c) if the funds in Court are money not exceeding K300.00—pay the money to any of them.

**54. Payment by post. (50/12)**

(1) Where any person is entitled to payment of any money in Court, he may give to the Registrar a request to send to him by post at a specified address a cheque for the money in a specified form.

(2) Where the Registrar sends a cheque in accordance with a request under Sub-rule (1), payment of the cheque shall be a discharge to the Registrar.

## **Order 3, Rule 1**

### **PART 2.—CIVIL JURISDICTION. ORDER 3.—DISCOVERY BEFORE SUIT.**

#### **1. Examination and production. (3/1)**

- (1) Where, on application by any person, it appears to the Court that—
  - (a) the applicant has a *prima facie* case for relief in proceedings in the Court against any person (in this Rule called "the person concerned"); and
  - (b) the applicant, having made reasonable inquiries, does not know the name, or does not know the description, of the person concerned, or is otherwise unable to identify the person concerned sufficiently for the purpose of commencing proceedings against the person concerned; and
  - (c) some person has or may have knowledge of facts, or has or may have in his possession, custody or power any document, recording or thing, tending to assist in the ascertainment of the name or description or other identification of the person concerned,

the Court may order that person—

- (d) to attend before the Court or an officer of the Court and be orally examined on any matter relating to the name or description or other identification of the person concerned; and
  - (e) to produce any document, recording or thing in his possession, custody or power relating to the name or description or other identification of the person concerned.

(2) Where, on the application of any person, the matters mentioned in Sub-rule (1)(a) and (b) appear to the Court and it further appears to the Court that a corporation has or may have in its possession, custody or power any document, recording or thing tending to assist in the ascertainment of the name or description or other identification of the person concerned, the Court may order the corporation or any officer of the corporation to produce any document, recording or thing in the possession, custody or power of the corporation relating to the name or description or other identification of the person concerned.

(3) In this Rule, "description" includes the place of residence, place of business, occupation and sex of the person concerned.

#### **2. Procedure. (3/2)**

(1) A person may apply for orders under Rule 1 by originating summons without making any person a defendant.

(2) An order under Rule 1 must be served personally on the person ordered to attend or to produce any document or thing.

**3. Conduct money. (3/3)**

(1) An order under Rule 1 shall not require a person to attend or to produce any document or thing on any day on which his attendance, or production by him, is required, unless a sum sufficient to meet his reasonable expenses of complying with the order in relation to that day is paid or tendered to him at the time of service of the order or not later than a reasonable time before that day.

(2) Where an order under Rule 1 requires a corporation to produce any document, recording or thing, the sum mentioned in Sub-rule (1) may be paid or tendered to any person apparently in the service of the corporation and apparently of or above the age of 16 years.

**4. Expense and loss. (3/4)**

Where any person incurs expense or loss in complying with an order under Rule 1 in an amount exceeding any sum paid under Rule 3, the Court may order the applicant to pay to that person an amount sufficient to make good the expense or loss.

## **Order 4, Rule 1**

### **ORDER 4.—COMMENCEMENT OF PROCEEDINGS.**

#### ***Division 1.—Mode of Beginning Civil Proceedings.***

##### **1. Two modes only. (4/1)**

Subject to the provisions of any Act, regulations or rules but without prejudice to Order 8 Rule 38, proceedings in the Court under this Part shall be commenced by writ of summons or by originating summons.

##### **2. Where writ of summons required. (4/2)**

(1) Proceedings shall be commenced by writ of summons—

- (a) where a claim is made by the plaintiff for any relief or remedy for any tort; and
- (b) where a claim made by the plaintiff is based on an allegation of fraud; and
- (c) where a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an Act or independently of any contract or any such provision), and the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person in respect of damage to any property; and
- (d) where a claim is made by the plaintiff for damages for a breach of promise of marriage.

(2) In Sub-rule (1) "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

(3) Sub-rule (1) does not apply to proceedings commenced by a person who desires to apply for—

- (a) a declaration of right; or
- (b) an immediate injunction; or
- (c) an immediate appointment of a receiver; or
- (d) immediate orders under Order 14 Rule 10 (the preservation of property).

##### **3. Where plaintiff may choose. (4/3)**

(1) Except in the case of proceedings which by these Rules or by or under any Act are required to be commenced by writ of summons, proceedings may be commenced either by writ of summons or by originating summons as the plaintiff considers appropriate.

(2) Proceedings—

- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of an Act or of any instrument made under an Act, or of any deed, will, contract or other document, or some other question of law; or
- (b) in which there is unlikely to be a substantial dispute of fact; or
- (c) in which a person is authorized by an Act, regulation or by these Rules to make an application to the Court or a Judge with respect to a matter that is not already the subject matter of a pending cause or matter, and no other mode of making the application is prescribed by that Act, or regulation or by these Rules,

are amongst those which are appropriate to be commenced by originating summons unless the plaintiff considers the proceedings more appropriate to be commenced by writ of summons.

**4. Mode of proceedings in interlocutory matters.**

Proceedings may be instituted by motion, only if they relate to an interlocutory application.

**5. Right to sue in person. (4/4)**

(1) Subject to Sub-rule (2), to Rule 6(1) and to Order 5 Rule 20(2) (disability), any person may proceed in the Court by a solicitor or in person.

(2) Except as provided by or under any Act, a corporation may not commence or carry on any proceedings otherwise than by a solicitor.

**6. Relator. (4/5)**

(1) A relator must act by a solicitor.

(2) A solicitor may not act for a relator in any proceedings unless the relator has authorized the solicitor in writing to act for him in the proceedings and the authority has been filed.

(3) The authority may be written on the originating process.

(4) A married woman may be a relator.

***Division 2.—Originating Process Generally.***

**7. Relief claimed. (7/1)**

(1) An originating process shall state specifically the relief claimed by the plaintiff.

## **Order 4, Rule 8**

(2) Where the claim for relief includes a claim for the determination or direction of the Court on any question, the originating process shall state the question.

(3) Subject to Rule 10(4) costs need not be specifically claimed.

### **8. Name, address, etc. (7/2)**

An originating process must have subscribed to it—

- (a) the name, address and occupation of the plaintiff; and
- (b) where the plaintiff sues by a solicitor—the name, address and telephone number of the solicitor; and
- (c) where the plaintiff sues by a solicitor and that solicitor has another solicitor as agent for him in the proceedings—the name, address and telephone number of the agent; and
- (d) an address for service, which shall not be more than 15 km from the Registry.

### **9. Notice of intention to defend. (7/3)**

(1) Where there is a defendant, an originating process (other than an originating summons under Rule 26) shall bear a note that the defendant is liable to suffer judgement or an order against him unless the prescribed form of notice of his intention to defend is received in the Registry.

(2) The note under Sub-rule (1) shall specify the time limited for the giving of the notice.

(3) Where there is a defendant an originating summons under Rule 26 shall bear a note that—

- (a) if there is no attendance before the Court by the defendant or his counsel or solicitor at the time and place stated in the summons, the proceedings may be heard and the defendant will be liable to suffer judgement or an order against him; and
- (b) before any attendance at that time the defendant must file in the Registry a notice of his intention to defend the claim.

### **10. Money claim; Stay on payment. (7/4)**

(1) Where a plaintiff, by his originating process, claims against a defendant for debt, damages or other money, but makes no claim of any other kind, the defendant—

- (a) may, within the time limited for giving notice of intention to defend, pay to the plaintiff the sum of—
  - (i) the amount claimed (other than costs); and
  - (ii) the amount prescribed for costs under Table 2 of Schedule 2; and

(b) may file notice of the payment in Form 8.

(2) Where payment is to be made under this Rule on a claim for liquidated demand together with interest, interest shall be paid for the period from the date of the claim until payment at the rate specified in the claim or, if no rate is specified, at the rate of 8% yearly.

(3) On the filing of a notice of payment under Sub-rule (1), further proceedings shall be stayed.

(4) An originating process to which this Rule applies shall bear a note to the effect of Sub-rules (1) and (3) and, where Sub-rule (2) applies, of that sub-rule, and shall specify the prescribed amount for costs.

**11. Time for giving notice of intention to defend. (7/5)**

The time to be limited for a defendant to give a notice of intention to defend shall be—

- (a) in the case of service of an originating summons under Rule 26—not later than the date for hearing stated in the summons; or
- (b) in the case of service of other originating process—
  - (i) within Papua New Guinea—not less than 30 days after service; or
  - (ii) outside Papua New Guinea—two months after service or such other time as the Court may order.

**12. Filing and copies (7/6)**

- (1) Proceedings shall be commenced by the filing of the originating process.
- (2) Originating process shall be filed in the Registry.
- (3) The Registrar shall sign and mark with the seal of the Court a sufficient number of copies of the originating process for service and proof of service.

**13. Validity for service. (7/7)**

- (1) For the purpose of service an originating process shall be valid for two years from the date on which it is filed.
- (2) The Court shall not extend the period of two years mentioned in Sub-rule (1).
- (3) This Rule does not prevent the plaintiff from commencing fresh proceedings by filing another originating process.

**14. Recovery of land; Notice to occupier. (7/8)**

(1) Where, on the date on which proceedings for possession of land are commenced, a person (in this Rule called the occupier) not joined as a defendant is in occupation of the whole or any part of the land, the plaintiff shall—

## **Order 4, Rule 15**

- (a) state in the originating process that he does not seek to disturb the occupation of the occupier; or
  - (b) where the proceedings are commenced by originating summons under Rule 26—serve on the occupier not less than 21 days before the date of the appointment for hearing, unless the Court otherwise orders, the summons together with a notice in Form 9 that he may apply to the Court for an order that he be added as a defendant and that, if he does not apply at or before the appointment for hearing stated in the summons, he may be evicted pursuant to a judgement entered in his absence; or
  - (c) where in proceedings other than proceedings commenced by originating summons under Rule 26—serve the originating process on the occupier together with a notice that he may apply to the Court for an order that he be added as a defendant and that, if he does not so apply within 21 days after service, he may be evicted pursuant to a judgement entered in his absence.
- (2) Documents may be served on an occupier for the purpose of Sub-rule (1) personally or by leaving the documents in a prominent and secure place on the land in his occupation addressed to him by name or addressed to "the occupier".

### **15. Concurrent writs of summons.**

- (1) One or more concurrent writ of summons may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time before the original writ ceases to be valid.
- (2) Without prejudice to the generality of Sub-rule (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.
- (3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.
- (4) This Rule shall apply to an originating summons as it applies in relation to a writ of summons.

### ***Division 3.—Writ of Summons.***

#### **16. Form of writ.**

A writ of summons for the commencement of an action shall, except when any different form is prescribed, be in Form 5.

**17. Costs of prolixity.**

Any costs occasioned by the use of any more prolix or other forms of writs, and of endorsements on them, than the forms prescribed shall be borne by the parties using the same, unless the Court otherwise directs.

**18. Date and teste.**

Every writ of summons, and also (unless by any law or by these Rules it is otherwise provided) every other writ shall bear date on the day on which it is issued, and shall be tested in the name of the Chief Justice of the Court.

**19. Endorsement of claim. (UK 6/2)**

Without prejudice to Order 8 Rule 33, before a writ of summons is issued it must be endorsed with a statement of claim.

**20. Endorsement as to capacity. (UK 6/3)**

(1) Before a writ of summons is issued it must be endorsed—

(a) where the plaintiff sues in a representative capacity—with a statement of the capacity in which he sues; and

(b) where a defendant is sued in a representative capacity—with a statement of the capacity in which he is sued.

(2) In probate actions the endorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next-of-kin, heir-at-law, devisee, or in any and what other character.

(3) The issue of a writ of summons in a probate action shall be preceded by the filing of an affidavit by the plaintiff, or by one of the plaintiffs, verifying the endorsement on the writ.

**21. Endorsement of claim for account.**

In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that such account be taken.

**22. In actions for libel and slander.**

In actions for—

(a) libel—the endorsement on the writ shall state sufficient particulars to identify the publications in respect of which the action is brought; and

(b) slander—the writ shall state sufficient particulars to identify the time and place where the words complained of were uttered.

## **Order 4, Rule 23**

### ***Division 4.—Originating Summons.***

#### **23. Application. (5/1)**

This Division applies only to proceedings commenced by originating summons.

#### **24. Parties. (5/2)**

- (1) A party claiming relief by originating summons shall be called a plaintiff.
- (2) A party against whom relief is claimed by originating summons shall be called a defendant.

#### **25. Choice of summons.(5/4)**

A plaintiff commencing proceedings by originating summons may use either a summons stating an appointment for hearing in accordance with Rule 26 or a summons for a hearing to be appointed in accordance with Rule 27.

#### **26. Summons stating appointment for hearing. (5/4A)**

- (1) This Rule applies to proceedings commenced by originating summons in Form 6 stating an appointment for hearing.
- (2) The appointment for hearing to be stated in a summons under this Rule may be fixed by the Court, or, if not fixed by the Court, shall be obtained from the Registry.
- (3) Where there is a defendant, the summons shall, unless the Court otherwise orders, be served not less than five days before the date of the appointment for hearing.
- (4) Where the appointment for hearing is obtained from the Registry and the summons is to be served outside Papua New Guinea, the date of the appointment shall be not less than one month after the date of filing of the summons.
- (5) Where the Court makes an order under Sub-rule (3), the summons shall bear a note of the order made.

#### **27. Summons for hearing to be appointed. (5/4B)**

- (1) This Rule applies to proceedings commenced by originating summons in Form 7, for a hearing to be appointed.
- (2) Where there is no defendant, the plaintiff may at any time obtain from the Registry an appointment for hearing.
- (3) Where any defendant has given notice of intention to defend or has made default in giving that notice, the plaintiff may obtain from the Registry an appointment for hearing.
- (4) Where a plaintiff does not obtain an appointment under Sub-rule (3) within seven days after becoming entitled to do so, a defendant may obtain from the Registry an appointment for hearing.

(5) The Court may, on application by a party, make an appointment for hearing at any time, whether or not an occasion has arisen for obtaining an appointment under Sub- rule (2) or (3).

**28. Appointment for further hearing. (5/4C)**

(1) This Rule applies where the proceedings are not disposed of altogether on the first day appointed for hearing.

(2) A party may, unless the Court otherwise orders, obtain from the Registry an appointment for further hearing.

(3) The Court may make an appointment for further hearing.

(4) This Rule does not affect the powers of the Court as to adjournment.

**29. Notice of appointment. (5/5)**

(1) Where—

(a) a party obtains an appointment for hearing under Rule 27(2) or (3); or

(b) a party obtains an appointment for further hearing under Rule 28(2),

the party shall, on the day on which the appointment is obtained, file notice of the appointment and serve notice in Form 10 on each other party who has an address for service in the proceedings.

(2) Where the Court makes an appointment for hearing under Rule 27(4) or for further hearing under Rule 28(3), the Court may give directions for the filing and service of notice of the appointment or for otherwise notifying the parties of the appointment.

**30. Alteration of date. (5/5A)**

(1) Where an appointment for hearing has been obtained or made the Court may alter the appointment to a later date and may authorize the solicitor for a party to make corresponding alterations in any copy for service of any summons or notice.

(2) The Registrar may exercise the powers of the Court under Sub-rule (1) and may give authority by telephone or by such other means as he thinks fit.

**31. Directions. (5/7)**

(1) The Court may exercise its powers under this Rule at any time after the commencement of the proceedings.

(2) The Court shall give such directions as are convenient for the just, quick and cheap disposal of the proceedings.

(3) Without limiting the generality of Sub-rule (2), the Court may—

(a) make orders for defining the issues by pleading or otherwise; and

(b) direct that the whole or any part of the evidence be given on affidavit or orally; and

## **Order 4, Rule 32**

- (c) make any orders relating to the conduct of the proceedings which it might make on motion by a party.

### **32. Determination. (5/8)**

The Court may, on the first or any later day of hearing—

- (a) hear and determine the proceedings or any claim in the proceedings; and
- (b) make such order or direct the entry of such judgement as the nature of the case requires.

### **33. Absence of party. (5/9)**

The Court may proceed with a hearing in the absence of—

- (a) a plaintiff, where he has had due notice of the hearing; or
- (b) a defendant, where—
  - (i) he is in default of giving a notice of intention to defend; or
  - (ii) he has had due notice of the hearing.

### **34. Cross-claim. (5/10)**

(1) A defendant may, with the leave of the Court, cross-claim for any relief which the Court may grant.

(2) A defendant who wishes to cross-claim shall, at as early a stage as is practicable, tell the Court the nature of the cross-claim.

(3) A cross-claim shall be made in such manner as the Court may direct under Rule 31 or 35. or under Order 8 Rule 37(2).

### **35. Continuation on pleadings. (5/11)**

- (1) The Court may order that the proceedings continue on pleadings.
- (2) The Court may, on or after making an order under Sub-rule (1)—
  - (a) order that any affidavits stand as pleadings; or
  - (b) make orders for the filing of a statement of claim or other pleadings.

(3) The provisions of these Rules concerning proceedings commenced by writ of summons shall, except as far as the Court otherwise orders, and except so far as the context or subject matter otherwise indicates or requires, apply to proceedings ordered under this Rule to continue on pleadings.

**36. Want of prosecution. (5/12)**

(1) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the Court may stay or dismiss the proceedings.

(2) Sub-rule (1) applies, with any necessary modifications, in relation to a cross-claimant as it applies in relation to a plaintiff.

***Division 5.—Motions.***

**37. Interlocutory or other application in proceedings. (19/1)**

An interlocutory or other application, in or for the purpose of or in relation to proceedings commenced or to be commenced by writ of summons or by originating summons, shall be made by motion.

**38. Notice necessary. (19/2)**

(1) Subject to Sub-rule (2), a person shall not move the Court for any orders unless before moving he has filed notice of the motion and has served the notice on each interested party who has an address for service in the proceedings.

(2) A person may move the Court without previously filing or serving notice of the motion—

- (a) where the preparation of the notice, or the filing or service, as the case may be, of the notice would cause undue delay or other mischief to the applicant; or
  - (b) where each party interested, other than the applicant, consents to the order; or
  - (c) where under these Rules or the practice of the Court for the time being the motion may properly be made without the prior filing or service, as the case may be, of notice of the motion; or
  - (d) where the Court dispenses with the requirements of Sub-rule (1).
- (3) Except with the leave of the Court, and subject to these Rules, a motion shall be moved only on a date fixed by the Court for the hearing of motions.

**39. Parties to a notice of motion.**

- (1) A party making an application by motion shall be called an applicant.
- (2) A party against whom relief is claimed by motion shall be called a respondent.

## **Order 4, Rule 40**

### **40. Contents of notice. (19/2(3))**

- (1) Notice of a motion shall—
  - (a) state the date and time when, and the place where, the motion is to be moved; and
  - (b) where the Court makes an order under Rule 44—bear a note of the order made; and
  - (c) state concisely the nature of the order which is sought; and
  - (d) name each party affected by the order which is sought.
- (2) Costs need not be specifically claimed.
- (3) Notice of motion shall be in Form 11.

### **41. Persons under disability.**

Where the applicant or his solicitor is aware that the respondent is an infant or a person of unsound mind the fact shall appear on the face of the notice of motion.

### **42. Time for service of notice. (19/3)**

Where notice of a motion is required to be served, it shall, unless the Court otherwise orders, be served not less than three days before the date named in the notice for hearing the motion.

### **43. Service. (19/4)**

(1) Where notice of a motion is to be served on a person who has not given a notice of intention to defend and is not in default in giving that notice, the notice of motion shall be served personally.

(2) An affidavit of service of a notice of motion shall be filed not later than the day before the day on which the motion is to be made.

### **44. Affidavits.**

(1) Where a motion is founded on facts or on facts and documents, unless the Court otherwise orders, an affidavit setting forth those facts and having annexed to it those documents (if any) shall be filed with the notice of motion, and a copy of the affidavit shall be served on the parties sought to be affected by the motion with the notice of the motion.

(2) A respondent may, before the date appointed for the hearing or, by leave of the Court within such further time as may be fixed by the Court, file an answering affidavit and shall on the same day serve a copy of it on the applicant.

**45. Motion dismissed or adjourned for notice on other persons.**

If, on the hearing of a motion, the Court is of opinion that any person on whom notice of the motion has not been served ought to have been served, the Court may, on such terms (if any) as the Court thinks fit to impose, either dismiss the motion or adjourn its hearing in order that such notice may be given.

**46. Absence of party. (19/5)**

The Court may hear and dispose of a motion in the absence of any party—

- (a) where service of notice of the motion on the absent party is not required by these Rules or by an order; or
- (b) where notice of the motion has been duly served on the absent party.

**47. Notice of adjournment. (19/7)**

Where notice of motion has been served for any date or the hearing of a motion has been adjourned to any date, and, before that date, any party files a request, bearing the consent of each other party to the motion, for an adjournment in accordance with this Rule, the hearing of the motion shall stand adjourned to the date specified in the notice or to such later date as the Court may appoint.

**48. Further hearing. (19/8)**

(1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day—

- (a) the Court may hear and dispose of the motion on any later day fixed by the Court; and
  - (b) subject to Sub-rule (2), filing or service of further notice of motion shall not be required.
- (2) Sub-rule (1)(b) shall not have effect—
- (a) where the Court directs the filing or service of a further notice of motion; or
  - (b) where service is required on a party on whom notice of the motion has not previously been served.

## **Order 4, Rule 49(1)**

Order 4 Division 5 (*Motions*) of the *National Court Rules* is amended by inserting the following:

### **49. – Motions (Amendment) Rules 2005.**

#### **Purpose.**

Between 1983 to 2004, the Registrar issued a number of Practice Directions & Notes in relation to the conduct of motions. These are contained in *Civil Jurisdiction Bulletin 2004*. These Rules include a consolidation of those previous Practice Directions & Notes. Upon coming into operation of these Rules, those Practice Directions & Notes shall cease to apply. The purpose of these Rules is to improve the disposition of motions and other interlocutory applications in all civil cases, in a quick, fair and cheap manner.

#### **1. Motions List.**

The Registrar shall from time to time as required by the Motions Judge, compile a Motions List containing Motions filed for all civil cases except Motions in the following matters-

- a. Appeals,
- b. Judicial Review,
- c. Commercial,
- d. Election Petitions,
- e. and in those cases which involve listing issues such as Motions seeking leave to dispense with requirements for notice to set down for trial or applications for dismissal of proceedings for want of prosecution or under Order 12 Rule 40 and Order 8 Rule 27 of the *National Court Rules*.

#### **2. Rules of Court.**

These Rules are in addition to the procedure for motions as set out in O. 4 Div. 5 (Rules 37 to 48) of the *National Court Rules*.

#### **3. Judge.**

The Chief Justice may from time to time assign a judge(s) to conduct the Motions List, as determined in the *Annual Circuit Calendar* issued by the Chief Justice.

#### **4. Senior Clerk.**

The Registrar shall appoint a Senior Clerk and such other clerks to manage the motions list and to perform other duties required of him or her under the Rules or as required by the Registrar.

**5. Urgent *ex parte* applications.**

***i. Without filing Originating Process and Notice of Motion under Order 14 Rules 9 – 16 of the National Court Rules.***

(a) If a lawyer or a party wishes to make an urgent *ex parte* application, they must first contact the Registrar or Deputy Registrar by telephone, and by sending a fax setting out the details of the application, and why the matter is urgent.

(b) The Registrar will then fix a time for the hearing in consultation with the Motions Judge.

(c) If the judge grants the interim orders sought, they must be made returnable before the Court on a fixed date. The judge must also make orders for filing and service of the Court Order, Originating process, Notice of Motion and supporting affidavit, Undertaking as to damages, security for costs and any other relevant documents, on the defendant or any other person directly affected by the order.

***ii. Urgent *ex parte* applications in other cases.***

(a) A lawyer or a party wishing to make an urgent *ex parte* application, must contact the Registrar in writing, explaining the reasons for the urgency and why the requirements for service of the Motion is sought to be dispensed with.

(b) The Registrar, after being satisfied with the explanation given, will fix a time and date for the hearing of the Motion, in consultation with the Motions Judge.

(c) The application will not be set down for hearing unless the following documents are filed:-

- Originating Process;
- Notice of Motion;
- Supporting Affidavit/s;
- Where appropriate, an Undertaking as to Damages;
- Draft order.

(d) The applicant must, in the Notice of Motion, first seek an order dispensing with the requirement for service of the motion. In the supporting affidavit, the deponent must demonstrate the urgency of the matter and the reasons why dispensation with the requirement for service of the Motion is necessary, such as difficulty with locating the defendant in order for service to be effected.

(e) Upon hearing the application, the Judge may make orders including:

- i. An order dispensing with requirements of service;
- ii. An interim order which provides some solution, until the return date;
- iii. Service of the Order, the Originating Process, Motion, Supporting Affidavit, Undertaking as to Damages (where appropriate) and other documents filed in the proceedings, on or by a specified date.

## **Order 4, Rule 49(6)**

- iv. Giving "liberty to apply";
- v. Giving a specific return date, when the interim orders become returnable before the Motions Judge.
- vi. Affidavit of service of the documents referred to in above.

(f) A party shall not and the judge shall not make any order in terms of the substantive relief sought in the originating process.

### **6. Motion days.**

Motions are heard at times as determined by the Judge. For the time being in Waigani, Motions are heard on Monday, Wednesday and Friday, of each week except, on the Supreme Court week.

### **7. Duty Judge.**

Motions to be moved after official Court sitting time on week-ends and public holidays must be done by prior arrangement with the Registrar. The Motions Judge is the duty judge or in his or her absence, another judge assigned by the Judge Administrator (Civil). They are treated as urgent applications and the practice set out in Rule 5 above, applies.

### **8. Form of Motions.**

All Motions must contain a concise reference to the Court's jurisdiction to grant the orders being sought. Motions not containing such reference will not be accepted for filing. If accepted by the Registry staff without such reference, and it goes before the motions judge, the Court may strike out the motion for being incompetent and for lack of form.

The motion must state the following;

"...move the Court for Order pursuant to (e.g. section 5 of the *Claims By and Against the State Act*...) ...".

### **9. Motions for interlocutory matters only.**

Except as otherwise expressly provided in the National Court Rules, Motions shall be for relief on interlocutory matters only and not for the substantive relief claimed in the originating process.

### **10. Signing of Motions.**

The Motion must be signed by the lawyer or applicant and the name of the lawyer or party must appear below the signature. The Motion cannot be signed by the Law firm as it is incapable of having a signature.

**11. Filing and Service of Motions.**

(1) Motions must be served as soon as practicable on or after the day they are filed. Counsel must ensure that the motion is not listed, if he or she has not complied with the three (3) clear days of service. If the motion is listed, and the three (3) days service rule has not been complied with, the court will adjourn the motion.

(2) An Affidavit of Service must be filed as soon as practicable on or after the day of service. To that affidavit of service must be attached copies of the court documents served, including cover letters/notes and the Law firm's acknowledgement form showing who received the document; his or her name; his or her position with the company and the date and time of receipt.

(3) If affidavits served exceed 5 pages, the copies of the first two (2) pages and the last page of the affidavit (not the attachment), should be attached.

**12. Supporting affidavits.**

(1) All affidavits in support of the Motion must be filed on the date of filing the Motion;

(2) All affidavits opposing and counter motions must be filed at the latest by 2 pm on the day before the hearing of the motion;

(3) Motion files will be sent to the Motions Judge at the latest by 3 pm on the day preceding the day the Motion is to be heard;

(4) Leave must be sought from the Motion Judge before any affidavit is filed on the day of the hearing. The Registry will no longer accept affidavits filed after 2 pm on the day preceding the hearing of the Motion or on the morning the Motion is to be heard.

(5) With the exception of contempt hearings, there shall be no cross-examination of deponents of affidavits, except with leave of the Court.

**13. Motion List & Number of matter on Motions List.**

(1) The Registrar shall publish a Motions List and made available at the Registry on Motion days. Lawyers and parties must check with the Motions Clerk on the day preceding the hearing date, to ensure that their matter is placed on the Motions List. Any Motions that does not appear on the Motions List is not before the Judge and it will not be dealt with.

(2) The maximum number of Motions appearing on the Motions List shall not exceed 35. This number may be varied by the Judge.

**14. Motion duration.**

A motion must not exceed a total of 20 minutes in hearing time. Where a Motion is expected to exceed 20 minutes, application should be made to the judge for a special fixture. The Judge may allocate a special fixture in the circuit month or refer the matter to the Judge Administrator (Civil) for a special fixture.

## **Order 4, Rule 49(15)**

### **15. Special fixtures.**

The Motions Judge may refer a motion matter to the Judge Administrator (Civil) to allocate a special fixture in appropriate cases including a motion which is expected to exceed 20 minutes or in which the Judge is unable to deal with the motion.

### **16. Motions not mentioned.**

(1) Motion matters appearing on the Motion List but not mentioned due to non-appearance of parties may be struck out for want of prosecution or be adjourned to a fixed time.

(2) Where the Motion is adjourned, the Registrar shall advise the parties in writing of the adjournment and if the party filing the Motion fails to appear on the adjourned date, the Motion may be struck out or dismissed for want of prosecution.

### **17. Dismissal /Striking out of Motions.**

The Court may of its own motion or upon application strike out or dismiss a Motion which is not prosecuted within one (1) month after it is filed or if it is adjourned twice.

### **18. Adjournments.**

(1) A Motion shall not be adjourned generally but to a fixed date and time.

(2) With the exception of winding up petitions, a Motion will not be adjourned twice, except with leave of the court. Otherwise, the Motion may be struck out for want of prosecution.

(3) A motion may be adjourned by consent of the parties by completing the form in *Schedule A* hereto. The completed form may be presented to the Court or given to the Clerk responsible for Motion matters or the Judge's Associate before the hearing. If counsel for the applicant is resident out of town, then he or she must brief counsel in a law firm in town to appear for him/her to seek the adjournments.

(4) No Motion will be adjourned by correspondence addressed to or copied to the Registrar, Clerk or Judge's Associate.

### **19. Other matters.**

#### **(1) Undertaking as to Damages.**

This must be filed together with the Originating Process, affidavits and Notice of Motion and it must be signed by the applicant, not the lawyer.

#### **(2) Contempt hearings.**

All contempt matters shall be mentioned before the motions judge who either hears the application on the motion day or allocates a special fixture for the hearing of the application.

**(3) *Default judgment procedure.***

**(a) *Against individuals***

(i) An applicant for Default judgment shall file the following documents:

1. Notice of Motion
2. An Affidavit of Service;
3. An Affidavit of Search (of the court file) conducted just before filing the motion;
4. An Affidavit in support (to also attach copy of the letter to the other party forewarning of the application, if a Notice of Intention to Defend has been filed).
5. A draft order for Default Judgment.

(ii) Upon compliance with sub-rule (i) and the requirements of Order 12 Division 3 of the *National Court Rules*, the Registrar shall fix a return date on the Notice of Motion. The date must be three (3) clear days after the anticipated service of the Motion.

(iii) If the motion has been outstanding for two (2) weeks or more, then three (3) days before the motion is moved, the applicant or his/her lawyer must conduct a fresh search of the court file and file a fresh affidavit of search.

(iv) The affidavit of service must strictly comply with Order 12 Rule 34 of the *National Court Rules*, that is:

- the affidavit must prove due service of the writ, ie it must depose to date and time of service and on whom the writ was served;
- A copy of the writ must be attached to the affidavit of service.

**(b) *Against a corporate entity including the State***

(i) Motions on other statutory corporations and bodies must be effected in accordance with the requirements of the relevant statutory provision, e.g. 431 (1)

(a) to (f) (2) of the *Companies Act*

(ii) In order to assist the court, Counsel moving the Motion must tender to the court copy of the relevant provision governing institution and service of court process against these entities.

**(4) *Application to set aside ex parte orders.***

(1) An application to set aside *ex parte* order shall be made *inter partes*, before the same judge who made the *ex parte* order.

(2) Where the judge who made the *ex parte* order is unavailable, the application may be made before another judge.

#### **Order 4, Rule 49(20)**

**20. Dispensation with requirements of these Rules.**

The judge may dispense with the requirements of these Rules in appropriate cases.

**21. Commencement of these Rules.**

These Rules shall commence on the date they are signed by the Judges.

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<sup>1</sup> Signed by the Judges on 27<sup>th</sup> September 2005

## **Schedule A – Consent Adjournment Form**

### **SCHEDULE A**

**(Title)**

#### **CONSENT ADJOURNMENT FORM**

I .....(insert name) the lawyer for the Plaintiff/Defendant certify that I agree to the adjournment of the Motion in this matter dated .....(insert date).

.....  
(Signature of Lawyer)

.....  
(Lawyer's name and firm name)

I ..... (insert name) the lawyer for the Defendant/Applicant (or as appropriate) certify that I agree to the adjournment of the Motion in this matter dated ..... (insert date) to the following date..... (insert date).

.....  
(Signature of Lawyer)

.....  
Lawyer's name and firm

Dated this ..... day of ..... 20.....

## **Order 5, Rule 1**

### **ORDER 5.—PARTIES AND CAUSES OF ACTION.**

#### ***Division 1.—Joinder of Causes of Action and Parties.***

##### **1. Joinder of causes of action. (8/1)**

A plaintiff may, in any proceedings, claim relief against the same defendant in respect of more than one cause of action—

- (a) where the plaintiff claims, and the defendant is alleged to be liable in the same capacity in respect of all the causes of action; or
- (b) where the plaintiff claims, or the defendant is alleged to be liable in the capacity of executor of the will of a deceased person or administrator of the estate of a deceased person in respect of one or more of the causes of action and in his personal capacity but with reference to the estate of the same deceased person, in respect of all other causes of action; or
- (c) where the Court gives leave to do so.

##### **2. Joinder of parties generally. (8/2)**

Two or more persons may be joined as plaintiffs or defendants in any proceedings—

- (a) where—
  - (i) if separate proceedings were brought by or against each of them, as the case may be, some common question of law or of fact would arise in all the proceedings; and
  - (ii) all rights to relief claimed in the proceedings (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or
- (b) where the Court gives leave to do so.

##### **3. Joint right. (8/3)**

(1) Where, in any proceedings, the plaintiff claims relief to which any other person is entitled jointly with him—

- (a) all persons so entitled shall be parties to the action; and
- (b) any of them who do not consent to being joined as a plaintiff shall be made a defendant.

(2) Sub-rule (1) applies subject to any Act and applies unless the Court gives leave to the contrary.

**4. Leave under Rules 1, 2 and 3. (8/4)**

(1) The Court may grant leave under Rule 1 or 2 before or after the joinder and may grant leave under Rule 3(2) before or after the non-joinder.

(2) A plaintiff may apply for leave under Rule 1, 2 or 3(2) before or after filing his originating process and may apply without serving notice of the motion on any person on whom the originating process has not been served.

**5. Common liability. (8/5)**

(1) Where, in any proceedings, relief is claimed against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the proceedings.

(2) Where persons are jointly, but not severally, liable under a contract, and relief is claimed against some but not all of those persons in proceedings in respect of that contract, the Court may, on the application of any defendant to the proceedings, by order stay the proceedings until the other persons so liable are added as defendants.

**6. Inconvenient joinder. (8/6)**

Where any joinder of parties or causes of action may embarrass or delay trial of the proceedings or is otherwise inconvenient, the Court may order separate trials or make such other order as the Court thinks fit.

**7. Misjoinder and non-joinder of parties. (8/7)**

(1) Proceedings shall not be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party.

(2) The Court may in any proceedings determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

**8. Addition of parties. (8/8)**

(1) Where a person who is not a party—

(a) ought to have been joined as a party; or

(b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated on,

the Court, on application by him or by any party or of its own motion, may, on terms, order that he be added as a party and make orders for the further conduct of the proceedings.

(2) A person shall not be added as plaintiff without his consent.

## **Order 5, Rule 9**

(3) Without limiting the generality of Sub-rule (1), where a person not a party to proceedings for possession of land is in possession (by himself or by a tenant) of the whole or any part of the land, the Court, on application by him, may, on terms, order that he be added as a defendant and make orders for the further conduct of the proceedings.

### **9. Removal of parties. (8/9)**

Where a party—

- (a) has been improperly or unnecessarily joined; or
- (b) has ceased to be a proper or necessary party,

the Court, on application by any party or of its own motion, may, on terms, order that he cease to be a party and make orders for the further conduct of the proceedings.

### **10. Death, transmission, etc. (8/10)**

(1) Where a party dies or becomes bankrupt but a cause of action in the proceedings survives, the proceedings shall not abate by reason of the death or bankruptcy.

(2) Where the interest or liability of a party passes by assignment, transmission, devolution or otherwise to another person, the Court may make orders for the addition, removal or rearrangement of parties and may make orders for the further conduct of the proceedings.

(3) The Court may act under Sub-rule (2) on application by a party or by a person to whom the interest or liability passes or of its own motion.

### **11. Further conduct of proceedings (8/11)**

(1) Without limiting the generality of the powers of the Court under Rules 8, 9 and 10 orders under those Rules for the further conduct of the proceedings may include orders relating to—

- (a) service of the order and other documents in the proceedings; and
- (b) amendment; and
- (c) appearance of added parties; and
- (d) substitution of one party for another party or a former party.

(2) Where the Court orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order shall, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but notice of intention to defend by the old party shall not dispense with notice of intention to defend by the new.

(3) Subject to Sub-rule (2), where a party is added pursuant to an order under Rule 8 or 10, the date of commencement of the proceedings so far as concerns him shall be the date of filing of the originating process amended so as to add him as a party or, where an amended originating process is not filed, the date of the amendment adding him as a party.

**12. Failure to proceed after death of party. (8/12)**

(1) Where—

- (a) a party dies but a cause of action in the proceedings survives his death; and
- (b) an order under Rule 10 for the addition of a party in substitution for the deceased party is not made within three months after the death,

the Court may, on application by a party or by a person to whom liability on the cause of action survives on the death, order that, unless, within a specified time after service of the order in accordance with Sub-rule (2), a party is added in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon, as the case may be, survives on the death.

(2) On making an order under Sub-rule (1), the Court shall give such directions as it thinks fit for service of the order on the persons (whether parties or not) interested in continuing the proceedings.

**13. Representation; Current interests. (8/13)**

(1) Where numerous persons have the same interest in any proceedings the proceedings may be commenced, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings pursuant to this Rule the Court, on the application of the plaintiff, may, on terms, appoint any one or more of the defendants or other persons (as representing whom the defendants are sued) to represent all, or all except one or more, of those persons in the proceedings.

(3) Where, under Sub-rule (2), the Court appoints a person who is not a defendant, the Court shall make an order under Rule 8 adding him as a defendant.

(4) A judgement entered or order made in proceedings pursuant to this Rule shall be binding on all the persons as representing whom the plaintiffs sue or the defendants are sued, as the case may be, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

## **Order 5, Rule 14**

(5) An application for leave under Sub-rule (4) shall be made by motion, notice of which shall be served personally on the person against whom it is sought to enforce the judgement or order.

(6) Notwithstanding that a judgement or order to which an application under Sub-rule (5) relates is binding on the person against whom the application is made, that person may dispute liability to have the judgement or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from the liability.

(7) This Rule does not apply to proceedings concerning—

- (a) the administration of the estate of a deceased person; or
- (b) property subject to a trust.

### **14. Representation; Administration cases, etc. (8/14)**

(1) In any proceedings concerning—

- (a) the administration of the estate of a deceased person; or
- (b) property subject to a trust; or
- (c) the construction of a written instrument, including an Act,

the Court, if satisfied that one or more of the conditions specified in Sub-rule (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class of persons who is or may be interested (whether presently or for any future, contingent or unascertained interest) in, or affected by, the proceedings.

(2) The conditions for the exercise of the power conferred by Sub-rule (1) are—

- (a) that the person, the class of persons or some member of the class, cannot be ascertained or cannot readily be ascertained; and
- (b) that the person, class of persons or some member of the class, though ascertained, cannot be found; and
- (c) that, though the person or the class of persons and the members of the class can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings the Court exercises the power conferred by Sub-rule (1), a judgement or order entered or made in the proceedings shall be binding on the person or class of persons represented as if he or they were parties.

## **Order 5, Rule 16**

(4) Where, in any such proceedings as are referred to in Sub-rule (1), a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but—

- (a) there is a party in the same interest who assents to the compromise or on whose behalf the Court sanctions the compromise; or
- (b) the absent persons are represented by a person appointed under Sub-rule (1) and he so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

### **15. Trustee, etc. (8/15)**

(1) Where any proceedings, including proceedings to enforce a security by way of foreclosure or otherwise, are brought by or against a trustee, executor or administrator—

- (a) it shall not be necessary to join as a party any of the persons having a beneficial interest under the trust or in the estate; and
- (b) a judgement or order in the proceedings shall, subject to Sub-rule (2), be as binding on those persons as it is on the trustee, executor or administrator.

(2) Where a judgement is entered or an order is made in proceedings to which Sub-rule (1) applies and it appears to the Court that in those proceedings the trustee, executor or administrator could not or did not in fact represent the interests of the persons having a beneficial interest under the trust or in the estate, the Court may, in those or other proceedings, order, on terms, that the judgement so entered or the order so made shall not be binding on those persons.

(3) Sub-rule (1) does not limit the power of the Court to order the addition of parties under Rule 8.

### **16. Deceased person. (8/16)**

(1) Where in any proceedings it appears to the Court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party—

- (a) order that the proceedings continue in the absence of a person representing the estate of the deceased person; or

## **Order 5, Rule 17**

(b) by order (with the consent of the person appointed) appoint a person to represent that estate for the purposes of the proceedings.

(2) An order under Sub-rule (1), and any judgement or order subsequently entered or made in the proceedings, shall bind the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceedings.

(3) Before making an order under this Rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

### **17. Conduct. (8/17)**

The Court may give the conduct of the whole or any part of any proceedings to such person as it thinks fit.

## ***Division 2.—Disability.***

### **18. Reference to next friend. (63/1)**

Where it is necessary to refer to the office of a next friend, he shall be described as a next friend unless it is necessary to distinguish between a plaintiff and a defendant to an action or proceeding.

### **19. Need for next friend. (63/2)**

(1) Subject to Sub-rule (3), a disabled person may not, except by his next friend, bring or make a claim or carry on any proceedings for relief in the Court.

(2) Subject to Sub-rule (3), a disabled person may not, except by his guardian at law—

(a) defend any proceedings; or

(b) intervene in any proceedings; or

(c) appear in any proceedings under a judgement or order.

(3) Where, in any proceedings, a disabled person has a next friend, the disabled person may, by his next friend, commence, carry on or defend any claim in those proceedings for relief.

### **20. Conduct of proceedings by next friend. (63/3)**

(1) Subject to these Rules, where a disabled person is a party to any proceedings, anything which would, if he were not a disabled person, be required or authorized by these Rules to be done by him shall or may be done by his next friend.

(2) A next friend must act by a solicitor.

**21. Appointment of next friend generally. (63/4)**

(1) Subject to Sub-rule (5) and to Rules 22 and 24 an order appointing a next friend is not necessary.

(2) A disabled person may not be a next friend and a corporation may not be a next friend, but otherwise, and subject to Sub-rule (3), any person may be a next friend.

(3) A person may not be a next friend of a disabled person in any proceedings in which he has an interest adverse to the interest of the disabled person.

(4) A person shall not be made a next friend without his consent.

(5) Where a person has been or is next friend for a disabled person in any proceedings, no other person may, except on appointment by the Court, act as next friend for the disabled person in those proceedings.

(6) A person shall not take any step in any proceedings as next friend for a disabled person unless beforehand there have been filed—

(a) his consent to act; and

(b) a certificate by his solicitor that the next friend has no interest in the proceedings adverse to that of the disabled person.

**22. Appointment of next friend of mentally disordered person. (63/5)**

(1) Where a mentally disordered person has a committee or curator and the committee or curator has or may be given authority, under an Act, to bring or defend proceedings on behalf of the mentally disordered person, a person other than the committee or curator shall not, unless the Court otherwise orders, act as next friend of the mentally disordered person in proceedings which the committee or curator has or may be given authority to bring or defend.

(2) Where, after the commencement of proceedings, a party becomes a mentally disordered person, no step in the proceedings shall be taken by or against the mentally disordered person until a next friend for him has been appointed by the Court.

(3) A person shall not take any step in any proceedings as next friend for a mentally disordered person unless he has been appointed next friend by the Court or unless there has been filed (in addition to the documents mentioned in Rule 21(6))—

(a) in a case to which Sub-rule (1) applies—a certificate by the next friend that he is committee or curator for the mentally disordered person and specifying the date on which and the manner by which he became committee or curator; or

## **Order 5, Rule 23**

- (b) in a case to which Sub-rule (1) does not apply—a certificate by his solicitor that he knows or that he believes that that sub-rule does not apply and giving the grounds of his knowledge or belief

### **23. Notice of intention to defend by disabled person. (63/6)**

(1) Where originating process in any proceedings is served on a disabled person and a notice of intention to defend is required to be given by the disabled person within a limited time but no notice of intention to defend is given within that time, a party to the proceedings shall not take any step in the proceedings affecting the disabled person until a notice of intention to defend is given by a guardian at law for the disabled person.

(2) Where, in any proceedings, notice of a judgement or order is served on a disabled person and a notice of intention to defend is not given for the disabled person, the Court may stay proceedings under the judgement or order until a notice of intention to defend is given by a guardian at law for the disabled person.

(3) A person moving for an appointment under this Rule shall, unless the Court otherwise orders, serve a notice of the motion on the disabled person.

### **24. Appointment by the Court. (63/7)**

(1) The Court may, on motion by a party to proceedings or any other person, appoint a guardian at law for a disabled person for the purposes of the proceedings.

(2) The evidence on a motion for an appointment under Sub-rule (1) shall include evidence—

- (a) that the person for whom the guardian at law is proposed to be appointed is a disabled person; and
- (b) that the proposed guardian at law—
  - (i) consents to act; and
  - (ii) is a proper person for appointment; and
  - (iii) has no interest in the proceedings adverse to the interest of the disabled person; and
- (c) that the disabled person is in default of giving a notice of intention to defend, if that is the fact.

### **25. Removal. (63/8)**

(1) The Court may, on motion by a party to proceedings or by any other person or of its own motion—

- (a) remove a next friend; and

(b) stay the proceedings until appointment of a next friend in place of the next friend removed.

(2) A person moving for an order under this Rule shall, unless the Court otherwise orders, serve notice of the motion on the next friend whose removal is sought and on the disabled person for whom he is next friend.

**26. No imputed admission on pleadings. (63/9)**

Order 8 Rule 21(1) does not apply to an opposite party who is a disabled person.

**27. Discovery and interrogatories. (63/10)**

Order 9 Divisions 1 and 2 apply to a disabled person and to his next friend.

**28. Compromise of suits including infant settlements. (63/11)**

(1) Where proceedings have been commenced, and afterwards an agreement is made by the next friend in the proceedings of a disabled person for the compromise or settlement of any matter in dispute in the proceedings, the Court may approve or disapprove the agreement.

(2) An agreement approved by the Court under Sub-rule (1) is as binding on the disabled person as if the disabled person were not a disabled person and his next friend were his agent to make the agreement.

(3) An agreement disapproved by the Court under Sub-rule (1) is not binding on the disabled person.

**29. Compromise etc. before suit. (63/13)**

(1) Where a claim enforceable by proceedings in the Court is made by or on behalf of, or against, a disabled person and, before proceedings are commenced to enforce the claim, an agreement is made by or on behalf of the disabled person for the compromise or settlement of the claim, the Court may approve or disapprove the agreement.

(2) An agreement approved by the Court under Sub-rule (1) is as binding on the disabled person by or on whose behalf it is made as if the disabled person were not a disabled person and, where the agreement is made by another person on behalf of the disabled person, as if that other person were his agent to make the agreement.

(3) An agreement disapproved by the Court under Sub-rule (1) is not binding on a disabled person by or on whose behalf it is made.

(4) Notwithstanding Order 4 Rule 2 (cases where a writ of summons is required), a person may commence proceedings by originating summons for approval of an agreement under this Rule and may, by the summons, seek enforcement of the claim where the Court has refused to approve the agreement.

## **Order 5, Rule 30**

(5) Where, in proceedings by originating summons under this Rule, a claim is made under Part IV of the *Wrongs (Miscellaneous Provisions) Act 1962* the plaintiff shall file and serve with the summons full particulars of the matters specified in Section 32 of that Act.

(6) Where, in proceedings under this Rule, the Court does not approve an agreement but the plaintiff seeks to enforce the claim, the Court may give directions for the further conduct of the proceedings.

### **30. Terms of approval. (63/14)**

- (1) The Court may give its approval under Rule 28 or 29 on terms.
- (2) Without affecting the generality of Sub-rule (1), the Court—
  - (a) may, as a term of its approval, require that any money or other property payable or applicable to or for the benefit of a disabled person be dealt with by way of settlement or otherwise as the Court thinks fit for the benefit of the disabled person; and
  - (b) may make such orders as it thinks fit for the carrying out of its requirements under Paragraph (a).

### **31. Service. (63/15)**

(1) This Rule applies where, in any proceedings, a document is required to be served personally on a disabled person.

(2) Personal service on a disabled person shall not be effected otherwise than in accordance with this Rule.

(3) Where the disabled person has a next friend in the proceedings, the document may be served on the next friend.

(4) The document may be served on any person (including the disabled person) whom the Court may, before or after service, approve.

(5) Where the person to be served is an infant and has no next friend in the proceedings, the document may be served—

- (a) if he is aged 16 years or upwards—on him; or
- (b) on one of his parents or a guardian of his person or of his estate; or
- (c) if he has no parent and has no guardian of his person or of his estate—on a person with whom he resides or in whose care he is.

(6) Where the person to be served is a mentally disordered person and has no next friend in the proceedings, the document may be served—

- (a) if he has a committee or curator—on the committee or curator; or

## Order 5, Rule 32

(b) if he has no committee or curator—on a person with whom he resides or in whose care he is.

(7) A document served pursuant to any of Sub-rules (3) to (6) must be served in the manner required by the rules with respect to the document.

(8) A judgement or order requiring a disabled person to do, or refrain from doing, any act, a notice of motion for the committal of a disabled person, and a summons to a disabled person to give evidence must, in addition to any other service required by these Rules and notwithstanding Sub-rules (3) to (6), be served personally on the disabled person.

(9) Sub-rule (8) does not apply to an order for interrogatories or for discovery or inspection of documents.

(10) This Rule does not extend the jurisdiction of the Court over a disabled person absent from Papua New Guinea.

### **32. Payment into Court on behalf of disabled person. (63/12)**

(1) A next friend shall not, except by leave of the Court, bring money into Court under Order 8 Division 6 or accept money brought into Court under that Division.

(2) Money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of a disabled person shall, to the extent that it has not been paid into Court or otherwise dealt with in pursuance of an order of the Court under this Rule, be paid into Court.

(3) The Court may, in addition to the powers conferred on it by Section 15 of the *Infants Act* 1956, make an order directing how money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of a disabled person shall be dealt with, and in particular, may, by order, direct—

- (a) the payment of all or a part of the money to that person or his next friend in respect of expenses incurred by or paid for on behalf of the person or for his maintenance or benefit, or to his solicitor in respect of costs; and
- (b) the investment of all or a part of the money on behalf of the disabled person in the manner specified in the order; and
- (c) the investment of all or a part of the interest received from an investment under this Rule on behalf of the disabled person in the manner specified in the order; and
- (d) the variation of an investment made under this Rule; and

## **Order 5, Rule 33**

- (e) the sale of securities in which the money is invested under this Rule at such time and on such conditions as are specified in the order; and
  - (f) the payment of all or a part of the money, or the transfer of a security or investment under this Rule (including a savings bank account), to the person entitled to it.
- (4) The Registrar may, at any time, apply in writing to the Court for an order under this Rule directing how all or a part of the money shall be dealt with and the Court may make an order giving such directions in relation to the matter as it thinks fit.
- (5) A parent, guardian or next friend of an infant may, on behalf of the infant, request the Registrar to make an application under Sub-rule (4) for the payment out of moneys, invested under this Rule or remaining in Court, of an amount for the maintenance or benefit of the infant, and the Registrar shall make the application, together with his recommendations, accordingly.
- (6) A request under Sub-rule (5) shall—
- (a) be in writing; and
  - (b) specify the amount sought to be paid; and
  - (c) be supported by an affidavit, or, with the consent of the Registrar, a statutory declaration, verifying the amount sought to be paid and stating the reasons for the application.
- (7) Unless the Court otherwise orders, it shall not be necessary for a person to appear before the Court in connection with the making of an order under Sub-rule (3).
- (8) Where the Court has not made an order under this Rule for the investment or payment out of Court of all of the money paid into Court, the Registrar shall, on behalf of the disabled person, invest the money remaining in Court in the same manner as a trustee may invest trust funds under the law of Papua New Guinea, and shall invest in like manner the interest received from an investment under this Sub-rule.
- (9) This Rule does not prejudice the lien of a solicitor for costs.

### ***Division 3.—Business Names.***

#### **33. Interpretation of Division 3. (64/1)**

In this Division—

"the Act" means the *Business Names Act* 1963;

"business name" means a name, style, title or designation under which a person carries on a business, not being a name consisting of the name of that person and the name of each other person (if any) in association with whom that person carries on business, without any addition.

**34. Proceedings in business names. (64/2)**

Where a claim for relief is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within Papua New Guinea by that person under a business name and that business name is not, on the date on which proceedings in the Court for that relief are commenced, registered under and for the purposes of the Act, in relation to that person, then, subject to this Division—

- (a) the proceedings may be commenced and prosecuted against that person in that business name; and
- (b) that business name shall, for the purpose of the proceedings, be a sufficient designation of that person in any process or other legal document or instrument; and
- (c) any judgement given or order made in the proceedings may be enforced against that person or, where there are two or more such persons, against any of them.

**35. Service. (64/3)**

(1) Where a person is carrying on business within Papua New Guinea under a business name not registered under and for the purpose of the Act, in relation to that person, any originating process or other document in or relating to any proceedings may be served—

- (a) by leaving it at a place within Papua New Guinea where the business is carried on with some person apparently engaged (whether as servant or otherwise) in the business and apparently of or above the age of 16 years; or
  - (b) by sending it by certified mail addressed to the business name or to the person to be served and addressed to a place within Papua New Guinea where the business is carried on.
- (2) Sub-rule (1) applies whether the person to be served is sued in his own name or in a business name.
- (3) Service in accordance with Sub-rule (1) shall have effect as personal service.

## **Order 5, Rule 36**

(4) Where a document is served in accordance with either Sub-rule (1)(a) or (b) the place of service shall, for the purpose of the proceedings, be the place mentioned in that paragraph wherever (whether within Papua New Guinea or not) the person served may be at the time of service.

### **36. Notice of intention to defend. (64/4)**

(1) Where any person is sued in a business name, he shall not give a notice of intention to defend except in his own name.

(2) Where any person gives a notice in proceedings in which he is sued in a business name, he shall file and serve with his notice a statement of the names and places of residence of all the persons carrying on business under that business name on the date of commencement of proceedings.

(3) Where a person fails to comply with Sub-rule (2), the Court may order that his notice of intention to defend be struck out.

### **37. Amendments as to parties. (64/5)**

(1) Where proceedings are commenced against any person in a business name, the plaintiff shall, as soon as practicable, take all reasonable steps (whether by way of discovery of documents, interrogatories or otherwise) for the purpose of ascertaining the names of the defendant and shall, so far as practicable, make amendments so that the proceedings are continued against the person sued in his own name and not in his business name.

(2) Where proceedings are commenced against any person in a business name, the plaintiff shall not, without the leave of the Court, take any step in the proceedings, except in respect of service of the originating process and except for the purpose of compliance with Sub-rule (1), until amendments are made in accordance with that Sub-rule.

(3) Where an amendment is made under this Rule, the mode of amendment and service after amendment shall be in accordance with Order 8 Rules 56, 57 and 58.

(4) A party may make any amendment pursuant to Order 8 Rule 51 notwithstanding that he has made an amendment under this Rule.

### **38. Execution. (64/6)**

(1) Where proceedings against a person in a business name are continued by leave given under Rule 37, a judgement or order against that person in the business name shall not be enforced by execution except as specified in this Rule.

## **Order 5, Rule 40**

(2) A judgement or order against a person in a business name may be enforced by execution against any property of the business carried on under that name and, where the judgement or order is against partners, against any other property which is property of the partnership.

(3) In Sub-rule (2), the expression "property of the business", in relation to a judgment or order against a person in a business name, means all property and rights and interests in property, originally brought into the business carried on under that name or acquired, whether by purchase or otherwise, on account of the business, or for the purposes and in the course of the business, being property rights or interests of that person.

### **39. Variation of judgement or order. (64/7)**

(1) Notwithstanding Rule 38, the Court may vary a judgement or order against a person in a business name so as to make it a judgement or order against that person in his own name and, when so varied, the judgement or order may be enforced accordingly.

(2) Notice of a motion for a variation of a judgement or order under Sub-rule(1) shall be served personally on the person against whom the judgment was given or the order was made, and Rule 35 shall not apply to that service.

### **40. Discovery in aid of Rules 36 and 38. (64/8)**

(1) Where it appears to the Court that some person has or may have knowledge of facts, or has or may have in his possession, custody or power, any document or thing tending to assist in the ascertainment of the name or description or other identification of a defendant sued in a business name, the Court may, for the purpose of enabling amendments to be made under Rule 37 or a variation of a judgement or order to be made under Rule 39—

- (a) order that person to attend before the Court or an officer of the Court and be orally examined on any matter relating to the name or description or other identification of the defendant; and
- (b) order that person to produce any document or thing in his possession, custody or power relating to the name or description or other identification of the defendant; and
- (c) if that person is a corporation—order the corporation or any officer of the corporation to produce any document or thing in the possession, custody or power of the corporation relating to the name or description or other identification of the defendant.

(2) In Sub-rule (1), "description", in relation to a defendant, includes the place of residence, place of business, occupation and sex of the defendant.

(3) Order 3 Rules 2(2), 3 and 4 apply in relation to an order under this Rule as they apply in relation to an order under Rule 1 of that Order.

## **Order 6, Rule 1**

### **ORDER 6.—SERVICE OF DOCUMENTS.**

#### ***Division 1.—Service Generally.***

##### **1. Mode of service. (9/1)**

Any document required or permitted to be served in any proceedings may be served personally, but need not be served personally unless personal service is required by these Rules or by order of the Court.

##### **2. Originating process. (9/2)**

(1) Subject to any Act, and to these Rules, originating process shall be served personally on each defendant.

(2) The copy for service shall be signed and sealed as specified in Order 4 Rule 12.

(3) Where a defendant to any originating process serves a notice of intention to defend under Order 7, the originating process shall be taken to have been served on him personally on the date on which that notice is filed or on such earlier date as may be proved.

##### **3. Personal service: How effected. (9/3)**

(1) Personal service of a document may be effected by leaving a copy of the document with the person to be served or, if he does not accept the copy, by putting the copy down in his presence and telling him the nature of the document.

(2) Personal service of a document on a corporation may be effected by serving the document in accordance with Sub-rule (1) on the mayor, chairman or president of the corporation, or on the town clerk, clerk, secretary, treasurer or other similar officer of the corporation.

(3) Sub-rule (2) applies in addition to any provision for service on a corporation made by or under any Act.

##### **4. Ordinary service: How effected. (9/4)**

(1) Where personal service of a document is not required, the document may be served—

(a) by leaving a copy of the document at the proper address of the person to be served between the hours of 9 a.m. and 5 p.m. on any day on which the Registry is open; or

(b) by sending a copy of the document by pre-paid post addressed to the person to be served at his proper address.

## **Order 6, Rule 6**

(2) For the purpose of Sub-rule (1), the proper address of a person shall be the address for service of that person in the proceedings but if, at the time when the copy is left or posted pursuant to that Sub-rule, he has no address for service in the proceedings, his usual or last known place of business or of abode shall be his proper address.

(3) Where service of a document is made by pre-paid post under this Rule, service of the document shall, unless the contrary is proved, be deemed to have been effected at the time at which the document would be delivered in the ordinary course of post.

### **5. Identity. (9/4A)**

For the purpose of the proof of service, evidence of a statement by a person of his identity or that he holds some office is evidence of his identity or that he holds that office as the case may be.

### **6. Possession of land. (9/5)**

(1) Where in proceedings for possession of land, the Court is satisfied—

(a) that it appears that no person is in possession of the land; and

(b) that there is a defendant on whom the originating process cannot, apart from this Rule, be served without undue delay or expense,

the Court may authorize service of the originating process on that defendant by affixing a copy of the originating process to a conspicuous part of the land.

(2) Where, in proceedings for possession of land, the Court is satisfied—

(a) that a copy of the originating process has been affixed to a conspicuous part of the land; and

(b) that at the time when the copy was so affixed it appeared that no person was in possession of the land; and

(c) that there is a defendant on whom the originating process could not, apart from this Rule, be served without undue delay or expense,

the Court may order that the affixing of the copy have effect as service on that defendant.

(3) A party may apply for an order under this Rule without filing or serving a notice of the motion.

(4) This Rule has effect notwithstanding that the defendant is outside Papua New Guinea at the time of affixing the copy of the originating process.

## **Order 6, Rule 7**

### **7. Address for service. (9/6)**

(1) An address for service shall be the address, of a place within 15 km of the Registry, at which documents in the proceedings may, during ordinary business hours, be left for the person whose address for service it is and to which documents in the proceedings may be posted for that person.

(2) The address for service of a person represented by a solicitor shall be the office of the solicitor or of his Papua New Guinea agent, but in the case of a solicitor who has requested and been allocated by the Registrar a compartment in the Document Exchange Box located within the Registry then a deposit of a document in such compartment shall amount to ordinary service within the meaning of this Sub-rule.

(3) A person may change his address for service by filing a notice of the change showing his new address for service.

(4) A person who files a notice of a change of his address for service shall, on the date of filing, serve the notice on each party to the proceedings.

### **8. Acceptance by solicitor. (9/7)**

(1) This Rule applies to—

- (a) any originating process; and
- (b) any document required or permitted to be served in any proceedings, but not required to be served personally.

(2) Where a solicitor makes on a copy of a document to which this Rule applies a notice that he accepts service of the document on behalf of any person, the document shall be taken to have been duly served on that person on the date on which the solicitor makes the note or on such earlier date of service as may be proved.

### **9. Service on solicitor in court below. (9/8)**

(1) This Rule applies where—

- (a) a decision is given or a stated case is stated in proceedings in any court other than the National Court; and
- (b) on the date on which the decision is given or the stated case is stated a party to the proceedings below has a solicitor and an address for service for the purposes of the proceedings below; and
- (c) that address for service is a place within 15 km of the Registry and is the office of the solicitor or his agent; and
- (d) proceedings are commenced in the Court—
  - (i) instituting an appeal from the decision in the proceedings below; or

## **Order 6, Rule 10**

- (ii) for an extension of time for instituting an appeal from that decision, or proceedings on the stated case are commenced in the Court; and
  - (e) that party to the proceedings below is a defendant in the proceedings in the Court; and
  - (f) the plaintiff in the proceedings in the Court has not, before the date on which those proceedings are commenced, received notice that that solicitor has ceased to act for that defendant or that that address for service has ceased to be applicable.
- (2) In a case to which this Rule applies—
- (a) the plaintiff in the proceedings in the Court shall file and serve with the originating process a statement showing, in respect of the defendant mentioned in Sub-rule (1), the name of his solicitor and his address for service for the purposes of the proceedings below; and
  - (b) the solicitor shown in the statement shall be the solicitor for that defendant for the purposes of the proceedings in the Court, subject to change under Order 2, Division 5; and
  - (c) the address for service shown in the statement shall be the address for service of that defendant for the purposes of the proceedings in the Court, subject to change under Rule 7; and
  - (d) the originating process need not be served personally on that defendant, unless the Court otherwise orders.
- (3) The statement required by Sub-rule (2) may be subscribed to the originating process.
- (4) Where there are two or more defendants to whom Sub-rule (1) applies, the matters mentioned in Sub-rule (2)(a) shall be put in a single statement for all of them.

### **10. Service on agent of principal out of Papua New Guinea.**

- (1) Where the Court is satisfied that—
- (a) a contract has been entered into within Papua New Guinea with or through an agent who is either a natural person residing or carrying on business within Papua New Guinea or a corporation having a registered office or place of business within Papua New Guinea; and
  - (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such a natural person nor such a corporation; and

## **Order 6, Rule 11**

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations with the principal, the Court may authorize service of a writ of summons commencing an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this Rule authorizing service of a writ of summons on an agent shall limit a time for the notice of intention to defend of the defendant.

(3) An application under this Rule may be made *ex parte* supported by an affidavit stating the facts on which the application is founded.

(4) Where an order is made under this Rule authorizing service of a writ of summons on an agent, a copy of the order, the writ and the endorsements on it shall be sent by prepaid post to the defendant at his address out of Papua New Guinea.

### **11. Service under contract. (9/9)**

Where a defendant in any proceedings has, before or after the commencement of the proceedings, agreed that originating process or any other document in the proceedings may be served on the defendant or on some other person on behalf of the defendant in a manner or at a place (whether in or outside Papua New Guinea) specified in the agreement, service in accordance with the agreement shall be sufficient service on the defendant.

### **12. Substituted service. (9/10)**

(1) Where the service of any document is required or permitted in any proceedings and it is impracticable for any reason to serve the document or to serve the document in the manner required by or under any Act or by these Rules, the Court may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served.

(2) Every application to the Court for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds on which the application is made.

(3) Where the Court makes an order under Sub-rule (1), the Court may order that the document be taken to have been served on the happening of any specified event, or on the expiry of any specified time.

### **13. Informal service: Confirmation. (9/11)**

Where the service of any document on any person is required or permitted in any proceedings and it is impracticable for any reason to serve the document or to serve the document in the manner required by or under any Act or by these Rules, but steps for the purpose of bringing, or having a tendency to bring, the document to the notice of that person have been taken, the Court may, by order, direct that the document be taken to have been served on that person on a date specified in the order.

**14. Service by filing. (9/12)**

Where the service of any document on any person is required or permitted in any proceedings, but personal service is not required, and that person is in default of giving a notice of intention to defend, or has given such a notice but has no address for service in the proceedings, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that person.

**15. Husband and wife. (9/13)**

Subject to these Rules, where husband and wife are parties to proceedings, service on the husband shall not have effect as against the wife.

**16. Notice etc. by the Court. (9/14)**

Where, under these Rules or under any order, any notice or other document is to be given to or served on any party by the Court or any officer of the Court, the notice or document shall, unless these Rules otherwise provide or the Court otherwise orders, be sufficiently given or served if served in any manner in which a document not requiring personal service may be served under this Division.

**17. Injunction: Service. (9/15)**

Where the Court grants an interlocutory injunction, the party may serve notice of the injunction, if desired, by telegram or letter signed by or on behalf of the Registrar.

**18. Affidavit of service.**

An affidavit of service of a document shall state by whom the document was served, the day of the week and the date on which it was served and the manner of service.

***Division 2.—Service Outside Papua New Guinea. 19.***

**Cases for service of originating process. (10/1)**

Subject to Rule 20, originating process may be served outside Papua New Guinea where—

- (a) the proceedings are founded on a cause of action arising in Papua New Guinea; or
- (b) the proceedings are founded on a breach in Papua New Guinea of a contract wherever made, whether or not the breach is preceded or accompanied by a breach wherever occurring that renders impossible the performance of any part of the contract which ought to be performed in Papua New Guinea; or

## **Order 6, Rule 19(c)**

- (c) the proceedings are for the enforcement, rescission, dissolution, rectification or annulment of a contract, or otherwise affect a contract, or are for damages or other relief in respect of the breach of a contract, and the contract—
  - (i) is made in Papua New Guinea; or
  - (ii) is made on behalf of the person to be served by or through an agent carrying on business or residing in Papua New Guinea; or
  - (iii) is governed by the law of Papua New Guinea; or
- (d) the proceedings are founded on tort committed in Papua New Guinea; or
- (e) the proceedings are founded on, or are for the recovery of, damage suffered wholly or partly in Papua New Guinea caused by a tortious act or omission wherever occurring; or
- (f) the proceedings are for contribution or indemnity in respect of a liability enforceable by proceedings in the Court; or
- (g) the person to be served is domiciled or ordinarily resident in Papua New Guinea; or
- (h) the proceedings are proceedings in respect of which the person to be served has submitted to the jurisdiction of the Court; or
- (i) the proceedings are properly brought against a person served or to be served in Papua New Guinea and the person to be served outside Papua New Guinea is properly joined as a party to the proceedings; or
- (j) the subject matter of the proceedings so far as concerns the person to be served, is property in Papua New Guinea; or
- (k) the proceedings are for the perpetuation of testimony relating to property in Papua New Guinea; or
- (l) the proceedings concern the construction, effect or enforcement of an Act, or a regulation or other instrument having or purporting to have effect under an Act affecting property in Papua New Guinea; or
- (m) the proceedings are for the construction, rectification, setting aside or enforcement of a deed, will or other instrument, or of a contract, obligation or liability, affecting property in Papua New Guinea; or
- (n) the proceedings are for an injunction as to anything to be done in Papua New Guinea or against the doing of any act in Papua New Guinea whether damages are also sought or not; or
- (o) the proceedings are for the administration of the estate of a person who dies domiciled in Papua New Guinea or are for relief which might be granted in proceedings for administration of such an estate; or

## Order 6, Rule 20

- (p) the proceedings are for the execution of trusts which are governed by the law of Papua New Guinea, or are for relief which might be granted in proceedings for the execution of those trusts; or
- (q) the proceedings affect the person to be served in respect of his membership of a corporation incorporated in Papua New Guinea or of an association formed or carrying on any part of its affairs in Papua New Guinea; or
- (r) the proceedings concern the construction, effect or enforcement of an Act or a regulation or other instrument having or purporting to have effect under an Act; or
- (s) the proceedings concern the effect or enforcement of an executive, ministerial or administrative act done or purporting to be done under an Act or regulation or other instrument having or purporting to have effect under an Act; or
- (t) the action is brought by virtue of the *Civil Aviation (Aircraft Operators' Liability) Act 1975*; or
- (u) the proceedings are related to an arbitration held in Papua New Guinea; or
- (v) the proceedings, so far as concerns the person to be served, fall partly within one of the paragraphs of this Rule and partly within one or more of the other paragraphs.

### 20. Leave or confirmation. (10/2)

(1) Service outside Papua New Guinea of originating process is not valid under this Division unless—

- (a) the service is in accordance with the prior leave of the Court given under Sub-rule (2); or
- (b) the Court confirms the service under Sub-rule (7); or
- (c) the person served waives objection by giving notice of an intention to defend.

(2) Where the Court is satisfied—

- (a) that the proceedings are proceedings to which Rule 19 applies; and
- (b) that the applicant has a *prima facie* case for the relief he seeks,

the Court may, by order, grant leave to serve originating process in the proceedings outside Papua New Guinea under this Division.

(3) Every application for leave to serve originating process, or notice of it, shall be supported by affidavit or other evidence—

## **Order 6, Rule 21**

- (a) stating that, in the belief of the deponent, the plaintiff has a good cause of action; and
  - (b) showing in what place or country the defendant is, or probably may be found; and
  - (c) stating the grounds on which the application is made.
- (4) The Court shall not grant leave to serve originating process, or notice of it, out of Papua New Guinea unless the Court is satisfied that the case is a proper one for service out of Papua New Guinea under this Order.
- (5) Where the defendant is not within Papua New Guinea notice of the writ in Form 12, and not the writ itself, shall be served on him.
- (6) Where the Court grants leave to serve originating process out of Papua New Guinea, the Court may, in the order granting leave, specify a time to be inserted in the originating process or notice of it, within which the defendant served with it is to give notice of his intention to defend the claim.
- (7) Where originating process has been served outside Papua New Guinea without a prior motion for leave under Sub-rule (2), and the Court is satisfied—
- (a) on the matters mentioned in that Sub-rule; and
  - (b) that the failure to apply for leave is sufficiently explained,
- the Court may, on terms, by order confirm the service.

### **21. Other documents. (10/3)**

Service outside Papua New Guinea of a document other than originating process is valid if the service is in accordance with the prior leave of the Court or is confirmed by the Court.

### **22. Rules as to service generally. (10/4)**

(1) Subject to this Division and subject to any convention, these Rules apply to service outside Papua New Guinea under this Division as they apply to service inside Papua New Guinea.

(2) Subject to Sub-rule (1), and in Rule 23, notice of a writ should be served in the manner in which a writ of summons is served under these Rules.

### **23. Mode of service. (10/5)**

A document which is to be served outside Papua New Guinea need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.

***Division 3.—Procedure for Effecting Service Outside Papua New Guinea.***

**24. Application of Division 3. (10/7)**

(1) This Division applies to the service outside Papua New Guinea of a document for the purpose of proceedings in the Court.

(2) This Division shall not affect the operation of Division 2.

(3) This Division does not apply to, or render invalid or insufficient, a mode of service in a country, with which a convention has been made, extending to Papua New Guinea which is otherwise valid and sufficient according to the procedure of the Court and which is not expressly excluded by that convention.

**25. Service in foreign country.**

(1) Where a document in a proceeding is to be served in a foreign country with which a convention in that behalf subsists, the document may be served—

(a) through a judicial authority of that country; or

(b) through a Papua New Guinea consular authority in that country.

(2) Where a document in a proceeding is to be served in a foreign country with which a convention in that behalf does not subsist, the document may be served—

(a) through the government of that country, where that government is willing to effect service; or

(b) through a Papua New Guinea consular authority in that country unless service through such an authority is contrary to the law of that country.

**26. Requisite documents. (10/8)**

A person (in this Division called "the applicant") requiring a document to be served in another country may—

(a) lodge with the Registrar—

(i) the document to be served; and

(ii) unless English is an official language of the country concerned, a translation of the document in accordance with Rule 27; and

(iii) a copy of the document and of the translation for each person to be served; and

(iv) such further copies of the document and of the translation as the Registrar may direct or the convention may require; and

(v) if any special manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and

## **Order 6, Rule 27**

- (b) file—
  - (i) a copy of each of the documents in Paragraph (a); and
  - (ii) a request and undertaking in accordance with Rule 28.

### **27. Translation. (10/9)**

A translation of a document lodged under Rule 26 shall—

- (a) be a translation into an official language of the country in which service is required; and
- (b) bear a certificate, in that language, of the translator, stating his full name, address and qualifications for making the translation and certifying that it is a translation of the document.

### **28. Request and undertaking. (10/10)**

- (1) A request and undertaking filed under Rule 26 shall contain—
  - (a) a request by the applicant to the Registrar that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person; and
  - (b) if the applicant requires service pursuant to a convention a reference to the convention; and
  - (c) an undertaking by the applicant or his solicitor to pay to the Registrar an amount equal to the sum of all expenses incurred in consequence of the request for service.
- (2) The request and undertaking shall be in Form 13 or 14, as the case requires.
- (3) The request shall state the medium through which it is desired the service shall be effected, that is, whether—
  - (a) directly through the Papua New Guinea Consul; or
  - (b) through a foreign judicial authority.

### **29. Procedure on filing and lodgement. (10/11)**

Where documents are filed and lodged under Rule 26, the Registrar shall seal the documents lodged with the seal of the Court and shall send them to the Secretary for Justice for transmission for service, together with such letter of request (if any) as may be necessary.

**30. Evidence of service. (10/12)**

(1) Where the Registrar has sent documents to the Secretary for Justice under Rule 29 and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country concerned or of a Papua New Guinea consular authority in that country as to service or attempted service or non-service is filed, the certificate shall be sufficient proof of the matters stated in the certificate.

(2) Where an official certificate filed in the Court in the manner provided in Sub-rule (1), certifies or declares that efforts to serve a document have been without effect, the Court may, on the *ex parte* application of the plaintiff, order that the plaintiff may make a request for substituted service of the document.

(3) A request for substituted service of a document under this Rule, and the document and a copy of the document and of the order shall be sealed and transmitted to the Secretary for Justice in the manner described in Rule 29 together with such letter of request (if any) as may be necessary.

(4) Where a writ of summons or other originating process, or notice of a writ or other process, is served pursuant to this Rule and an official certificate of service is produced, an endorsement of service is not required.

**31. Order for payment of expenses. (12/13)**

Where a person has given an undertaking under Rules 26 and 28 and does not, within seven days after service on him of an account of expenses incurred in consequence of the request for service, pay to the Registrar the amount of the expenses, the Court may, on application by the Registrar—

- (a) order the applicant to pay the amount of the expenses to the Registrar; and
- (b) stay the proceedings until payment, so far as concerns the whole or any part of any claim for relief, by the applicant.

***Division 4.—Service in Papua New Guinea of External Process.***

**32. Application of Division 4. (57/1)**

This Division applies to the service in Papua New Guinea of any document required in connection with civil proceedings pending before a court or other tribunal in a place outside Papua New Guinea, where a letter of request from the court or tribunal is received by the Registrar whether pursuant to a convention which has been extended to Papua New Guinea or otherwise from a proper authority.

**33. Requisite documents. (57/2)**

(1) In order that service may be effected in accordance with this Division, there must be delivered to the Registrar, unless he otherwise directs—

## **Order 6, Rule 34**

- (a) the document to be served and two copies of it; and
- (b) the letter of request and a copy of it; and
- (c) if the document to be served or the letter of request is not in English—a translation in English of the document or letter, as the case may be, and a copy of the translation.

(2) Instead of translated copies of the document forwarded with the letter of request, it shall be sufficient if each copy of the document is endorsed with an annotation in the English language, stating as precisely as possible the name and address of the person on whom the document is to be served, the nature of the document, and the names of the parties.

(3) Where the document to be served is annotated in accordance with Sub-rule (2), it shall not be necessary to leave with the person served a translated copy of the document.

### **34. Service. (57/3)**

(1) The Registrar shall request the Sheriff or some other person to serve the document.

(2) Subject to the provisions of the convention (if any) the document may be served in any manner in which originating process in proceedings in the Court may be served, including substituted service pursuant to Rule 13.

(3) Court fees shall not be charged for the service, but the fees to be paid to the Sheriff shall be the same as those payable for the service of similar documents issued out of the Court.

(4) Particulars of the charges of the person or agent who effects service shall be submitted to the Registrar, who shall certify the amount properly payable.

(5) The Court may make all such orders for substituted service or otherwise as are necessary to give effect to this Division.

(6) Proceedings for an order for substituted service shall be commenced by the State Solicitor by originating summons and the summons shall not join any person as a defendant.

### **35. Affidavit of service. (57/4)**

After the document has been served or attempts to serve the document have failed, the process server shall file an affidavit made by the person who served or attempted to serve the document stating when, where and how he did so and the costs incurred.

### **36. Certificate. (57/5)**

(1) Where the request for service is made pursuant to a convention, the Registrar shall give either—

## Order 6, Rule 37

- (a) a certificate—
    - (i) certifying that the document or a copy of it, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and
    - (ii) certifying the amount of the costs incurred; or
  - (b) such other certificate as is appropriate to the terms of the letter of request.
- (2) Where the request for service is not made pursuant to a convention, the Registrar shall give either—
- (a) a certificate—
    - (i) annexing the letter of request, and a copy of the document to be served and of any translation, and a copy of the affidavit under Rule 35; and
    - (ii) identifying the annexures; and
    - (iii) certifying that the manner of service of the document and the proof of service are such as are required by the rules of the court regulating the service of originating process of the Court in Papua New Guinea or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and
    - (iv) certifying the amount of the costs incurred; or
  - (b) such other certificate as is appropriate to the terms of the letter of request.
- (3) The certificate shall be sealed with the seal of the Court.
- (4) The Registrar shall send the certificate to the Secretary for Justice, or, if the letter of request or any relevant convention so requires, to the appropriate consul or other authority.

### **37. Private service of external process not affected.**

This Division shall not prevent the service of external process otherwise than in accordance with these Rules.

## **Order 7, Rule 1**

### **ORDER 7.—NOTICE OF INTENTION TO DEFEND.**

#### **1. Notice of intention to defend by solicitor or in person. (11/1)**

(1) A defendant may give a notice of intention to defend and may defend proceedings by a solicitor or in person.

(2) Where a defendant is a disabled person Sub-rule (1) has effect subject to Order 5 Rules 19 and 20.

(3) Notwithstanding Sub-rule (1), but subject to any Act, a corporation may not give a notice of intention to defend or defend any proceedings except by a solicitor.

#### **2. No step without notice of intention to defend. (11/2)**

Subject to these Rules, a person shall not, except by leave of the Court, take any step in any proceedings unless, before taking the step, he has filed originating process in the proceedings or has given a notice of intention to defend in the proceedings.

#### **3. Mode of giving. (11/3)**

(1) A notice of intention to defend may be given by filing it in or by posting it to the Registry.

(2) Two or more persons giving a notice of intention to defend by the same solicitor on the same date may do so by a single notice.

(3) The date of giving a notice of intention to defend shall be the date when the notice is received in the Registry.

#### **4. Notice of intention to defend. (11/4)**

(1) A notice of intention to defend shall show—

- (a) the name, address and occupation of the person giving the notice; and
- (b) where the person giving the notice does so by a solicitor—the name, business address and telephone number of the solicitor; and
- (c) where the person giving the notice does so by a solicitor and that solicitor has another solicitor as agent for him in the proceedings the name, business address and telephone number of the agent; and
- (d) an address for service.

(2) Where any address shown in a notice of intention to defend is not genuine, the plaintiff may, with the leave of the Court, continue the proceedings as if the notice had not been given.

(3) The notice of intention to defend shall be in Form 15.

**5. Copies and service. (11/5)**

(1) A defendant may, when filing a notice of intention to defend, tender one or two copies of the notice and request that the copies be dealt with in accordance with Sub-rule (3).

(2) A defendant may, when posting a notice of intention to defend to the Registry, send one or two copies of the notice and request that the copies be dealt with in accordance with Sub-rule (3).

(3) Where a notice of intention to defend is received in the Registry together with one or two copies and a request that the copies be dealt with in accordance with this Sub-rule—

(a) the copies shall be marked by the Registrar with the date of receipt of the notice; and

(b) a copy shall be posted by the Registrar to the plaintiff at his address for service; and

(c) the second copy (if any) shall be posted by the Registrar to the defendant at his address for service.

(4) Unless a copy of a notice is tendered with a request for postage in accordance with Sub-rule (3)(b) the defendant shall, on the date of filing the notice, serve a copy of the notice on the plaintiff.

**6. Late notice. (11/6)**

(1) A defendant may give a notice of intention to defend at any time without leave.

(2) Where a defendant gives a notice after the time limited for doing so, he shall not, unless the Court otherwise orders, be entitled to file a defence or do any other thing later than if he had given a notice of intention to defend within that time.

**7. Conditional notice.**

(1) The giving of a notice of intention to defend does not constitute a submission to the jurisdiction of the Court.

(2) A defendant shall be entitled, either before giving notice of intention to defend or within 14 days after giving that notice, to serve a notice of motion to set aside the service on him of the writ or of notice of the writ or to discharge the order authorizing the service on the ground that—

(a) the Court has no jurisdiction to determine all or part of the plaintiff's claim;  
or

(b) the issue or service of the writ was irregular; or

(c) an order giving leave to serve the writ or notice of the writ out of the jurisdiction ought not to have been made; or

## **Order 7, Rule 8**

(d) the defendant has been served as a partner in a firm of which he was not a partner or liable as such at any material title.

(5) After the service of the notice of motion the plaintiff shall not be entitled to enter judgement in default of defence or take any other step in the action without the leave of the Court.

### **8. Setting aside originating process, etc. (11/8)**

The Court may, on motion made by a defendant under Rule 7, by order—

- (a) set aside the originating process; or
- (b) set aside the service of the originating process on the defendant; or
- (c) declare that the originating process has not been duly served on the defendant; or
- (d) discharge any order giving leave to serve the originating process outside Papua New Guinea or confirming service of the originating process outside Papua New Guinea.

### **9. Objection to file defence not affected.**

The filing of a notice of intention to defend under this Order does not relieve the defendant from any obligation under these Rules to file a defence or other pleading.

### **10. Person not named may defend for land.**

Any person not named as a defendant in a writ of summons for the recovery of land may, by leave of the Court, appear and defend on filing an affidavit showing that he is in possession of the land either by himself or his tenant, and the Court may strike out or confine defences set up by persons not in possession by themselves or their tenants.

### **11. Landlord to appear as such.**

Any person appearing to defend an action for the recovery of land as landlord in respect of property of which he is in possession only by his tenant, shall state in his notice of intention that he appears as landlord.

### **12. Person appearing to be named as defendant.**

Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court to defend, he shall give notice of his intention to defend according to the preceding Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall immediately serve a copy of that notice on the plaintiff's solicitor, or on the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

**13. Defence may be limited.**

Any person giving notice of intention to defend a writ of summons for the recovery of land may limit his intended defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his notice.

## **Order 8, Rule 1**

### **ORDER 8.—PLEADINGS.**

#### ***Division 1.—Preliminary.***

##### **Subdivision A.—Introductory.**

#### **1. Application of Division 1. (15/1)**

This Division applies to proceedings commenced by writ of summons but, subject to these Rules, not to proceedings commenced by originating summons.

#### **2. Trial without further pleadings. (15/2)**

(1) Where, in the opinion of the Court—

- (a) the issues between the parties can be defined without further pleadings; or
- (b) for any other reason the proceedings can properly be tried without further pleadings,

the Court may on application by a party, order that the proceedings be so tried.

(2) Where the Court makes an order under Sub-rule (1)—

- (a) the Court may direct the parties to prepare a statement of the issues or, if the parties do not agree on a statement of the issues, may settle the statement itself; and
- (b) the proceedings shall, on the hearing of the application for an order under Sub-rule (1), be before the Court for directions.

(3) Where the Court dismisses an application for an order under Sub-rule (1), the Court may, on application by any party or of its own motion, order that the proceedings be before the Court for directions, either immediately or on such date as the Court may direct.

##### **Subdivision B.—Particular Pleadings.**

#### **3. Statement of claim.**

Unless the Court gives leave to the contrary or a statement of claim is endorsed on the writ, the plaintiff must file and serve on the defendant or, if there are two or more defendants, on each defendant, a statement of claim and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant gives notice of his intention to defend.

#### **4. Defence. (15/3)**

(1) Subject to Sub-rule (2), a defendant shall file and serve on the plaintiff his defence in Form 16—

## **Order 8, Rule 7**

- (a) where the statement of claim is endorsed on the writ—before the expiry of 14 days after the date of expiry of the time limited for him to give notice of intention to defend; or
  - (b) where the statement of claim is not endorsed on the Writ—before the expiry of 14 days from the date of service of the statement of claim; or
  - (c) in the case of a defendant to a cross-claim who is not required to give notice of intention to defend the cross-claim—before the expiry of 21 days after the date of service of the cross-claim on him.
- (2) Where, before the date on which a defendant files his defence, a plaintiff serves on that defendant notice of a motion under Order 12 Rule 38 for summary judgement on any claim for relief or part of any claim for relief—
- (a) Sub-rule (1) shall not apply to that defendant; but
  - (b) if, on the motion for summary judgement, the Court does not dispose of all the claims for relief against the defendant the Court may order him to file and serve his defence before the expiry of a time fixed by the Court.
- (3) This Rule does not apply to proceedings on a cross-claim for contribution to which Rule 48(2) applies.

### **5. Reply. (15/4)**

- (1) Where a defendant serves a defence on a plaintiff and a reply is needed for compliance with Rule 14 or Rule 87 (defamation), the plaintiff shall file and serve the reply in Form 17 before the expiry of 14 days after the date of service on him of the defence.
- (2) Where a plaintiff files both a reply and a defence to a cross-claim in Form 18, he shall put them in one document.

### **6. Rejoinder, etc. (15/5)**

A party shall not, except with the leave of the Court, file any pleadings subsequent to a reply.

## **Subdivision C.—Form and Manner of Pleading.**

### **7. Paragraphs. (15/6)**

Where a plaintiff alleges or otherwise deals with several matters—

- (a) the pleading shall be divided into paragraphs; and
- (b) each matter shall, so far as convenient, be put in a separate paragraph; and
- (c) the paragraphs shall be numbered consecutively.

## **Order 8, Rule 8**

### **8. Facts, not evidence. (15/7)**

(1) A pleading of a party shall contain only a statement in a summary form of the material facts on which he relies, but, subject to these Rules, not the evidence by which those facts are to be proved.

(2) Sub-rule (1) has effect subject to this Division and to Order 4 Division 2 (originating process) and to Division 2 (particulars).

### **9. Brevity. (15/8)**

A pleading shall be as brief as the name of the case admits.

### **10. Documents and spoken words. (15/9)**

Where any document or spoken words are referred to in a pleading—

- (a) the effect of the document or of the spoken words shall, so far as material, be stated; and
- (b) the precise terms of the document or spoken words shall not be stated, except so far as those terms are themselves material.

### **11. Presumed facts. (15/10)**

A party need not plead a fact if—

- (a) the fact is presumed by law to be true; or
- (b) the burden of disproving the fact lies on the other party,

except so far as may be necessary to meet a specific denial of that fact by the other party in his pleading.

### **12. Condition precedent. (15/11)**

Where it is a condition precedent necessary for the case of a party in any pleading that a thing has been done or an event has happened, a statement that the thing has been done or that the event has happened shall be implied in the pleading.

### **13. Money claims. (15/12)**

(1) This Rule applies where the plaintiff claims money payable by the defendant to the plaintiff for—

- (a) goods sold and delivered by the plaintiff to the defendant; or
- (b) goods bargained and sold by the plaintiff to the defendant; or

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<sup>2</sup> The words ‘subject to these Rules’ inserted by *Rules of the National Court of Justice (Underlying Law Amendment)* 2011.

## **Order 8, Rule 14**

- (c) work done and materials provided by the plaintiff for the defendant at his request; or
  - (d) money lent by the plaintiff to the defendant; or
  - (e) money paid by the plaintiff for the defendant at his request; or
  - (f) money had and received by the defendant for the use of the plaintiff; or
  - (g) interest on money due from the defendant to the plaintiff and forborne at interest by the plaintiff to the defendant at his request; or
  - (h) money found to be due from the defendant to the plaintiff on accounts stated between them.
- (2) Subject to Sub-rules (3) and (4) it shall be sufficient to plead the facts in the manner appearing in Sub-rule (1).
- (3) The defendant may, within the time limited for filing his defence, file and serve on the plaintiff a notice in Form 19 that the defendant requires the plaintiff to plead the facts on which he relies in accordance with this Division other than this Rule.
- (4) Where a defendant files and serves a notice pursuant to Sub-rule (3)—
- (a) the plaintiff shall, within 14 days after service of the notice on him, amend his statement of claim so as to plead the facts on which he relies in accordance with this Division other than this Rule; and
  - (b) the time for the defendant to file his defence shall not expire before the lapse of 14 days after service on him of the amended statement of claim or of notice of the amendments to the statement of claim.
- (5) Rules 56, 57 and 58 (mode of amendment and service after amendment) apply to an amendment under this Rule.
- (6) A plaintiff may amend his statement of claim under Rule 51 notwithstanding that he had amended it under this Rule.
- (7) This Rule does not affect the provisions of Division 2 concerning particulars.
- (8) A defendant may add a notice under Sub-rule (3) to his notice of intention to defend.

### **14. Matters for specific pleading. (15/13)**

In a defence or subsequent pleading the party pleading shall plead specifically any matter, for example, performance, release, any statute of limitation, fraud, or any fact showing illegality—

- (a) which he alleges makes any claim, defence or other case of the opposite party not maintainable; or

## **Order 8, Rule 15**

- (b) which, if not pleaded specifically, may take the opposite party by surprise; or
- (c) which raises matters of fact not arising out of the preceding pleadings.

### **15. Contributory negligence. (15/14)**

A defendant who relies on contributory negligence shall plead the contributory negligence.

### **16. Possession of land: Defence. (15/15)**

In proceedings for the possession of land—

- (a) a defendant shall plead specifically every ground of defence on which he relies; and
- (b) it shall not be sufficient for a defendant to state that he is in possession of the land by himself or his tenant.

### **17. New matter. (15/16)**

A party may plead any matter notwithstanding that the matter has arisen after the commencement of the proceedings.

### **18. Departure. (15/17)**

A party shall not in any pleading make an allegation of fact, or raise any ground or claim, inconsistent with his own previous pleading.

### **19. Alternative allegations of fact, etc.**

Rule 18 does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

### **20. Points of law. (15/18)**

A party may by his pleadings raise any point of law.

## **Subdivision C1.—Pleading the Underlying Law.**

### **20A. The Underlying Law Act 2000.**

- (1) Interpretation and application.
  - a. This Subdivision C1 shall also apply to proceedings commenced by Originating Summons.
  - b. In this rule terms have the same meaning that they have in the *Underlying Law Act 2000*.
  - c. In this rule the term "*Constitutional rights*" means the National Goals and Directive Principles and Basic Social Obligations established in the *Constitution* and the basic rights guaranteed by Division III.3 (Basic Rights) of the *Constitution*.

**Order 8, Rule 20A(4)(b)**

(2) Every pleading which does not state whether or not a rule of customary law is applicable shall be deemed to plead that no rule of customary law is applicable.

(3) Where a party pleads that a rule of customary law exists but should not apply that party shall plead the particulars of the rule and whether or not the rule of customary law:

- a. Is inconsistent with a written law;
- b. Its application or enforcement, would be contrary to the Constitutional rights; and
- c. The facts and circumstances on which the party relies to contend that the rule of customary law should not apply.

(4) Where a party pleads that the Court should apply:

- a. A rule of customary law, that party shall plead:
  - i. the particulars of the rule, the source of the rule and the factual circumstances in respect of which the rule is applicable;
  - ii. the nature and source of the evidence or information which the party will adduce to assist the court;
  - iii. and shall be deemed to have pleaded:
    1. the rule is not inconsistent with the written law;
    2. the rule is consistent with the Constitutional rights.
- b. A rule of common law, which is not part of the underlying law, that party shall plead:
  - i. whether any rule of customary law is applicable, and if so, the facts and circumstances on which the party relies to contend that the Court should not apply the rule of customary law;
  - ii. the rule of common law, the source of the rule (including case citations) and the factual circumstances in respect of which the rule is applicable;
  - iii. the nature and source of the evidence or information that party will adduce to assist the court;
  - iv. and the party shall be deemed to have pleaded that the adoption of the proposed rule of common law:
    1. is not inconsistent with the written law; and
    2. is applicable and appropriate to the circumstances of the country, and

## **Order 8, Rule 20A(4)(c)**

3. is consistent with any applicable rule of the customary law; and
  4. or its application or enforcement, would not be contrary to the Constitutional rights.
- c. A new rule of the underlying law, that party shall:
- i. be deemed to have pleaded that the written law, the customary law and the underlying law do not apply to the subject matter of the proceeding;
  - ii. plead the particulars of all of the matters which the party contends the Court should have regard to including:
    1. the Constitutional rights;
    2. analogies drawn from the relevant written law and customary law; and
    3. the laws of a foreign country relevant to the subject matter of a proceeding.
    4. the nature and source of the evidence or information that party will adduce to assist the court.
- d. A newly formulated rule of the underlying law that party shall plead:
- i. the formulated rule of the underlying law that the party seeks to have applied;
  - ii. the facts and circumstances on which the party relies to contend that a rule of the underlying law is no longer applicable to the circumstances of the country;
  - iii. particulars of all of the matters which the party contends the Court should have regard to including:
    1. the Constitutional rights;
    2. the laws of a foreign country relevant to the subject matter of a proceeding;
    3. the nature and source of the evidence or information that party will adduce to assist the Court.

## **Subdivision D.—Progress of Pleading.**

### **21. Admissions and traverse. (15/20)**

(1) Subject to Sub-rule (3), an allegation of fact made by a party in his pleading shall stand admitted by any opposite party required to plead to that pleading unless it is traversed by that opposite party in his pleading or a joinder of issue under Rule 22 operates as a denial of it.

(2) A traverse may be either by a denial or by a statement of non-admission, and either expressly or by necessary implication, and either generally or as to any particular allegation.

(3) Where a pleading makes an allegation of the suffering of damage, or an allegation of an amount of damages, a pleading to that pleading by an opposite party shall be taken to traverse the allegation, unless the allegation is specifically admitted.

**22. Joinder of issue. (15/21)**

(1) If there is no reply to a defence, there shall be an implied joinder of issue on that defence.

(2) Subject to Sub-rule (3)—

(a) there shall be, at the close of pleadings, an implied joinder of issue on the pleading last filed; and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There shall be no joinder of issue on a statement of claim.

(4) A joinder of issue operates as a denial of every allegation of fact made in the pleading on which there is a joinder of issue, unless, in the case of an express joinder of issue, any allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue shall operate as a denial of every other allegation of fact.

**23. Close of pleadings. (15/22)**

(1) The pleadings on a statement of claim shall, unless the Court otherwise orders, be closed, as between any plaintiff and any defendant, on the date of expiry of the last of the times fixed by or under these Rules for filing a defence or reply or other pleading between those parties on the statement of claim.

(2) Sub-rule (1) shall have effect notwithstanding that, on the date mentioned in that Sub-rule, a request or order for particulars has been made but has not been complied with.

**Subdivision E.—General.**

**24. Defence: Verification. (15/23)**

(1) Where a plaintiff, by his statement of claim, makes a claim against a defendant for a liquidated demand, but no other claim, and the statement of claim bears a note requiring the defendant to verify his defence, the defendant shall verify his defence, that is to say, he shall, within the time limited for filing his defence, file an affidavit verifying his defence to the claim in accordance with this Rule.

## **Order 8, Rule 25**

(2) Subject to Sub-rule (4) the deponent making an affidavit verifying a defence shall, in the affidavit, swear that the defence is true in substance and in fact.

(3) An affidavit verifying a defence may be made—

(a) by the defendant; or

(b) where the defendant is a Minister or officer of the Government of Papua New Guinea sued in his official capacity—by some officer of the Government having knowledge of the facts; or

(c) where the defendant is a corporation or a body of persons which, by law, may be sued (whether in its own name or in the name of any officer or other person) by some member or officer of the corporation or body having knowledge of the facts; or

(d) where the defendant is a disabled person—by his guardian at law.

(4) The Court may, by order, give leave to a defendant to file, instead of an affidavit in accordance with Sub-rules (2) and (3), an affidavit by such deponent and as to such facts in or towards verification of his defence, or instead of verification of his defence, as the Court may determine.

(5) A defendant may apply for an order under Sub-rule (4) without filing or serving notice of the motion.

(6) A defendant filing an affidavit verifying his defence shall, on the day of filing, serve the affidavit and, where the affidavit is filed pursuant to an order under Sub-rule (4), serve the order, on the plaintiff.

(7) The affidavit required by or under this Rule in relation to a defence may be subscribed to the defence.

### **25. Tender. (15/24)**

Where in any proceedings a defence of tender before the commencement of the proceedings is pleaded, the defendant shall bring into Court in accordance with Division 6 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until the amount has been brought into Court.

### **26. Set-off. (15/25)**

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by a plaintiff, it may be included in the defence and set off against the plaintiff's claim, whether or not the defendant also cross-claims for that sum of money.

### **27. Embarrassment, etc. (15/26)**

(1) Where a pleading—

(a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading; or

(b) has a tendency to cause prejudice, embarrassment or delay in the proceedings; or

(c) is otherwise an abuse of the process of the Court,

the Court may at any stage of the proceedings, on terms or otherwise, order that the whole or any part of the pleading be struck out.

(2) The Court may receive evidence on the hearing of an application for an order under Sub-rule (1).

**28. General issue abolished. (15/27)**

A party shall not plead the general issue.

***Division 2.—Particulars.***

**29. General. (16/1)**

(1) A party pleading shall give the necessary particulars of any claim, defence or other matter pleaded by him.

(2) Rules 30 to 34 do not affect the generality of Sub-rule (1).

**30. Fraud, etc. (16/2)**

A party pleading shall give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which he relies.

**31. Condition of mind. (16/3)**

(1) A party pleading any condition of mind shall give particulars of the facts on which he relies.

(2) In Sub-rule (1) "condition of mind", includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

**32. Negligence: Breach of statutory duty. (16/4)**

(1) In proceedings on a claim for damages in tort, a party pleading negligence (whether contributory or otherwise) or breach of statutory duty shall give particulars of the matter pleaded.

(2) The particulars required by Sub-rule (1) shall be a statement of the facts, but not of the evidence by which the facts are to be proved, on which the party relies as constituting the negligent act or omission or the breach of statutory duty alleged in the pleading.

(3) If the party relies on more than one negligent act or omission or breach of statutory duty, the particulars required by Sub-rule (1) shall, so far as practicable, state separately each negligent act or omission or breach of statutory duty on which he relies.

## **Order 8, Rule 33**

### **33. Particulars to be given in death or personal injuries cases.**

(1) Where a claim is made by the plaintiff for damages for breach of duty, and the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person the statement of claim endorsed on the writ of summons shall set forth full particulars of the claim, including—

- (a) the date and place of birth of each plaintiff; and
- (b) a statement in summary form, of the material facts relied on as giving rise to the cause of action; and
- (c) particulars of the injuries alleged to have been sustained by each plaintiff; and
- (d) where relevant, a statement in summary form of the medical treatment received by each plaintiff; and
- (e) where relevant, a statement as to whether or not with respect to each injured plaintiff that plaintiff has sustained any permanent disability and, if so, particulars of that disability; and
- (f) particulars required by any Act under which a claim is brought; and
- (g) details of each item of special damages claimed, including wages and other economic loss, both present and future; and
- (h) particulars of the alleged negligence of the defendant, where negligence is alleged; and
- (i) where relevant, the average weekly earnings (less income tax) of each plaintiff during the months previous to the injury and the period employed during those months; and
- (j) where relevant, the average weekly amount which each plaintiff is earning or is able to earn in some suitable employment or business after the injury; and
- (k) where relevant, the payment, allowance or benefit received from his employer by each plaintiff during the period of his incapacity; and
- (l) where relevant, particulars of the persons dependent on the plaintiff's earnings,

set out, as far as may be practicable, in that order.

(2) The claim shall conclude with a summary of the relief claimed, without quantifying either general damages or costs.

(3) In this rule, "personal injuries" includes any disease and any impairment of a person's physical, nervous or mental condition.

## **Order 8, Rule 36**

(4) The particulars of claim referred to in Sub-rule (1) shall, for all purposes of these Rules, be treated as a statement of claim.

(5) Rule 13(3), (4) and (5) shall apply, with appropriate modifications, to the particulars of claim referred to in Sub-rule (1).

### **34. Out of pocket expenses. (16/5)**

Where, in proceedings on a common law claim, a party pleading claims damages which include moneys which he has paid or is liable to pay, he shall give particulars of those moneys.

### **35. Manner of giving particulars. (16/6)**

(1) Where any of Rules 29 to 32 or Rule 34 require particulars of any pleadings to be given, the particulars shall be set out in the pleading or, if that is inconvenient, shall be set out in a separate document referred to in the pleading and that document shall be filed and served with the pleading.

(2) Notwithstanding Sub-rule (1), where the necessary particulars of debt, expenses or damages exceed three folios and have, before the date on which the pleading is filed, been given to the party on whom the pleading is required to be served, and the pleading shows the date on which the particulars were given—

(a) Sub-rule (1) shall not require that the particulars be filed or served; but

(b) the Court may order that a copy of the particulars be filed and served.

### **36. Order for particulars. (16/7)**

(1) The Court may, on terms, order a party to file and serve on any other party—

(a) particulars of any claim, defence or other matters stated in his pleading, or in any affidavit ordered to stand as his pleading; or

(b) a statement of the nature of the case on which he relies.

(2) Without limiting the generality of Sub-rule (1) where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may, on terms, order that party to file and serve on any other party—

(a) where he alleges knowledge—particulars of the facts on which he relies; and

(b) where he alleges notice—particulars of the notice.

(3) The Court shall not make an order under this Rule before the filing of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

## **Order 8, Rule 37**

### ***Division 3.—Cross-claims. 37.***

#### **Application of Division 3.**

- (1) This Division applies to proceedings commenced by writ of summons.
- (2) This Division applies to proceedings commenced by originating summons to such extent and with such modifications as the Court may direct.

#### **38. Commencement.**

- (1) A party against whom a claim is made in proceedings and who claims relief by way of counter-claim, cross-action, set-off, third party claim or otherwise may make his claim by filing a pleading by way of cross-claim in those proceedings.
- (2) A cross-claimant may file a cross-claim within the time fixed for filing his defence.

#### **39. Form.**

- (1) A cross-claim shall be in Form 20 or 21 as the case requires.
- (2) A cross-claim shall be intitled in the proceedings with an addition showing the names of the parties to the cross-claim.
- (3) Where a cross-claimant cross-claims solely against a party who claims in the proceedings against the cross-claimant, the cross-claimant may add the cross-claim to his defence.
- (4) Where there are two or more cross-claims, the second cross-claim to be filed shall be called the second cross-claim, the third to be filed shall be called the third cross-claim, and so on.
- (5) Subject to Rule 27 (embarrassing pleadings and the like), a cross-claimant may, in his cross-claim, plead all or any of the facts on which he relies by reference to the prior pleadings in the proceedings.
- (6) A cross-claimant shall, in addition to pleading any other facts on which he relies, plead the facts showing that the claim is one which may be made in the proceedings.
- (7) Order 4 Rule 7 (claims for relief in originating process) applies to a cross-claim whether or not the cross-claim is an originating process.

#### **40. Title. (6/3)**

On a cross-claim being filed, a document afterwards filed or used in the proceedings shall be intitled in the manner in which the cross-claim is intitled.

#### **41. Directions. (6/4)**

- (1) A party to the proceedings may, at any time after the filing of a cross-claim, move for directions.

## **Order 8, Rule 43**

(2) On a motion for directions under this Rule, or on the trial of the cross-claim, the Court may, on such terms as it thinks fit—

- (a) make any order or direction which it considers necessary; and
- (b) order that any claim, question or issue in or arising on the cross-claim be tried in such manner as the Court may direct; and
- (c) give to a defendant to the cross-claim leave to defend the claim on the statement of claim or any other cross-claim in the proceedings, either alone or in addition to any other party; and
- (d) give to a defendant to the cross-claim leave to appear at the trial of the claim on the statement of claim or on any other cross-claim in the proceedings and to take such part in the trial as the Court thinks fit; and
- (e) dismiss the cross-claim; and
- (f) determine the extent to which the cross-claimant and a defendant to the cross-claim shall be bound as between themselves by a judgement (including a judgement by consent or by default) or decision (including a decision by consent) on the claim on the statement of claim or any other cross-claim in the proceedings; and
- (g) direct the entry of such judgement as the nature of the case may require; and
- (h) give such directions as the Court thinks fit for having the rights and liabilities of the parties determined and enforced, including any order or direction which may be made or given under this Division.

### **42. Service. (6/5)**

(1) Where a defendant to a cross-claim has, on the date of filing the cross-claim, an address for service in the proceedings, the cross-claimant shall, on that date, serve the cross-claim on that defendant to the cross-claim.

(2) Where a defendant to a cross-claim has an address for service in the proceedings, personal service of the cross-claim on him is not required.

(3) Order 6 Rule 14 (cases where filing operates as service) does not apply to the service of a cross-claim.

### **43. Service of prior pleadings.**

(1) Where a defendant to a cross-claim is made a party to the proceedings by the filing of the cross-claim, he may, by notice in Form 22 filed and served on the cross-claimant, require the cross-claimant to serve on him all or any of the pleadings in the proceedings filed before the filing of the cross-claim.

## **Order 8, Rule 44**

(2) A defendant to a cross-claim may add a notice under Sub-rule (1) to his notice of intention to defend.

(3) Where a notice under Sub-rule (1) is served on a cross-claimant then, unless the Court otherwise orders, he shall, within three days after service of the notice, or such longer time as may be specified in the notice, serve on the defendant to the cross-claim notice of each pleading mentioned in the notice.

### **44. Conduct of proceedings generally. (6/6)**

(1) Subject to this Division, the proceedings on a cross-claim shall follow as nearly as may be the course of proceedings on a writ of summons.

(2) Subject to this Division, and without limiting the generality of Sub-rule (1), these Rules apply to a cross-claim and the proceedings arising from it as they apply to a writ of summons and the proceedings arising from it.

(3) Sub-rules (1) and (2) apply as if—

- (a) the cross-claim were a writ of summons; and
- (b) the cross-claimant were a plaintiff; and
- (c) the defendant to the cross-claim were a defendant.

(4) A plaintiff in a writ of summons need not give notice of intention to defend a cross-claim in the same proceedings.

(5) A notice of intention to defend given by a party to the proceedings shall, on service of a cross-claim on him, operate as a notice of intention to defend the cross-claim.

(6) Subject to this Division, the trial and all other steps in the proceedings on the cross-claim shall as far as practicable be carried on together with the trial and similar steps in the proceedings on the writ of summons.

### **45. Default of defendant to cross-claim. (6/7)**

Where a defendant to a cross-claim does not give notice of an intention to defend the cross-claim or file a defence as required by these Rules, or does not file a defence in accordance with an order to do so, a judgement (including a judgement by default or by consent) or decision (including a decision by consent) on any claim, question or issue in the proceedings on the writ of summons or on any other cross-claim in the proceedings shall, unless the Court otherwise orders, be binding as between the cross-claimant and the defendant to the cross-claim so far as the judgement or decision is relevant to any Claim, question or issue in the proceedings on the cross-claim.

### **46. Setting aside default judgement. (6/8)**

Where a judgement on a cross-claim is entered in default of notice of intention to defend or defence or in consequence of default in compliance with an order or direction of the Court, the Court may, on terms, set aside or vary the judgement.

**47. Separate prosecution. (6/9)**

A cross-claim may proceed notwithstanding that judgement is entered on the writ of summons or any other cross-claim in the proceedings or that the proceedings on the writ of summons or any other cross-claim are stayed, dismissed or discontinued.

**48. Contribution or indemnity. (6/10)**

(1) Where a defendant makes a cross-claim for contribution or indemnity in respect of a claim against him in the proceedings—

- (a) judgement for the claimant on the cross-claim shall not be entered except by direction of the Court; and
- (b) judgement for the claimant on the cross-claim shall not, unless the Court otherwise orders, be enforced by execution until satisfaction of any judgement in the proceedings against the cross-claimant.

(2) Where, in respect of a claim against him in any proceedings, the defendant makes a claim for contribution under Part VIII of the *Wrongs (Miscellaneous Provisions) Act* (tort-feasors), against a party in the proceedings, a defence to the cross-claim or subsequent pleading on the cross-claim shall not be fined or served unless the Court so directs.

**49. Order of contribution. (6/11)**

Where in any proceedings—

- (a) a party (in this Rule called the first party) stands to be held liable to another party (in this Rule called the second party) to contribute towards any debt or damages which may be recovered against the second party in the proceedings; and
- (b) the first party, before the trial, makes an offer to the second party to contribute to a specified extent to the debt or damages, then, if the first party makes the offer without prejudice to his defence, the offer shall not be brought to the attention of the Court until all questions of liability or amount of debt or damages have been decided.

***Division 4.—Amendment.***

**50. General. (20/1)**

(1) The Court may, at any stage of any proceedings, on application by any party or of its own motion, order, on terms that any document in the proceedings be amended, or that any party have leave to amend any document in the proceedings, in either case in such manner as the Court thinks fit.

## **Order 8, Rule 51**

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, or of correcting any defect or error in any proceedings, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, Sub-rule (1) applies to the person intended to be made a party as if he were a party.

(4) This Rule does not apply to the amendment of a minute of a judgement or order.

### **51. Amendment of pleading without leave. (20/2)**

(1) A party may, without leave, amend any pleading of his once at any time before the pleadings are closed.

(2) Where a plaintiff amends his statement of claim—

- (a) if the defendant has filed his defence, he may amend his defence; and
- (b) the time for filing his defence or amended defence, as the case may be, shall be either the time fixed by or under these Rules for filing his defence or 14 days after service on him of a notice or document under Rule 58, whichever expires later.

(3) Where a defendant amends his defence—

- (a) if the plaintiff has filed a reply, he may amend his reply; and
- (b) the time for filing his reply or amended reply, as the case may be, shall be either the time fixed by or under these Rules for filing his reply or 14 days after service on him of a notice or document under Rule 58, whichever expires later.

(4) The rights to amend under Sub-rules (2)(a) and (3)(a) are in addition to the right to amend under Sub-rule (1).

(5) Where—

- (a) a party (in this rule called the first party) files a pleading (in this Rule called the first pleading); and
- (b) an opposite party files a pleading (in this Rule called the second pleading) in answer (whether by way of defence, reply or otherwise) to the first pleading; and
- (c) the first party amends the first pleading; and
- (d) the opposite party does not amend the second pleading within the time allowed by this Rule,

then—

- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and

- (f) Rule 22(2)(a) shall not apply, but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

**52. Disallowance of amendment. (20/3)**

(1) Where a party amends his pleading under Rule 51(1), the Court, on application by an opposite party, may, on terms, but subject to Rule 51(2), by order disallow the amendment.

(2) Notice of a motion under Sub-rule (1) shall be filed and served within 14 days after the date of service on the applicant of a notice or document under Rule 58.

(3) Where, on the hearing of an application under Sub-rule (1), the Court is satisfied that, if an application for leave to make the amendment had been made under Rule 50(1) on the date on which the amendment was made under Rule 51(1) the Court would not have given leave to make the whole or some part of the amendment, the Court shall disallow the amendment or that part, as the case may be.

**53. Statutes of limitation. (20/4)**

(1) Where any relevant period of limitation expires after the date of issue of a writ of summons and after that expiry an application is made under Rule 50 for leave to amend the writ by making the amendment mentioned in any of Sub-rules (2), (3), (4) or (5), the Court may in the circumstances mentioned in that Sub-rule make an order giving leave accordingly, notwithstanding that that period has expired.

(2) Where notice of a motion for leave to make an amendment is filed within 14 days after the date of issuing the writ of summons, the Court may give leave to make the amendment whatever the nature of the amendment may be.

(3) Where there has been a mistake in the name of a party and the Court is satisfied that the mistake was not misleading nor such as to cause reasonable doubt as to the identity of the person intended to be made a party, the Court may make an order for leave to make an amendment to correct the mistake, whether or not the effect of the amendment is to substitute a new party.

(4) Where, on the date of issuing a writ of summons, the plaintiff is entitled to sue in any capacity, the Court may order that the plaintiff have leave to make an amendment having the effect that he sues in that capacity.

(5) Where a plaintiff, in his writ of summons, makes a claim for relief on a cause of action arising out of any facts, the Court may order that he have leave to make an amendment having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts and a claim for relief on that new cause of action.

## **Order 8, Rule 54**

(6) This rule has effect in relation to an originating summons as it has effect in relation to a writ of summons.

### **54. Duration of leave. (20/5)**

Subject to Order 1 Rule 15 (extension and abridgement of time), where the Court makes an order under this Division giving a party leave to amend a document, then, if the party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, before the expiration of 14 days after the date on which the order is made, the order shall cease to have effect

### **55. Mode of amendment: Directions. (20/6)**

(1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment.

(2) Rules 56, 57 and 58 have effect subject to Sub-rule (1).

### **56. Mode of amendment: Simple amendments. (20/7)**

(1) Where the amendments authorized under this Division to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the document difficult or inconvenient to read, the amendments may be made by—

- (a) filing a notice in Form 23 specifying the amendments and the matters mentioned in Sub-rule (2); and
- (b) where the document to be amended has been filed, writing the alterations in the document.

(2) A filed document amended under this Rule shall be marked with a statement specifying the date of the amendment and also, if made pursuant to an order, the date of the order or, if not made pursuant to an order, a reference to the Rule authorizing the amendment.

### **57. Mode of amendment: Fresh document. (20/8)**

Subject to Rule 56(1), amendments authorized under this Division to a filed document shall be made by filing a fresh document, amended as so authorized, and bearing a statement specifying the matters mentioned in Rule 56(2).

### **58. Service after amendment. (20/9)**

Where a document has been served and is afterwards amended, the party making the amendment shall, on the day on which the amendment is made, serve on the parties on whom the document was served—

- (a) if the amendment is made under Rule 56—the notice mentioned in Rule 56(1); or

(b) if the amendment is made under Rule 57—the fresh document.

**59. Minute of judgement or order. (20/10)**

(1) Where there is a clerical mistake in a minute of a judgement or order, or an error in a minute of a judgement or order arising from an accidental slip or omission, the Court, on application by a party or of its own motion, may, at any time, correct the mistake or error.

(2) Rules 56, 57 and 58 do not apply to a correction made under Sub-rule(1).

***Division 5.—Withdrawal and Discontinuance.***

**60. Withdrawal of notice of intention to defend. (21/1)**

A party who has given notice of his intention to defend may withdraw the notice at any time with the leave of the Court.

**61. Discontinuance. (21/2)**

(1) A party making a claim for relief may discontinue proceedings so far as concerns the whole or any part of any claim for relief by him—

(a) where the pleadings are not closed—without leave or consent; and

(b) where judgement has not been entered—with the consent of all other parties; and

(c) at any time—with the leave of the Court.

(2) A party making a claim by originating summons may, with the leave of the Court, discontinue the proceedings at any time so far as concerns the whole or any part of the claim.

**62. Withdrawal of defence, reply, etc. (21/3)**

(1) A party raising any matter in a defence or subsequent pleading may withdraw that matter at any time.

(2) Sub-rule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party.

**63. Terms of leave. (21/4)**

The Court may give leave under Rule 61 or 62 on terms.

**64. Mode of discontinuance or withdrawal. (21/5)**

(1) A discontinuance or withdrawal under Rule 61 or 62 shall be made by filing a notice stating the extent of the discontinuance or withdrawal.

(2) Where the discontinuance or withdrawal is by consent, the notice under Sub-rule (1) must bear the consent of each consenting party.

## **Order 8, Rule 65**

### **65. Service. (21/6)**

A party filing a notice under Rule 64 shall, on the day of filing, serve the notice on each other party.

### **66. Effect of discontinuance. (21/7)**

A discontinuance under this Division as to any cause of action shall not, subject to the terms of any leave to discontinue, be a defence to proceedings for the same, or substantially the same, cause of action.

### **67. Stay to secure costs. (21/8)**

Where—

- (a) a party discontinues proceedings so far as concerns the whole or any part of any claim for relief; and
- (b) he is, by reason of the discontinuance, liable to pay the costs of another party occasioned by the proceedings; and
- (c) before payment of the costs, he brings against that other party further proceedings on the same or substantially the same cause of action as that on which the discontinued proceedings were brought,

the Court may stay the further proceedings until those costs are paid.

## ***Division 6.—Payment into Court.***

### **68. Interpretation of Division 6. (22/1)**

In this Division unless the contrary intention appears—

- "cause of action" means a cause of action for the recovery of debt or damages;
- "trial" includes the hearing of a motion for judgement.

### **69. Bringing money into Court. (22/2)**

- (1) A defendant may from time to time bring money into Court—
  - (a) in answer to any one or more causes of action on which a plaintiff claims; and
  - (b) in addition to money previously brought in under this Rule.
- (2) A defendant may bring money into Court under this Division by paying the money into Court or by filing a security in accordance with Rule 81.

### **70. Defendant to cross-claim. (22/3)**

A defendant to a cross-claim may not bring money into Court in answer to a cause of action in respect of which he may, before the trial, make an order of contribution under Rule 49.

**71. Notice of deposit. (22/4)**

(1) On bringing money into Court under this Division, the defendant shall file a notice of deposit in Form 24.

(2) Where a plaintiff claims on two or more causes of action and a defendant brings money into Court under this Division, the defendant shall, in his notice of payment—

- (a) specify the cause or causes of action in answer to which the money is brought in; and
- (b) if the defendant allots part of the money to any cause or causes of action, specify the amount of that part and the cause or causes of action to which he allots that part.

**72. Order to allot. (22/5)**

(1) Where, before the beginning of the trial, a defendant brings money into Court or allots money under this Division in answer to two or more causes of action, the Court may order the defendant to allot the money distributively amongst the causes of action and to file an amended notice of payment accordingly.

(2) For the purposes of Sub-rule (1), a cause of action arising under Part IV of the *Wrongs (Miscellaneous Provisions) Act 1962* (wrongful act or neglect causing death) on the death of a person and a cause of action surviving under Part V of that Act (survival of causes of action) on the death of the same person shall be a single cause of action.

**73. Abandonment of cross-claim. (22/6)**

Where a defendant—

- (a) cross-claims against a plaintiff on any cause of action; and
- (b) brings money into Court under this Division; and
- (c) in bringing the money into Court, takes into account his cause of action against the plaintiff on the cross-claim with a view to its abandonment in case the plaintiff accepts the money,

the defendant shall, in his notice of payment, specify the cause of action on the cross-claim taken into account.

**74. Withdrawal by defendant. (22/7)**

(1) Subject to Sub-rule (2) a defendant may, with the leave of the Court—

- (a) withdraw the whole or any part of money paid into Court by him under this Division; or
- (b) withdraw a security filed by him under this Division.

(2) A defendant may not make a withdrawal in respect of any money after the money has been accepted by the plaintiff.

## **Order 8, Rule 75**

(3) A withdrawal under Sub-rule (1) shall be made by filing a notice of withdrawal of deposit in Form 25.

(4) On the filing of a notice of withdrawal of deposit under Sub-rule (3) the defendant shall be entitled to receive payment of the money or delivery of the security as the case may be.

### **75. Acceptance by plaintiff. (22/8)**

(1) A plaintiff may, within the time fixed by Sub-rules (2), (3) and (4), accept money brought into Court in satisfaction of the cause of action in answer to which the money is brought in, as against the defendant bringing the money into Court.

(2) Where the notice of payment, or last notice of payment, in answer to a cause of action is filed before the beginning of the trial, the plaintiff may accept the money in satisfaction of the cause of action within 14 days after service on him of the notice of payment, or last notice of payment, but before the beginning of the trial, by filing a notice of acceptance in Form 26.

(3) Where the notice of payment, or last notice of payment in answer to a cause of action is filed after the beginning of the trial, or a defendant, by notice served on the plaintiff after the trial begins, confirms a notice of payment, the plaintiff may, subject to Sub-rule (4), accept the money in satisfaction of the cause of action within two days after service on him of the notice or the last notice, by announcement to the Court during the trial or by filing a notice of acceptance in Form 26.

(4) A plaintiff shall not accept money in a case to which Sub-rule (3) applies after the Court gives its decision or begins to give its reasons for decision.

(5) A defendant who serves notice of confirmation under Sub-rule (3) shall file the notice on the day of service in Form 27.

(6) A plaintiff who accepts money by announcement to the Court under Sub-rule (3) shall file a notice of acceptance in Form 26 on the day of the announcement.

(7) Where a plaintiff claims on more than one cause of action and he accepts money brought into Court in answer to some one or more but not all of the causes of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon all his causes of action other than the cause of action to which the acceptance relates.

(8) Where a plaintiff claims against two or more defendants on a cause of action against them jointly, and he accepts money brought into Court by one or more but not all of those defendants in answer to that cause of action, he may, by filing a notice (which may be combined with his notice of acceptance) abandon his cause of action against the other or all the others of those defendants.

**76. Effect of acceptance. (22/9)**

(1) On a plaintiff accepting money under Rule 75 in satisfaction of a cause of action as against any defendant bringing money into Court, the proceedings shall be stayed in relation to—

- (a) that cause of action, as against that defendant; and
- (b) any alternative cause of action against that or any other defendant; and
- (c) any cause of action abandoned under Rule 75(7) or (8); and
- (d) where the defendant, in bringing the money into Court, has taken into account a cause of action on a cross-claim by him under Rule 73—that cause of action on the cross-claim, as against the plaintiff.

(2) Where a defendant brings money into Court in answer to a cause of action, and the plaintiff accepts the money in satisfaction of the cause of action as against that defendant, the liability of any other person (whether a party to the proceedings or not) jointly with that defendant on the cause of action—

- (a) shall be satisfied in the amount of the money accepted; but
- (b) shall not be discharged by the acceptance except to the extent of that satisfaction.

(3) A plaintiff who accepts money under Rule 75 shall, subject to Rule 78, be entitled to receive payment of the money, without any order.

**77. Withdrawal of acceptance. (22/10)**

(1) A plaintiff may, by filing a notice in Form 28, withdraw his acceptance of money brought into Court—

- (a) where all or any of the money has been brought into Court by the filing of a security and the money accepted is not paid into Court within seven days after service of notice of the acceptance on the defendant filing the security; or
- (b) where the Court gives leave to do so.

(2) On withdrawal of an acceptance all steps in the proceedings taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may—

- (a) give directions under Sub-rule (2); and
- (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
- (c) give directions for the further conduct of the proceedings.

## **Order 8, Rule 78**

### **78. Order for payment out after acceptance. (22/11)**

(1) Where a plaintiff accepts money in satisfaction of a cause of action, the money shall not be paid out except by order of the Court if—

- (a) the plaintiff claims on the cause of action against two or more defendants and any of those defendants does not join in bringing money into Court and does not consent to the payment out; or
- (b) the plaintiff claims on an alternative cause of action against a defendant who does not join in bringing the money into Court and does not consent to the payment out; or
- (c) the money is brought into Court in answer to a cause of action to which the defendant bringing the money into Court pleads or otherwise properly raises a defence of tender before the commencement of the proceedings; or
- (d) the plaintiff accepts the money in satisfaction of a cause of action arising under Part IV. of the *Wrongs (Miscellaneous Provisions) Act* 1962 (wrongful act or neglect causing death) on the death of a person and in satisfaction of a cause of action surviving under Part V. of that Act (survival of causes of action) on the death of the same person; or
- (e) the plaintiff accepts the money in satisfaction of a cause of action arising under Part IV of the *Wrongs (Miscellaneous Provisions) Act* 1962 and that cause of action is wholly or in part for the benefit of a person other than the plaintiff and that person does not consent to the payment out; or
- (f) the plaintiff accepts the money after the beginning of the trial; or
- (g) the plaintiff is a disabled person.

(2) On motion for an order under Sub-rule (1), the Court shall, so far as practicable, deal with all the costs of the proceedings.

### **79. Money not accepted. (22/12)**

Where money brought into Court by a defendant is not accepted in accordance with Rule 75 the defendant shall be entitled to receive payment of the money or delivery of the security as the case may require.

### **80. Non-disclosure. (22/13)**

(1) Subject to Sub-rules (2) and (3), the fact that money has been brought into Court—

- (a) shall not be pleaded; and
- (b) shall not be disclosed to the Court at the trial or hearing of any question of liability or amount of debt or damages until all such questions have been decided.

## **Order 8, Rule 81**

(2) Sub-rule (1) does not apply where the money has been brought into Court in answer to a cause of action to which the defendant pleads or otherwise properly raises a defence of tender before commencement of the proceedings.

(3) Sub-rule (1)(b) does not apply—

(a) where the plaintiff accepts the money pursuant to Rule 75; or

(b) where the disclosure is necessary for the purpose of an application under this Division.

### **81. Security. (22/14)**

(1) A security filed for the purpose of bringing money into Court under this Division shall be in Form 29 by which an authorized person (whether a party to the proceedings or not)—

(a) is bound to observe the requirements of this Division with respect to a specified sum of money (in this Rule called "the money secured"); and

(b) gives an address for service.

(2) A person approved by the Court shall be an authorized person for the purposes of this Rule.

(3) A person giving security under this Rule may pay the money secured into Court and—

(a) subject to any order or judgement for interest under this Rule, or for costs, he shall have no further liability on the security in the proceedings; and

(b) the money paid in shall, unless the Court otherwise orders, be dealt with as if brought into Court in place of the security by the party filing the security.

(4) Where a security has been filed, the Court may order the person giving the security to pay, within a time specified in the order, the whole or any part of the money secured into Court or to such person as the Court may direct.

(5) If a person giving a security fails to comply with an order under Sub-rule (4), the Court may—

(a) order the person giving the security to pay into Court, or pay to such person as the Court may direct, interest on the money unpaid until payment at such rate not exceeding 8% yearly as the Court may determine; and

(b) in addition to any other order as to costs which the Court may make, order the person giving the security to pay the costs of any party incurred or thrown away by reason of failure to comply with the order under Sub-rule (4).

## **Order 8, Rule 82**

(6) The Court may direct the entry of such judgement as the nature of the case may require in favour of any party against the person giving the security for the whole or any part of any money secured or interest or costs the subject of an order under Sub-rule (4) or (5) or for costs.

(7) A party moving for an order or direction under any of Sub-rules (4), (5) and (6) shall serve notice of the motion on the person giving the security and may serve the notice at the address for service specified in the security.

(8) A party filing a security shall, on the day of filing, serve a copy of it on each party interested.

### **82. Service. (22/15)**

A party filing a notice under this Division shall, on the day of filing, serve the notice on each other party on whom the notice has not previously been served.

## ***Division 7.—Defamation.***

### **83. Application of Division 7. (67/1)**

This Division applies to proceedings for defamation.

### **84. Particulars; Publications and innuendo. (67/2)**

The particulars required by Rule 29 in relation to a statement of claim shall include—

- (a) sufficient particulars of the publications in respect of which the proceedings are brought to enable the publications to be identified; and
- (b) where the plaintiff alleges that the matter complained of was used in a defamatory sense other than its ordinary meaning—particulars of the facts and matters on which he relies in support of that sense.

### **85. Protection, justification and excuse. (67/3)**

A defendant shall specifically plead any defence of protection, justification or excuse of law.

### **86. Particulars of defence. (67/4)**

(1) Where a defendant pleads fair comment (whether by way of rolled-up plea or otherwise), the particulars required by Rule 29 shall include—

- (a) if, as the basis or part of the basis for the comment, he relies on facts not stated in the matter complained of—particulars stating those facts; and

- (b) if, as the basis or part of the basis for the comment, he relies on facts stated in the matter complained of—particulars stating which words in the matter complained of he alleges are statements of fact and on which of those alleged statements he so relies; and
- (c) particulars of the facts and matters on which he relies to establish the truth of the facts on which he relies as the basis for the comment.

(2) Where a defendant pleads truth and public benefit, the powers of the Court under Rule 36 shall extend to orders in relation to particulars of the facts and matters on which he relies to establish—

- (a) that the publication was made for the public benefit; and
- (b) that the matter complained of was true.

**87. Pleading and particulars; Want of good faith. (67/5)**

Where a plaintiff intends to meet any defence by alleging that the publication of the matter complained of was not in good faith—

- (a) the plaintiff shall plead that allegation by way of reply; and
- (b) the particulars required by Rule 29 in relation to the reply shall include particulars of the facts and matters from which the absence of good faith is to be inferred.

**88. Evidence in mitigation of damages in libel and slander.**

In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

**89. Payment into Court. (67/6)**

Rule 80(1) (non-disclosure of a payment into Court) does not apply to money brought into Court under Section 26 of the *Defamation Act 1962*.

**90. Statement in open Court. (67/7)**

(1) Where a plaintiff accepts money brought into Court under Division 6 in satisfaction of a cause of action for defamation he may, with the leave of the Court, make in open Court a statement approved by the Court in private.

(2) Where proceedings are settled before trial a party may, with the leave of the Court, make in open Court a statement approved by the Court in private.

## **Order 8, Rule 91**

### **91. Interrogatories. (67/8)**

Interrogatories as to the sources of information or grounds of belief of the defendant shall not be allowed on an issue

- (a) whether the whole or any part of the matter complained of was fair comment; or
- (b) whether the publication by the defendant of the matter complained of was in good faith.

**ORDER 9.—DISCOVERY, INTERROGATORIES AND ADMISSIONS.**

***Division 1.—Discovery and Inspection of Documents.***

**Subdivision A.—Discovery.**

**1. Notice for discovery. (23/1)**

(1) Subject to this Rule, where the pleadings between any parties are closed, any of those parties may, by notice for discovery in Form 30 filed and served on any other of those parties, require the party served to give discovery of documents, with or without verification.

(2) A party may require another party to give discovery with verification notwithstanding that he has previously required the same party to give discovery without verification.

(3) This Rule does not apply to proceedings on a claim for damages arising out of the death of, or bodily injury to, any person for contribution in respect of damages so arising.

**2. Discovery on notice. (23/2)**

(1) A party required under Rule 1 to give discovery shall, subject to Sub-rule (2), give discovery within such time, not being less than 14 days after service on him of the notice for discovery, as may be specified in the notice for discovery.

(2) A party required under Rule 1 to give discovery without verification shall, subject to Rule 3, give discovery by filing and serving on the party giving the notice for discovery a list in accordance with Rule 6 of documents relating to any matter in question between him and the party giving the notice for discovery.

(3) A party required under Rule 1 to give discovery with verification shall, subject to Rule 3, give discovery by filing and serving on the party giving the notice for discovery—

(a) an affidavit verifying the list referred to in Sub-rule (2); and

(b) the list so verified, unless the list has already been filed and served on that party.

(4) Where a claim is made against a party—

(a) for the recovery of any penalty recoverable by virtue of any Act; or

(b) for the enforcement of a forfeiture,

he need not include in a list of documents under this Rule any document relating only to a matter in question on that claim.

## **Order 9, Rule 3**

### **3. Limitation of discovery on notice. (23/3)**

(1) The Court may, before or after any party has been required under Rule 1 to give discovery, order that discovery under Rule 2 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceedings, as may be specified in the Order.

(2) The Court shall, on application, make such orders under Sub-rule (1) as are necessary to prevent unnecessary discovery.

### **4. Co-defendants. (23/4)**

Where a plaintiff claims relief against two or more defendants, and requires any defendant to give discovery under Rule 2, that defendant shall serve his list of documents and affidavit (if any) not only on the plaintiff but also on each other defendant who has filed a defence.

### **5. Order for general discovery. (23/5)**

The Court may, at any stage of any proceedings, order any party to file and serve on any other party—

(a) a list in accordance with Rule 6 of documents relating to any matter in question in the proceedings; or

(b) a list as mentioned in Paragraph (a) verified by affidavit.

### **6. Contents of list. (23/6)**

(1) A list of documents required by or under this Division shall, unless the Court otherwise orders, conform to the requirements of this Rule, and be in Form 31.

(2) A list of documents shall enumerate the documents which are or have been in the possession, custody or power of the party making the list.

(3) A list of documents shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

(4) Where a party making a list of documents claims that any document in his possession, custody or power is privileged from production, he shall, in the list, sufficiently state the grounds of the privilege.

(5) A list of documents shall distinguish those documents which are in the possession, custody or power of the party making the list from those that have been but are not in his possession, custody or power.

(6) A list of documents shall, as to any document which has been but is not then in the possession, custody or power of the party making the list, state when he parted with the document and what has become of it.

(7) A list of documents shall appoint a time within seven days after service of the list when, and a place where, the documents in the list may be inspected.

(8) Where a party making a list of documents has a solicitor in the proceedings, the solicitor shall certify on the list that, according to his instructions, the list and the statements in the list are correct.

**7. Order for particular discovery. (23/7)**

Where, at any stage of the proceedings, it appears, to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for a belief that some document or class of document relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the Court may order that party—

- (a) to file an affidavit stating whether that document or any document of that class is or has been in his possession, custody or power and, if it has been but is not then in his possession, custody or power, when he parted with it and what has become of it; and
- (b) to serve the affidavit on any other party.

**8. Deponent. (23/8)**

(1) Subject to Sub-rule (2) an affidavit verifying a list of documents of a party or an affidavit to be filed by a party pursuant to an order under Rule 7 may be made—

- (a) by the party; or
- (b) where the party is a disabled person—by his next friend, or guardian at law; or
- (c) where the party is a corporation—by a member or officer of the corporation; or
- (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person—by a member or officer of the body; or
- (e) where the party is the Independent State of Papua New Guinea or an officer of the State suing or sued in his official capacity—by an officer of the State.

(2) Where the party is a person to whom Sub-rule (1)(c), (d) or (e) applies and the affidavit is to be filed and served pursuant to an order, the Court may—

- (a) specify by name or otherwise the person to make the affidavit; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

## **Order 9, Rule 9**

(3) Subject to Sub-rule (2), where the party is a person to whom Sub-rule (1)(c), (d) or (e) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

### **Subdivision B.—Inspection.**

#### **9. Document referred to in pleading or affidavit. (23/9)**

(1) Where a pleading or affidavit filed by a party refers to a document, any other party may, by notice to produce served on him, require him to produce the document for inspection.

(2) A notice to produce under this Rule shall be in Form 32.

(3) Where a notice to produce a document is served on a party under Sub-rule (1), he shall, within four days after that service, serve on the party requiring production or his guardian at law, a notice—

- (a) appointing a time within seven days after service of the notice under this Sub-rule when, and a place where, the document may be inspected; or
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in his possession, custody or power and stating to the best of his knowledge, information and belief where the document is and in whose possession, custody and power it is.

(4) A notice under Sub-rule (3)(a) shall be in Form 33.

#### **10. Order for production. (23/10)**

(1) Where—

- (a) it appears from a list of documents filed by a party under this Division that any document is in his possession, custody or power; or
- (b) a pleading or affidavit filed by a party refers to any document; or
- (c) it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for a belief that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party,

the Court may, unless the document is privileged from production, order the party—

- (d) to produce the document for inspection by any other party at a time and place specified in the order; or

## **Order 9, Rule 15**

- (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

(2) An affidavit made pursuant to an order under Sub-rule (1)(e) shall, unless the Court otherwise orders, state whether there are in the documents copied any and, if so what, erasures, interlineations or alterations.

### **11. Power to make copies. (23/11)**

A party to whom a document is produced for inspection under this Division may make copies of the document.

### **12. Production to the Court. (23/12)**

(1) The Court may, at any stage of any proceedings, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the proceedings.

(2) On production of a document to the Court pursuant to an order under Sub-rule (1), the Court may deal with the document in such manner as it thinks fit.

### **13. Inspection to decide objection. (23/13)**

Where an application is made for an order under Rule 10 for the production of any document for inspection by another party, or for an order under Rule 12 for the production of any document to the Court, and a claim is made that the document is privileged from production, or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

## **Subdivision C.—General.**

### **14. Order only if necessary. (23/14)**

The Court shall not make an order under this Division for the filing or service of any list of documents or affidavit or other document, or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

### **15. Default. (23/15)**

(1) Where a party makes default in filing or serving a list of documents or affidavit or other document, or in producing any document as required by or under this Division, the Court may make such order as it thinks fit, including—

- (a) if the party in default is a plaintiff—an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or

## **Order 9, Rule 16**

- (b) if the proceedings were commenced by writ of summons and the party in default is a defendant—an order that his defence be struck out and that judgement be entered accordingly.
- (2) Where a party has a solicitor—
  - (a) an order under any of the Rules of this Division need not, for the purposes of enforcement of the order by committal or sequestration, be served personally; but
  - (b) if the order has not been served personally, the order shall not be enforced by committal of any person or by sequestration of the property of any person if that person shows that he did not have notice or knowledge of the order within sufficient time for compliance with the order.
- (3) Where a party has a solicitor, and an order under this Division against the party is served on the party by leaving a copy of the order at the office of, or posting it to, the solicitor or his agent, the solicitor shall, if he fails without reasonable cause to notify the party of the order, be guilty of professional misconduct.

### **16. Public interest. (23/16)**

This Division does not affect any rule of law which authorizes or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

## ***Division 2.—Interrogatories.***

### **17. Interrogatories by notice. (24/1)**

- (1) Subject to Sub-rule (3), where the pleadings between any parties are closed, any of those parties may file and serve on any other of those parties a notice requiring the party served to answer specified interrogatories relating to any matter in question between the interrogating party and the party served.
- (2) The notice may require that the answers be verified, and may so require notwithstanding that the interrogating party has previously required all or any of the interrogatories to be answered without requiring the answers to be verified.
- (3) This Rule does not apply to proceedings on a common law claim for damages arising out of the death of, or bodily harm to, any person or for contribution in respect of damages so arising.
- (4) A notice under this Rule shall be in Form 34.
- (5) Subject to Sub-rule (2), a party shall not serve more than one notice under Sub-rule (1) on the same party without the leave of the Court.

**18. Answers pursuant to notice. (24/2)**

(1) A party who is required under Rule 17 to answer interrogatories shall, subject to Rule 19 answer the interrogatories within such time, not being less than 14 days after service on him of the notice under Rule 17, as may be specified in the notice.

(2) A party who is required under Rule 17 to answer interrogatories but is not required to verify his answers shall, subject to Rule 19, answer the interrogatories by filing and serving on the party requiring the answers a statement in accordance with Rule 22.

(3) A party who is required under Rule 17 to answer interrogatories and to verify his answers shall, subject to Rule 19, answer the interrogatories by filing and serving on the party requiring the answers—

- (a) an affidavit verifying a statement in accordance with Rule 22; and
- (b) the statement so verified, unless the statement has already been filed and served.

**19. Limitation of interrogatories by notice. (24/3)**

(1) The Court may, before or after any party has been required under Rule 17 to answer interrogatories, order that answers to interrogatories under Rule 18 by any party shall not be required, or shall be limited to such interrogatories or classes of interrogatories, or to such of the matters in question in the proceedings, as may be specified in the order.

(2) Where any party has been required under Rule 17 to answer any interrogatory, the Court may, on application by him, order that an answer to that interrogatory shall not be required or may limit the extent to which an answer shall be required.

(3) The Court shall, on application, make such orders under Sub-rules (1) and (2) as are necessary to prevent unnecessary interrogatories or unnecessary answers to interrogatories.

**20. Co-defendants. (24/4)**

Where a plaintiff claims relief against two or more defendants, and requires any defendant to answer interrogatories under Rule 18, that defendant shall serve his statement in answer and affidavit (if any) not only on the plaintiff but also on each other defendant who has filed a defence.

**21. Order to answer. (24/5)**

(1) The Court may, at any stage of any proceedings, order any party to file and serve on any other party (whether the interrogating party or not)—

- (a) a statement in accordance with Rule 22 in answer to interrogatories specified or referred to in the order relating to any matter in question in the proceedings; or

## **Order 9, Rule 22**

(b) a statement as mentioned in Paragraph (a) verified by affidavit.

(2) The Court shall not make an order under Sub-rule (1) unless satisfied that the order is necessary at the time the order is made.

### **22. Contents of statement. (24/6)**

(1) A statement in answer to interrogatories required by or under this Division shall, unless the Court otherwise orders, conform to the requirements of this Rule.

(2) A statement under Rule 21 shall be in Form 35 or 36.

(3) A statement in answer to interrogatories shall deal with each interrogatory specifically—

(a) by answering the substance of the interrogatory without evasion; or

(b) by objecting to answer the interrogatory on one or more of the grounds mentioned in Sub-rule (4) and briefly stating the facts on which the objection is based.

(4) Subject to Sub-rule (5), a party may object to answer any interrogatory only—

(a) where the answer is not required by an order that the interrogatory does not relate to any matter in question between him and the party requiring the answer; or

(b) that the interrogatory is vexatious or oppressive; or

(c) privilege.

(5) On an application under Rule 19(2) or 21 in respect of any interrogatory, the Court may require the applicant to specify on what grounds he objects to answer that interrogatory and may determine the sufficiency of that objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

### **23. Deponent. (24/7)**

(1) Subject to Sub-rule (2), an affidavit verifying a statement of a party in answer to interrogatories may be made

(a) by the party; or

(b) where the party is a disabled person—by his next friend; or

(c) where the party is a corporation—by a member or officer of the corporation; or

(d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person—by a member or officer of the body; or

## **Order 9, Rule 25**

- (e) where the party is the Independent State of Papua New Guinea, or an officer of the State suing or sued in his official capacity—by an officer of the State.
- (2) Where the party is a person to whom Sub-rule (1)(c), (d) or (e) applies, and the affidavit is to be filed and served pursuant to an order, the Court may, in relation to any or all of the interrogatories—
  - (a) specify by name or otherwise the person to make the affidavit; or
  - (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.
- (3) Subject to Sub-rule (2) where the party is a person to whom Sub-rule (1)(c), (d) or (e) applies, the party shall, in relation to each interrogatory, choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

### **24. Insufficient answer. (24/8)**

- (1) Where a party fails to answer an interrogatory sufficiently, the Court may—
  - (a) if he has made an insufficient answer—order him to make a further answer verified by affidavit in accordance with Rule 23; or
  - (b) order him or any of the persons specified in Rule 23(b) to (d), as the nature of the case requires, to attend to be orally examined.
- (2) Sub-rule (1) does not limit the powers of the Court under Rule 25.

### **25. Default. (24/9)**

- (1) Where a party makes default in compliance with an order under Rule 21 or 24 to file or serve a statement or affidavit, the Court may make such order as it thinks fit, including—
  - (a) if the party in default is a plaintiff—an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
  - (b) if the proceedings were commenced by writ of summons and the party in default is a defendant—an order that his defence be struck out and that judgement be entered accordingly.
- (2) Where a party has a solicitor—
  - (a) an order under Rule 21 or 24 need not, for the purposes of enforcement of the order by committal or sequestration, be served personally; but

## **Order 9, Rule 26**

- (b) if the order has not been served personally, the order shall not be enforced by committal of any person or by sequestration of the property of any person if that person shows that he did not have notice or knowledge of the order within sufficient time for compliance with the order.

(3) Where a party has a solicitor, and an order under Rule 21 or 24 against the party is served on the party by leaving a copy of the order at the office of, or posting it to, the solicitor or his agent, the solicitor shall, if he fails without reasonable cause to notify the party of the order, be guilty of professional misconduct.

### **26. Answers as evidence. (24/10)**

- (1) A party may tender as evidence—
  - (a) one or more answers to interrogatories without tendering the others; or
  - (b) part of an answer to an interrogatory without tendering the whole of the answer.
- (2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may—
  - (a) look at the whole of the answers; and
  - (b) if it appears to the Court that any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

### **27. Public interest. (24/11)**

This Division does not affect any rule of law which authorizes or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

## ***Division 3.—Admissions.***

### **28. Voluntary admission. (18/1)**

- (1) A party to proceedings may, by notice served on another party, admit, in favour of the other party, but for the purpose of the proceedings only, the facts specified in the notice.
- (2) A party may, with the leave of the Court, withdraw an admission under Sub-rule (1).

### **29. Notice to admit facts. (18/2)**

- (1) A party to proceedings may, by notice served on another party, require him to admit, for the purpose of the proceedings only, the facts specified in the notice.

(2) If, as to any fact specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit facts, a notice disputing that fact, that fact shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit facts is served in favour of the party serving the notice.

(3) A party may, with the leave of the Court, withdraw an admission under Sub-rule (2).

**30. Judgement on admissions. (18/3)**

(1) Where admissions are made by a party, whether by his pleading or otherwise, the Court may, on the application of any other party, direct the entry of any judgement or make any order to which the applicant is entitled on the admissions.

(2) The Court may exercise its powers under Sub-rule (1) notwithstanding that other questions in the proceedings have not been determined.

**31. Admission of documents discovered. (18/4)**

(1) Where a list of documents is served on a party under Division 1 (discovery and inspection of documents), and inspection of any document specified in the list is permitted to that party under that Division, then, subject to Sub-rule (2), the following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders—

- (a) that the document, if described in the list as an original document is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party—

- (a) has by his pleading denied the authenticity of a document; or
- (b) within 14 days after the time limited under Division 1 for inspection of a document, serves on the party giving inspection a notice that he disputes the authenticity of the document,

Sub-rule (1) does not work as an admission by the first-mentioned party as to that document.

(3) Where a party serves on another party a list of documents pursuant to Division 1, those parties shall be in the position that they would be in if the latter party had, on the date of service of the list, served on the party serving the list a notice requiring production at the trial of such of the documents specified in the list as are in possession, custody or power of the party serving the list.

## **Order 9, Rule 32**

(4) This Rule applies in relation to an affidavit made in compliance with an order under Division 1 Rule 7 (discovery of particular documents) as they apply in relation to a list of documents served under that Division.

### **32. Notice to admit documents. (18/5)**

(1) A party to proceedings may, by notice served on another party, require him to admit, for the purpose of those proceedings only, the authenticity of the documents specified in the notice.

(2) If, as to any document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit documents, a notice disputing the authenticity of the document, the document shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit documents is served.

(3) A party may, with the leave of the Court, withdraw an admission under Sub-rule (2).

### **33. Restricted effect of admission. (18/6)**

An admission under this Division for the purpose of any proceedings shall not be used—

- (a) against the admitting party in any other proceedings; or
- (b) in favour of any person other than the party in whose favour the admission is made.

### **34. Costs of notice where documents unnecessary.**

If a notice to admit comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving the notice.

### **35. Form of notice.**

- (1) A notice to admit facts (and authenticity of documents) shall be in Form 37.
- (2) A notice disputing facts (and authenticity of documents) shall be in Form 38.

## ***Division 4.—Medical Examination, Inspection of Property, etc.***

### **Subdivision A.—Medical Examination.**

### **36. Application and interpretation of Division 4. (25/11)**

- (1) Rules 36 to 43 apply to proceedings in which—
  - (a) the physical or mental condition of a person is relevant to any matter in question; and

(b) either—

- (i) that person is a party; or
- (ii) a party claims relief for the benefit of that person under Part IV of the *Wrongs (Miscellaneous Provisions) Act* 1962 (wrongful act or neglect causing death).

(2) In this Division—

"first party" means the party mentioned in Sub-rule (1)(b); "person concerned" means the person mentioned in Sub-rule (1)(a).

**37. Notice for examination. (25/2)**

(1) Any party other than the first party may serve on the first party a notice in accordance with this Rule for the medical examination of the person concerned.

(2) A notice for medical examination shall be a request by the party giving the notice that the person concerned submit to examination by a specified doctor at a specified time and place, and shall be in Form 39.

**38. Expenses. (25/3)**

A party who serves a notice for medical examination shall, on request by the first party, pay to the first party a reasonable sum to meet the travelling and other expenses of the person concerned of and incidental to the medical examination including the expenses of having a doctor chosen by him attend his examination under Rule 41.

**39. Non-compliance with notice. (25/4)**

(1) Where a notice for medical examination of a person concerned is served under Rule 37, and a reasonable sum has been paid, if requested, in accordance with Rule 38, and the person concerned does not submit to examination in accordance with the notice, the Court may, on terms, stay the proceedings as to any claim for relief by or for the benefit of the person concerned, and order the refund of the sum to the party who paid it.

(2) Where, before the proceedings are set down for trial under Order 10 Division 1, a party files notice of a motion for a stay of proceedings under Sub-rule (1) the proceedings shall, unless the Court otherwise orders, be stayed pending disposal of the motion.

**40. Order for examination. (25/5)**

(1) The Court may, on terms, make orders for the medical examination of a person concerned, including an order that a person concerned submit to examination by a specified doctor at a specified time and place.

## **Order 9, Rule 41**

(2) Where the Court orders that a person concerned submit to examination by a doctor, the person concerned shall do all things reasonably requested and answer all questions reasonably asked of him by the doctor for the purposes of the examination.

### **41. Doctor for person concerned. (25/6)**

The person concerned may have a doctor chosen by him attend his examination.

### **42. Report. (25/7)**

(1) The examining doctor shall make a written report of his examination of the person concerned and shall give his report to the party serving the notice, or obtaining the order, for medical examination.

(2) A party to whom a report is given under Sub-rule (1) shall serve a copy of the report on the first party.

(3) Where the person concerned has had a doctor chosen by him attend his examination that doctor shall make a written report of the medical examination and shall give his report to the first party.

(4) The party to whom a report is given under Sub-rule (3) shall serve the report on the party serving the notice for medical examination or obtaining the order for medical examination.

### **43. Further medical examination.**

Rules 36 to 42 are applicable to enable a second or further medical examination of the person concerned.

## **Subdivision B.—Inspection of Property, etc.**

### **44. Inspection of property, etc. (25/8)**

(1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceedings, make orders, on terms, for—

- (a) the inspection of any property; or
- (b) the taking of samples of any property; or
- (c) the making of any observation of any property; or
- (d) the trying of any experiment on or with any property; or
- (e) the observation of any process.

(2) An order under Sub-rule (1) may authorize any person to enter any land or to do any other thing for the purpose of getting access to the property.

(3) A party applying for an order under this Rule shall, so far as practicable, serve notice of the motion on each person who would be affected by the order, if made.

## **Order 9, Rule 46**

(4) In this Rule, "property" includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

### **45. View. (25/9)**

The Court may inspect any place, process or thing with respect to which any question arises in the proceedings.

### **Subdivision C.—Default.**

### **46. Default. (25/10)**

(1) Where a party makes default in compliance with an order under this Division or in compliance with Rule 40(2), the Court may make such order as it thinks fit, including—

- (a) if the party in default is a plaintiff—an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed; or
- (b) if the proceedings were commenced by writ of summons and the party in default is a defendant—an order that his defence be struck out and that judgement be entered accordingly.

(2) Where a person concerned, not being a party, makes default in compliance with an order under this Division, or in compliance with Rule 40(2), the Court may order that the proceedings be stayed or dismissed as to any relief claimed for the benefit of the person concerned.

(3) This Rule does not limit the powers of the Court to punish for contempt.

## **Order 10, Rule 1**

### **ORDER 10.—TRIAL.**

#### ***Division 1.—Setting Down for Trial.***

##### **1. Application of Division 1. (33/1)**

- (1) This Division applies to proceedings commenced by writ of summons.
- (2) This Division applies to proceedings commenced by originating summons to such extent and with such modifications as the Court may direct.

##### **2. Place and mode of trial. (33/2 and 3)**

- (1) Subject to Sub-rule (2) the trial of proceedings shall take place at such place within Papua New Guinea as is stated in the notice filed pursuant to Rule 4.
- (2) Notwithstanding the provisions of Sub-rule (1) the Court may, on the application of a party or of its own motion, appoint some other place within Papua New Guinea for the trial of any proceeding.
- (3) Unless the Court otherwise orders the trial shall be by a single Judge.

##### **3. Extent of trial. (33/4)**

Proceedings shall, unless the Court otherwise orders, be set down for trial generally, that is to say, for trial of all the questions and issues arising on every claim for relief in the proceedings.

##### **4. Notice to set down for trial. (33/5)**

- (1) A party may, after the pleadings are closed, file a notice requesting that the proceedings be set down for trial.
- (2) The notice in Form 40 to set down for trial shall state—
  - (a) the place for trial as fixed by or under Rule 2; and
  - (b) whether the proceedings are to be set down for trial generally or for the trial of specified issues.
- (3) A party filing notice to set down for trial shall, on the day of filing, serve the notice on each other party who has an address for service in the proceedings.

##### **5. Want of prosecution. (33/6)**

Where a plaintiff does not, within six weeks after the pleadings are closed, set the proceedings down for trial, the Court, on motion by any other party, may, on terms, dismiss the proceedings or make such other order as the Court thinks fit.

##### **6. Directions before setting down. (33/7)**

Where notice to set down for trial has been filed, but the Court considers that the proceedings are not ready for trial, the Court may give directions as to the steps to be taken to make the proceedings ready for trial.

**7. Listing a matter for hearing.**

Where a notice has been given under Rule 4 the Registrar shall place the matter in the list of matters for hearing at the next sittings of the Court at the place appointed for the hearing of the proceedings.

**8. Delivery of copies of pleadings on entering action.**

(1) The plaintiff shall, within seven days after the cause or issue has been set down for trial, deliver to the Registrar two copies of the whole of the pleadings or of the issues, one of which shall be for the use of the Court at the trial.

(2) The copies referred to in Sub-rule 1 shall be typed, except as to such parts (if any) of the documents as are by these Rules permitted to be written.

**9. Notice of trial. (33/9)**

The Registrar shall, not less than 14 days before the date for which the proceedings are set down for trial, give notice of trial in Form 41 to each party who has an address for service and who was not present or represented when the proceedings were set down for trial.

Order 10 Division 1 (*Setting down for trial*) of the *National Court Rules* is amended by inserting the following:

**9A. - Listings Rules 2005<sup>3</sup>**

**Purpose.**

These Rules include a consolidation of all previous Practice Directions and Notes issued by the Registrar between 1983 to 2004 in relation to call – over and listing of all civil cases, except, for Appeal, Judicial Review, Commercial and Election Petition cases. Those previous Practice Directions & Notes are contained in *Civil Jurisdiction Bulletin 2004*. As from the date of coming into operation of these Rules, those practice directions & notes will cease to apply.

These *Rules* are in addition to the provisions of Order 10 Div. 1 (rr 1-9) of the *National Court Rules* relating to pre-trial preparation and setting down cases for trial. They are intended to improve the disposition of civil cases in a quick, fair and cheap manner.

**1. INTERPRETATION.**

The following words or abbreviations unless the context otherwise suggests –

"Listing process" means, the process set out in this Practice Direction and in particular, Mentions, Directions Hearing, Pre-trial Conferences and Status Conferences.

"List" means matters on the Listings List., Mentions List & Directions List.

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<sup>3</sup> Inserted by the National Court Listing Rules 2005

## **Order 10, Rule 9A(2)**

### **2. JUDGE.**

The Chief Justice may assign a judge(s) as determined in the *Annual Circuit Calendar* to conduct listings in all civil cases except for, appeals, judicial review, commercial and election petition matters.

### **3. CALL-OVERS.**

The Registrar will not produce a call-over list and conduct call-over of civil matters. Instead, all matters already filed and pending before the Court as well as those that are yet to be filed, will be dealt with in the manner outlined hereunder.

### **4. FILE REFERENCE.**

Civil matters bearing the following file reference shall be listed for directions before the listings judge:

WS No	of	(year)	- Writ of Summons
OS No.	of	(year)	- Originating Summons
MC No.	of	(year)	- Matrimonial Causes.
WPA No.	of	(year)	- Wills, Probate and Administration
LA -	of	(year)	- Lawyers Admission.
MP No.	of	(year)	- Human rights applications, Winding up Petitions, Insolvency Petitions and other Miscellaneous applications in civil matters.

### **5. COURT LISTS.**

(1) The Registrar shall maintain a general civil list of all civil cases (other than Appeal, Judicial Review, Commercial and Election Petition cases) filed and pending in the National Court.

(2) The Registrar shall compile such other lists as directed by the judge including a list containing cases in which a Notice to Set Down for Trial/Hearing has been filed and the case is ready for pre-trial directions.

### **6. NOTICE TO SET DOWN FOR TRIAL.**

(1) Where a Plaintiff wishes to file a Notice to Set Down for Trial he may do so after lapse of 6 weeks from the close of pleadings (after all interlocutory processes have been completed). He shall first write to the other parties to notify them that he is going to do this. Such letter can be sent at any time after pleadings are closed.

(2) The other party or parties may then do any of the following:

(a) Advise the Plaintiff in writing that they are not ready to have the matter set down for trial and specify the reasons in writing (a copy of the letter should be sent to the Registrar to be placed on the Court file); or

## **Order 10, Rule 9A(7)**

(b) Arrange to endorse the Notice to Set Down (or Notice of Hearing or Notice of Appointment for the Hearing), with the following words:

*"I agree that the matter is ready to proceed, pleadings have closed and there are no further interlocutory steps to complete prior to the Notice to Set Down for Trial (or such Notice as is appropriate) is filed".*

The endorsement must be signed by the lawyer or the party and the name of the lawyer party must appear below the signature. It must not be signed or initialled by the Law firm as it is incapable of having a signature.

(c) Send a letter to the other party (with a copy to the Court) agreeing in the terms set out in (b) above that the matter is ready to set down for trial.

(3) If the Plaintiff wishes to set a matter down where the Defendant says (in writing or by sending a letter) the matter is not ready, he or she shall apply by Motion, before the Listings Judge, for leave to be given for a Notice to Set Down for Trial or for such other orders as may seem appropriate.

### **7. MENTIONS.**

(1) All matters that have been filed and have progressed passed the pleadings and interrogatories and are pending before the National Court shall be specifically mentioned by the Court each Mondays on a date and time the Court may fix with sufficient notice to the parties, commencing with the earliest filed date of the originating process.

(2) Where necessary, the Registrar shall give Notice for Mention or Directions Hearing in accordance with the form provided in *Schedule "A"*.

(3) The Registrar shall produce at least 7 days before the date set for mention a mentions list and circulate the list to all of the parties.

(4) At the mention, the Court will consider, amongst other things, the following –

- (a) Legal representation of the parties;
- (b) The Courts jurisdiction and *locus standi* and the capacity of the parties to sue and be sued;
- (c) Sufficiency of pleadings and the need for further pleadings;
- (d) Whether any condition precedent to the action or statutory time bar issues arise;
- (e) Whether there are any related proceedings and their consolidation;
- (f) Nature of the case;
- (g) Joinder of all necessary and relevant parties and causes of action;
- (h) Any cross-claim or set-off;

## **Order 10, Rule 9A(7)(4)(i)**

- (i) Whether parties have attempted out of court settlement;
- (j) An identification of the relevant factual and legal issues raised in the proceedings;
- (k) Whether any documents will be relied upon and any need for discovery of documents;
- (l) Whether any expert or independent assessment is required;
- (m) The likely length of time for trial and time within which the matter is likely to be ready for trial;
- (n) Number of witnesses the parties wish to call and their relevance and necessity;
- (o) Filing of any witness statements and or affidavits;
- (p) Issue of witnesses summonses;
- (q) Whether parties wish to file statement of agreed and or disputed facts and issues for trial;
- (r) Medium and or mode of giving evidence;
- (s) Any requirement for translation;
- (t) Whether any further interlocutory steps need to be completed before trial;
- (u) The necessity to transfer the proceedings to a different Court or venue;
- (v) Preparation and compilation of a pleadings book as required by Order 10 Rule 8 of the ***National Court Rules*** which contains, amongst other relevant documents, the Originating Process, Statement of Claim, Defence (& Cross Claim if any), Reply (& Defence to Cross Claim if any), Reply to Defence on Cross Claim if any, and Further and Better Particulars;
- (w) The date, time and venue for pre-trial conference; and
- (x) Such other matters as may aid in the prompt disposition of the matter.

(5) After the completion of the mentions in accordance with sub-rule (4) and within 7 days from the close of pleadings for all other matters filed and pending, the Court shall similarly mention those matters.

(6) In a case where there has been no activity since filing or after the last activity there has been no further meaningful activity, the Court will deal with the matter summarily in accordance with procedure set out in Rule 16.

(7) If the parties are ready and able to assist the Court when a matter goes before the Court on mention or where the Court considers appropriate to do so, it may issue such orders and directions as it considers appropriate in relation to the matters set out in sub-rule (4).

## **Order 10, Rule 9A(9)**

(8) Where the parties are not ready to assist the Court at the mention, the Court shall fix a date within 14 days from the date of the mention for directions hearing.

### **8. DIRECTIONS HEARING.**

(1) At the Directions Hearing, the Court shall consider and give orders and directions in relation to the matters set out in Rule 7 (4) and fix a date for Pre-trial Conference.

(2) The Registrar shall produce at least 7 days before the date set for Directions Hearing, a Directions Hearing List and circulate it to the parties and the public.

### **9. PRE-TRIAL CONFERENCE.**

(1) The Court shall conduct a Pre-trial Conference within 21 days from the date of directions hearing.

(2) At the Pre-trial Conference the Court shall inquire into and ensure compliance of the orders and directions given at the Directions Hearing under Rule 7 & 8 and may amongst others:

- (a) Confirm legal representation;
- (b) Confirm correctness of the Pleadings Book;
- (c) Confirm the issues for trial;
- (d) Ascertain and confirm the number of witnesses and the length of their evidence;
- (e) Ascertain filing of Statement of Agreed and Disputed Facts and Legal Issues in the form in *Schedule "B"*;
- (f) Direct filing and service of notices under Section 34 and 35 of the *Evidence Act*;
- (g) Issue summonses for witnesses;
- (h) Direct filing extract of submissions where appropriate;
- (i) Fix a date or dates for trial; and (j)  
Fix a date for a status conference.

(3) Immediately upon the judge fixing a trial date(s), the Registrar shall issue to all the parties a Notice of Trial/Hearing or Appointment for the Hearing.

(4) Upon completion of the Pre-trial conference, the Judge's Associate shall record a summary of the pre-trial details in the form in *Schedule "C"* and place it on the file.

## **Order 10, Rule 9A(10)**

### **10. STATUS CONFERENCE.**

A status conference shall be conducted by the trial judge on the first day of the circuit month to confirm that all relevant directions and orders issued during directions and pre-trial conference have been complied with and that the matter is ready for trial.

### **11. URGENT MATTERS.**

Urgent matters shall be scheduled for Directions Hearing, Pre-trial Conference and or Status Conference, within the period stipulated by these rules or as the urgency of the case might require and or as the Court deems fit.

### **12. TRIAL.**

(1) Once a matter is listed for trial the Registrar shall issue to the parties a notice of trial and place the matter on a Trial List, which he shall produce and circulate to all the parties at least seven days before the dates fixed for trial.

(2) The trial shall proceed on the date fixed by the Court at the Pre-trial conference and it may be conducted in accordance with the directions and order made by the Court at the time or before the fixing of the trial date.

### **13. ADJOURNMENTS.**

(1) A trial once fixed shall not be adjourned except by leave of the Court upon sufficient cause being shown.

(2) Where the Court decides to adjourn the trial, it shall be adjourned to a fixed date within the circuit month or to the earliest available Directions Hearing or Pre-trial conference as the trial judge may consider appropriate.

### **14. LEGAL REPRESENTATION.**

(1) Subject to sub-rule (2) herein, where a party is represented by a lawyer, that party shall attend at all of the various listing process with the lawyer who has the carriage and conduct of the matter and will be appearing at the trial.

(2) Where the lawyer having carriage of the matter instructs another lawyer to appear, the lawyer must be fully briefed.

### **15. SUMMARY DISPOSAL.**

(1) The Court may summarily determine a matter:

- a. on application by a party; or
- b. on its own initiative; or
- c. upon referral by the Registrar under (3) below.

(2) The Court may summarily dispose of a matter in the following situations:

- a. for want of prosecution since filing the proceedings or since the last activity on the file; or

## **Order 10, Rule 9A(17)**

- b. for a failure to appear at any of the listing or directions hearing by a party or his lawyer; or
- c. for non-compliance of any order or directions previously made or issued by the Court at any of the listing processes.
- d. under any of the grounds set out in Order 12 Rule 40 *and* Order 8 Rule 27 of the *National Court Rules*.
- e. on any competency ground relating to non-compliance with the *National Court Rules* or any other relevant rules of Court.

(3) Where the Registrar refers a matter for summary determination, the following procedure shall be followed:

- a. A notice in the form in *Schedule "D"* is issued by the Registrar which gives notice to the parties of his intention to refer the matter to the judge for summary determination on the ground(s) stated in the letter. The letter will also give the parties thirty (30) days to respond and fix a return date and time for the matter to come before the judge. In appropriate cases, the Registrar may publish the notice letter in the media.
- b. If the Registrar receives a response, either in writing or verbal, he must place on the file the written response or a note of the verbal response and advise the parties to appear in Court on the date fixed.
- c. Upon expiry of 30 days, the Registrar shall forward the file to the judge.
- d. The judge may determine the proceedings summarily based on the response received and any further representations made by the parties in Court or give such directions as may seem necessary for the future conduct of the proceedings.
- e. If the parties are unrepresented, the Registrar shall draft the Court Order, enter it and forward sealed copies to the parties.
- f. The file is closed and forwarded to Archives for storage.

### **16. MOTIONS.**

Motions in respect of listing aspects such as application for leave to file Notice to Set Down for Trial, applications under Order 12 Rule 40 and Order 8 Rule 7 of the *National Court Rules* or applications for summary determination under Rule 16(1)(a) shall be moved before the Listings Judge.

### **17. DISPENSATION WITH REQUIREMENTS OF THESE RULES.**

The Court may dispense with compliance of these Rules in appropriate cases.

**Order 10, Rule 9A(18)**

**18. COMMENCEMENT OF THESE RULES.**

These Rules shall commence on the date they are signed by the Judges.

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<sup>4</sup> Signed by the Judges on 27<sup>th</sup> September 2005

## **Schedule "A" – Notice for Mention/Directions Hearing**

### **SCHEDULE "A"** **(Title)**

#### **NOTICE FOR MENTION/DIRECTIONS HEARING**

**To the:**

Plaintiff/lawyer:

Defendant/lawyer:

Take note that this matter is listed for Mention/Directions Hearing before the Listings judge at the National Court at ..... (Courthouse) at .....a.m./p.m. on the..... day of .....20 .....

You are required to attend at the Mention/Directions Hearing to assist the judge to deal with the matters listed below.

At the Mention/Directions Hearing, the judge will consider, amongst other things, the following:

- (a) Legal representation of the parties.
- (b) The Court's jurisdiction and *locus standi* and the capacity of the parties to sue and be sued.
- (c) Sufficiency of pleadings and the need for further pleadings.
- (d) Whether condition precedent to the action or statutory time bar issues arise.
- (e) Whether there are any related proceedings and their consolidation.
- (f) Nature of case.
- (g) Joinder of all necessary and relevant parties and causes of action.
- (h) Any cross-claim or set off.
- (i) Whether parties have attempted out of court settlement.
- (j) An identification of the relevant factual and legal issues raised in the proceedings.

## **Schedule "A" – Notice for Mention/Directions Hearing (cont...)**

- (k) Whether any documents will be relied upon and need for discovery of documents.
- (l) Whether any expert or independent assessment is required.
- (m) The likely length of time for trial and time within which the matter is likely to be ready for trial.
- (n) Number of witnesses the parties wish to call and their relevance and necessity.
- (o) Filing of witnesses' statements and or affidavits.
- (p) Issue of witnesses' summonses.
- (q) Whether parties wish to file statement of agreed and/or disputed facts and issues for trial.
- (r) Medium and/or mode of giving evidence.
- (s) Any requirement for translation.
- (t) Whether any further interlocutory steps need to be completed before trial and determination of the same.
- (u) The necessity to transfer the proceedings to a different Court or venue.
- (v) Preparation and compilation of a Pleadings Book as required by Order 10 Rule 8 of the *National Court Rules* which contains, amongst other relevant documents, the Originating Process, Statement of Claim, Defence (& Cross claim, if any), Reply (& Defence to Cross Claim, if any), Reply to Defence on Cross Claim, and Further and Better Particulars.
- (w) The date, time and venue for pre-trial conference.
- (x) Such other matters as may aid in the prompt disposition of the matter.

Dated this .....day of ....., 20 .....

Issued by:

.....  
Registrar

---

**Schedule "B" – Statement of Agreed & Disputed Facts & Legal Issues**

**SCHEDULE "B"**

(Title of proceedings)

**STATEMENT OF AGREED & DISPUTED FACTS & LEGAL ISSUES**

**A. STATEMENT OF AGREED FACTS**

The parties agree on the following facts:

**B. STATEMENT OF DISPUTED FACTS FOR DETERMINATION**

The following facts are disputed:

**C. STATEMENT OF AGREED LEGAL ISSUES FOR DETERMINATION**

The legal issues for determination are as follows:

Dated this .....day of .....20 .....

.....  
(signature)

Name of lawyer/Plaintiff:

.....  
(signature)

Name of Lawyer/ Defendant.

## Schedule "C" – Pre-Trial Form

### SCHEDULE "C"

#### PRE-TRIAL FORM

*(to be completed by Judge's Associate after Pre-trial Conference)*

**Title of proceedings:** \_\_\_\_\_

1. Lawyer for the Plaintiff & Counsel:
2. Lawyer for Defendant & Counsel:
3. Nature of claim:
4. Issues of fact:
5. Legal issues:
6. Statement of agreed and disputed facts filed:
7. Number of witnesses for Plaintiff-  
Giving affidavit evidence only:  
- Giving oral evidence:
8. Number of Defence witnesses-  
- Giving affidavit evidence only: -  
Giving oral evidence:
9. Expert witnesses:
10. Documentary and physical evidence:
11. Witnesses summonsed to give evidence:
12. Pleadings Book filed:
13. Duration of trial:
14. Whether out of court settlement attempted and exhausted:
15. Whether all necessary interlocutory processes have been completed:
16. Date and time of trial:

Dated this .....day of .....20.....

Prepared by:

.....

Name and signature of Associate to Judge

\_\_\_\_\_

**Schedule "D" – Notice Letter for Summary Determination**  
**SCHEDULE "D"**

**(Notice letter for summary determination).**

**Date:**

**To:** \_\_\_\_\_  
(Name of Plaintiff/Lawyer & Address)

**Copy to:** \_\_\_\_\_  
(Name of Defendant/Lawyer & address)

Title of proceedings: \_\_\_\_\_

I refer to the above matter and advise that this matter is listed for summary determination before the Listings Judge in the National Court at .....  
(Courthouse) at .....am/pm on the ..... day of ..... 20.....

The grounds or reasons are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

You are required to attend Court on the date and time fixed above to show cause why your matter should not be summarily dismissed for the reason(s) stated above.

If you wish to given an explanation before appearing in Court, you may do so by letter addressed to the Registrar, within thirty (30) days from the date of this letter.

Yours Sincerely,

.....  
Registrar

\_\_\_\_\_

## **Order 10, Rule 10**

### ***Division 2.—Trial.***

#### **10. Interpretation and application of Division 2. (34/1, 2)**

- (1) For the purposes of this Division—
  - (a) where the burden of proof on any issue lies on the plaintiff, he shall be the beginning party and the defendant shall be the opposite party; and
  - (b) where the burden of proof on all the issues lies on the defendant, he shall be the beginning party and the plaintiff shall be the opposite party.
- (2) This Division applies to proceedings commenced by writ of summons.
- (3) Subject to Rule 11, this Division applies to proceedings commenced by originating summons to such extent and with such modifications as the Court may direct.

#### **11. Time and place of trial. (34/4)**

- (1) Where proceedings have been set down for trial under Division 1 for a specified date, the trial may be held on that or any later date.
- (2) Notwithstanding Sub-rule (1) and notwithstanding the setting down of any proceedings for trial under Division 1, the Court may make such orders as it thinks fit for fixing the time and place of trial.

#### **12. Absence of party. (34/5)**

- (1) If, when a trial is called on, any party is absent, the Court may, on terms—
  - (a) order that the trial be not held unless the proceedings are again set down for trial, or unless such other steps are taken as the Court may direct; or
  - (b) proceed with the trial generally or so far as concerns any claim for relief in the proceedings; or
  - (c) adjourn the trial.
- (2) Where the Court proceeds with a trial in the absence of a party, and at or at the conclusion of the trial a verdict is given or a finding or assessment is made, the Court, on motion by that party, may, on terms, set aside or vary the verdict, finding or assessment, and may give directions for the further conduct of the proceedings.
- (3) A motion under Sub-rule (2) must be made on notice and the notice must be filed and served not more than seven days after the giving of the verdict or the making of the finding or assessment.

#### **13. Conduct of trial. (34/6)**

- (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.

(2) Subject to Sub-rule (1)—

(a) where the only parties are one plaintiff and one defendant, and there is no cross-claim, the order of evidence and addresses shall be as provided by this Rule; and

(b) in any other case, the order of evidence and addresses shall be as provided by this Rule, subject to such modifications as the nature of the case may require.

(3) The beginning party may make an address opening his case and may then adduce his evidence.

(4) Where, at the conclusion of the evidence for the beginning party, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.

(5) If, pursuant to Sub-rule (4), the opposite party elects not to adduce evidence, the beginning party may make an address closing his case and then the opposite party may make an address stating his case.

(6) If, under Sub-rule (4), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his evidence and after adducing his evidence he may make an address closing his case and then the beginning party may make an address closing his case.

#### **14. Judgement by direction.**

(1) Where the plaintiff is the beginning party, a defendant may, at any time after the conclusion of the evidence for the plaintiff in his case in chief, move the Court for an order directing the entry of judgement for that defendant in the proceedings generally or on any claim for relief in the proceedings on the ground that, on the evidence given, an order directing the entry of judgement for the plaintiff could not be supported.

(2) Where the ground of a defendant's motion under Sub-rule (1) is established, the Court may direct the entry of judgement for the defendant accordingly.

(3) Where a defendant's motion under Sub-rule (1) is refused, the defendant may not, without leave of the Court, adduce evidence in the proceedings or on the claim for relief in question, as the case may be.

(4) Where fewer than all defendants apply under Sub-rule (1), the Court may refuse to make an order under Sub-rule (2) until the conclusion of the evidence given for all the parties.

#### **15. Record of trial. (34/9)**

The associate, or other proper officer present at the trial, shall be the clerk at the trial and shall maintain and complete a record of the trial.

## **Order 10, Rule 16**

### **16. Death before judgement. (34/10)**

(1) Where a party dies after the verdict or finding on the issues of fact, the Court may by order direct the entry of judgement, and judgement may be entered, notwithstanding the death.

(2) Sub-rule (1) does not affect the power of the Court to make orders under Order 5 Rule 10 (change of parties by reason of death, etc.)

### ***Division 3.—Assessment.***

### **17. Damages under judgement. (35/1)**

(1) Subject to Sub-rule (2), where judgement is entered for damages to be assessed, the proceedings shall, unless the Court otherwise orders, be set down in accordance with Division 1 for trial for assessment of damages under the judgement.

(2) Where judgement is entered against any party for damages to be assessed and the proceedings are carried on against that party on any claim for relief not determined by the judgement or against any other party, the trial for assessment of damages under the judgement shall, unless the Court otherwise orders, be held together with any other trial in the proceedings and the proceedings shall be set down for trial accordingly.

### **18. Value of goods under judgement. (35/2)**

Rule 17 applies in relation to a judgement for the value of goods to be assessed, with or without damages to be assessed, as it applies to a judgement for damages to be assessed, and references in Rule 17 to the assessment of damages shall be construed accordingly.

### **19. Damages to time of assessment. (35/3)**

(1) Where damages are to be assessed in respect of—

- (a) any continuing cause of action; or
- (b) repeated breaches of recurring obligations; or
- (c) intermittent breaches of a continuing obligation,

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the commencement of the proceedings.

(2) Sub-rule (1) applies to the assessment of damages under this Division or otherwise.

***Division 4.—Separate Decision of Questions.***

**20. Interpretation of Division 4. (31/1)**

In this Division "question" includes any question or issue in any proceedings, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties or otherwise.

**21. Order for decision. (31/2)**

The Court may make orders for—

- (a) the decision of any question separately from any other question, whether before, at or after any trial or further trial in the proceedings; and
- (b) the statement of a case and the question for decision.

**22. Agreed result. (31/4)**

(1) Any parties to proceedings in which a case is stated under Rule 21 may, with the leave of the Court, agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgement or a specified order shall be made.

(2) On that question being so decided, the Court may make the agreed direction or order.

(3) Where an agreement is made pursuant to Sub-rule (1) before a case is stated, the terms of the agreement shall be set out in the stated case.

**23. Record, etc. of decision. (31/5)**

Where any question is decided under this Division the Court shall, subject to Rule 24, either—

- (a) cause the decision to be recorded; or
- (b) direct the entry of such declaratory judgement, or make such declaratory order, as the nature of the case requires.

**24. Disposal of proceedings. (31/6)**

Where the decision of a question under this Division—

- (a) substantially disposes of the proceedings or of the whole or any part of any claim for relief in the proceedings; or
- (b) renders unnecessary any trial or further trial in the proceedings or on the whole or any part of any claim for relief in the proceedings,

the Court may, as the nature of the case requires—

- (c) dismiss the proceedings or the whole or any part of any claim for relief in the proceedings; or

## **Order 10A(1)**

- (d) direct the entry of any judgement; or
- (e) make any other order.

### **ORDER 10A.— NATIONAL COURT (COMMERCIAL LIST) RULES.**

#### **Purpose.**

1. The purpose of these rules is to establish a Commercial List to expeditiously resolve commercial matters. The Commercial List will commence to operate on a date promulgated by the Chief Justice.

#### **Application.**

- 2. The Chief Justice will allocate a judge or judges to conduct the Commercial List.
- 3. The Commercial List will be maintained by a Commercial List Clerk in the Registry.
- 4. The Commercial List Judge will be responsible for the management of all pre-trial and listing matters.
- 5. The Commercial List Clerk will be the first point of contact and he may be contacted by telephone or facsimile.
- 6. All files for the Commercial List will be under the custody of the Commercial List Clerk who will be fully informed of the position of each matter in the Commercial List.
- 7. All file references of matters on the commercial list shall bear the abbreviation "COMM" beside the file reference.

#### **Nature of listed proceedings.**

8. Any matter already filed and apparently involving a dispute concerning an amount greater than K500, 000 arising out of a commercial transaction or in which there is an issue which has importance in trade or commerce, will be, if the Registry identifies the matter, automatically placed on the Commercial List. Any other matter may be added to the List by application of a party, in accordance with this direction, or on the recommendation of the Registrar.

9. Without being exhaustive, proceedings which are likely to involve any one or more of the following may be regarded as arising out of a commercial transaction or involving an issue which has importance in trade or commerce:

---

<sup>5</sup> Inserted by the National Court Commercial List Rules 2005

<sup>6</sup> The Commercial List commenced operation in 2007.

- a)
  - i) Construction of a business contract or a commercial document;
  - ii) Insurance and re-insurance;
  - iii) Banking and financial services;
  - iv) Provision and enforcement of securities;
  - v) Business and commercial agents;
  - vi) Exploitation of or rights to technology;
  - vii) Entitlement to intellectual property;
  - viii) Takeovers;
  - ix) Exporting or importing of goods;
  - x) Carriage of goods by land, sea, air or pipeline;
  - xi) Exploitation of natural resources;
  - xii) Conduct or operation of markets, exchanges or commodity boards or regulators;
  - xiii) Application of the *Independent Consumer and Competition Commission Act 2000*;
  - xiv) Proceedings under the *Income Tax Act* or other revenue legislation, but not matters where the summary judgement procedure is available to the plaintiff;
  - xv) Corporations' law.
- b) Proceedings which concern the above topics but exhibit no serious commercial element, or in which there is no real dispute, should not be listed on the Commercial List.
- c) The Commercial List judge has discretion as to whether a matter should be entered or retained on the Commercial List.

**Application for listing.**

10. A proceeding may be listed on the commercial list upon application to the Commercial List judge or the Judge Administrator of the Civil List.

11. Unless otherwise directed, an application to have a proceeding listed on the Commercial List may be made only:

- a) After the writ or summons has been served on the defendants or respondents;

## **Order 10A(12)**

b) After the views of the defendants or respondents as to its listing have been sought by the applicant;

c) On service of a motion to list together with a supporting statement, of the parties to the proceedings.

(i) Prior to filing a listing motion the lawyer for the applicant must contact the Commercial List Clerk or the Associate to the Commercial List Judge and obtain a date and time for the hearing.

(ii) a) A listing application is to be made by motion supported by a statement made in accordance with these rules ("a listing statement");

(iii) The form of a listing statement should substantially comply with schedule A.

12. An applicant for listing shall prepare a draft order setting out the directions sought on the return of the motion. The draft is to be delivered by the applicant to the associate to the Commercial List judge and to the other parties, not less than 24 hours prior to the time set for the hearing. Any consent to the orders should be endorsed on the draft. If the parties agree to the proposed orders the endorsed draft order should be delivered to the Commercial List judge and the judge may, without the need for a hearing, include the proceedings on the Commercial List.

13. An order to include a proceeding in the Commercial List is an interlocutory order.

14. The Respondent to an application shall be in a position on the hearing of the application to advise the Court of its position to each of the matters in the Listing Statement, including:

a) Which of the contentions is contested;

b) What the Respondent's contentions are in relation to the dispute;

c) What the Respondent believes to be the nature of the dispute and the issues likely to arise;

d) Whether the Respondent intends to cross-claim and the factual and legal basis of that cross-claim.

### **Applications and directions after listing.**

15. Upon entry of proceedings to the Commercial List all interlocutory applications and motions and the trial of the proceedings, if practicable, shall be conducted by the Commercial List judge, subject to any direction from the Judge Administrator of the civil list. The rules relating to motions in the National Court Rules shall apply to interlocutory applications.

16. The Commercial List judge may make such orders or give such directions as are

## **Order 10A(20)**

17. At the first directions hearing orders will be made and directions given with a view to the just, quick and cheap disposal of the proceedings. The orders or directions may relate to:

- (a) the filing of points of claim, points of defence or other documents;
- (b) the filing of cross-claims;
- (c) the filing of a statement of agreed issues and the result in the proceedings according to the determination of those issues;
- (d) the provision of any essential particulars;
- (e) the making of admissions, pursuant to a notice to admit facts or otherwise;
- (f) the delivery or exchange of experts' reports;
- (g) the holding of conferences of experts;
- (h) the filing of lists of documents either generally or with respect to specific matters;
- (i) the preparation of a Schedule of contentious issues;
- (j) the provision of copies of documents;
- (k) the administration and answering of interrogatories either generally or with respect to specific matters;
- (l) the service and filing of affidavits or statements of evidence by a specified date or dates;

18. Any defence filed pursuant to a direction should:

- (a) avoid formality;
- (b) admit or deny the facts on which the plaintiff relies;
- (c) so far as they do not appear from (b), state the facts on which the defendant relies and contain adequate particulars of those facts; and
- (d) identify the legal grounds for opposition to the relief claimed.

19. Orders or directions relating to the provision of particulars, the filing of lists of documents and the administration of interrogatories will be made only upon demonstrated need being established in respect to particular matters.

20. Where appropriate prior to trial orders for production of experts reports, statements of evidence and delivery of lists and bundles of documents will be made in the form of schedule "B" amended as the parties' desire. Where an order is made in terms of schedule "B" the order may be taken out in short form with any amendments noted substantially in accordance with schedule "C".

## **Order 10A(21)**

### **Matters listed by the Registry or on the recommendation of the Registrar.**

21. (1) Where a matter already filed at commencement of these rules is listed by the Registry or a matter is listed on the recommendation of the Registrar, the Commercial List Clerk will notify the parties;

(2) Within 14 days of receipt of such a notice from the Commercial List Clerk any party may apply by motion to have the matter removed from the lists;

(3) If no application is filed to remove the proceeding from the list within 14 days of the Commercial List Clerk's notice, the plaintiff shall, within 28 days of the notice, file a motion for directions, together with a Commercial List Statement completed as to paragraphs 1,2,5,6 and 7 if applicable.

### **Removal from the list.**

22. The Commercial List judge may order the removal of a proceeding from the Commercial List.

23. On making such an order these rules will no longer apply to the proceeding unless otherwise ordered.

24. Removal from the list in no way affects any order or direction made in the proceeding prior to removal.

### **Summary disposal.**

25. The summary disposal procedure set out in Rule 16 of the *Listings Rules 2005*<sup>7</sup> is adopted and shall apply to matters on the Commercial List.

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<sup>7</sup> See Order 10 Rule 9A/16

## **Schedule "A" – Commercial List Statement**

### **SCHEDULE "A"**

NATIONAL COURT OF  
JUSTICE AT WAIGANI

WS.....

[PARTIES]

#### **COMMERCIAL LIST STATEMENT**

The Plaintiff [or Defendant] makes the following statement in support of an application to have these proceedings listed on the Commercial List:

- 1. The nature of the dispute...** [set out in a summary way];
- 2. The issues which are likely to arise in the proceedings are...** [set out in a summary bullet point manner];
- 3. The proceedings ought to be included on the Commercial List for the following reasons:**
- 4. The attitude of the other parties as to the proposal to include these proceedings in the Commercial List are as follows:**
- 5. The applicant's contentions in relation to the proceedings are:**
  - a.** [set out a brief and informal statement of the relevant general facts giving rise to the proceeding];
  - b.** [set out a brief statement of the grounds on which the applicant claims relief, including any statutory rights etc].
- 6. The special directions required in this proceeding and the reasons why the directions are sought are:**
- 7. The circumstances of urgency in relation to the proceedings are:**

.....  
**Lawyers for the Applicant**

## **Schedule "B" – Order for Hearing**

### **SCHEDULE "B"**

IN THE NATIONAL COURT OF                      WS.....  
OF JUSTICE AT WAIGANI

[PARTIES]

### **ORDER FOR HEARING**

The Court Orders, subject to any specific orders which may have been made in relation to the following matters, that:

#### **1. Experts Reports**

1. If a party intends to rely upon the evidence of an expert witness:

- a. The party shall serve a copy of the report of the expert on each other party no later than 28 days before the date fixed for hearing ("trial date");
- b. The party shall serve a copy of a report responsive to a report delivered in accordance with subparagraph (a) no later than 14 days before the trial date;
- c. A party receiving a report pursuant to Order 1(a) shall not less than 14 days before the trial date, and a party receiving a report pursuant to Order 1(b) shall not less than 7 days before the trial date, state to each other party in writing whether or not it proposes to object to the whole or any part of any such report and the grounds of the objection;
- d. The Court may, on such terms as it thinks fit, direct that a report served or part of it, stand as the evidence in chief of the witness or as part of such evidence;
- e. If the report is not tendered by the party who served it and the expert is not called as a witness, no other party may put the report in evidence without the leave of the Court;
- f. If an expert is called as a witness, the party calling the expert may not lead evidence from the expert the substance of which is not included in the report already served in accordance with this paragraph, without the leave of the Court;
- g. If an expert is called as a witness any other party may use his report or any part of it in cross examination of the expert, whether or not the report was tendered, unless the Court otherwise orders;

## **Schedule "B" – Order for Hearing (cont...)**

h. Nothing in this order deprives a party of a proper objection to the admissibility of evidence;

### **2. Statements of Evidence**

2. Each party shall not less than 28 days before the trial date, serve on each other party a statement of the evidence proposed to be led from each witness to be called by that party, each page signed by the proposed witness, unless the Court otherwise orders.

### **3. Service & Delivery of Statements and Affidavits**

3. Where directions have been given for the service of affidavits or statements of evidence or paragraph 2 of this Order applies:

a. A party who fails to comply with such a direction or order may not adduce evidence to which the order or direction applies without leave of the Court;

b. At least 14 days before the trial date each party shall, by notice in writing to each other party, state whether that party proposes to object to the whole or any part of a statement of evidence or affidavit and the grounds for the objections;

c. The Court may, on such terms as it thinks fit, order that the affidavit or statement of evidence served, or part of it, stand as the evidence in chief of the witness or part of it;

d. If the affidavit is not read or the maker of the statement of evidence is not called as a witness, no other party may put the affidavit or statement into evidence without the leave of the Court;

e. If the affidavit is read or the maker of the statement is called as a witness, the party serving the affidavit or statement may not lead evidence from the maker, the substance of which is not included in the affidavit or statement, without the leave of the Court, except as to new matters which arise during the course of the trial;

f. Where the maker of an affidavit or statement served under this order, is called as a witness, any other party may use the affidavit or statement or part of it in cross examination, whether or not that document was used in evidence by the party calling the witness;

g. Nothing in this order deprives a party of a proper objection to the admissibility of evidence.

## **Schedule "B" – Order for Hearing (cont...)**

### **4. Specifying Documents to be tendered**

4 (1) At least 14 days before the trial date each party shall, by notice in writing to each other party, specify what documents it proposes to tender at the hearing and, if there has been no inspection, where the documents may be inspected;

(2) Within 7 working days thereafter, each party shall advise each other party in writing:

- a. Which of the specified documents may be tendered by consent;
- b. Whether the authenticity of any of the remaining documents, and if so which, is disputed; and
- c. In so far as any document may not be tendered by consent, the grounds for the objection to its tender.

(3) Each party other than the plaintiff shall, not later than 5:00 pm on the fourth last working day before the trial date, deliver to the plaintiff 2 copies of all documents intended to be tendered by such party at the hearing, which have not been specified in the plaintiffs notice referred to in subparagraph (1).

(4) The Plaintiff shall file by midday on the last working day prior to the trial date, duly paginated and indexed, two copies of the bundle of documents intended to be tendered at the hearing by any party. The index of documents shall indicate which documents are tendered by consent and where there is no consent to tender of a document which party intends to tender the document.

### **5. Tender of Original Documents**

(1) If any party intends to tender an original document that party shall, at least 7 days before the date fixed for hearing, give notice of that intention to all other parties;

(2) If any party requires another party to tender an original document that party shall at the time of advising in accordance with subpara 3(b) give notice of that requirement to the other party;

(3) The party in possession of a document the subject of a subpara (1) or (2) notice shall make the document available for inspection prior to the trial date at the office of the lawyer for the party giving notice.

## **Schedule "B" – Order for Hearing (cont...)**

### **6. Continuing Discovery**

6. Where a party is required to file a list of documents:

- a) Until the conclusion of the hearing that party shall be under a continuing obligation to disclose any document relevant to any matter in issue;
- b) If a party becomes aware that it has documents in its possession which have not been include in its list of documents that party shall include and clearly identify, particulars of those additional documents in a supplementary list and file and serve an affidavit specifying the reason for failure to disclose the documents in the original list;
- c) At least 7 days before the trial date each party shall file and serve a supplementary list of documents (if any) which have come into its possession since service of its original list, but excluding copies of documents received pursuant to discovery or subpoena to which all parties have been granted access, and shall give supplementary inspection.

### **7. Statements of Agreed Issues and Chronology etc.**

7. No later than 4:30 pm on the last working day before trial:

- a) The plaintiff's lawyer shall cause to be filed and served a statement of agreed issues, a chronology of relevant events and, where the number of persons who feature warrants it, a list of relevant characters;
- b) If there is no agreement each lawyer shall cause to be filed and served a statement of the issues which the lawyer perceives are likely to arise;
- c) Each lawyer shall cause to be filed a list of topics to be covered by the submissions, in the order in which they will be taken, and a list of propositions of law relied upon together with the authorities to be cited in support;
- d) The lawyer for any party other than the plaintiff may file and serve a chronology of relevant events and a list of relevant characters.

8. Documents required by paras 4(3) and 7 of this order to be filed are to be filed by delivery to the Commercial List Clerk. Documents required by para 7 of this order to be served are to be delivered to the lawyer for each opposing party.

## **Schedule "C" – The Court Orders**

### SCHEDULE "C"

IN THE NATIONAL COURT  
AT WAIGANI

WS....2005

[PARTIES]

The Court Orders:

1. The usual order for hearing in accordance with annexure "B" to *National Court (Commercial List) Rules*.

2. The usual order is amended as follows:

**ORDER 11.—EVIDENCE.**

***Division 1.—Summonses to Give Evidence.***

**1. Interpretation of Division 1. (37/1)**

In this Division, unless the contrary intention appears—

"person named" means, in relation to a summons, the person to whom the summons is addressed;

"summons for production" means an order in writing requiring the person named to attend as directed by the order and produce a document or thing for the purpose of evidence;

"summons to give evidence" means an order in writing requiring the person to attend as directed by the order for the purpose of giving evidence.

**2. Power to issue. (37/2)**

The Court may, in any proceedings, issue a summons to give evidence or a summons for production as a summons both to give evidence and for production in Form 42, 43, 44, 45 or 46, or in such other form as the Court may direct for the attendance on any trial or other occasion of the person named before the Court, officer, examiner or other person having authority to take evidence.

**3. Conduct money. (37/3)**

A summons shall not require the person named to attend or produce any document or thing on any day on which his attendance is required unless a sum sufficient to meet the reasonable expenses of the person named of complying with the summons in relation to that day is paid or tendered to him at the time of service of the summons not later than a reasonable time before that day.

**4. Production by non-party. (37/4)**

(1) Where the person named in a summons for production of any document or thing, being a summons requiring attendance before the Court or officer of the Court, is not a party to the proceedings, the summons shall, unless the Court otherwise orders, permit him to produce the document or thing to the Registrar or his delegate at his office at the place stated in the summons not later than the day before the first date on which his attendance is required, instead of attending and producing the document or thing as required by the summons.

(2) Where a document or thing is produced to a clerk under Sub-rule (1) the clerk shall—

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the Court may direct.

## **Order 11, Rule 5**

(3) This Rule does not apply to so much of a summons as requires the person named to attend to give evidence in any proceedings.

### **5. Issue. (37/6)**

(1) On request by a party, the Registrar shall, unless the Court otherwise orders, issue a summons to give evidence or a summons for production or a summons both to give evidence and for production.

(2) A summons shall be issued under seal.

(3) Unless the summons is issued in the Registry, the issuing officer shall subscribe on it the place of issue.

(4) Subject to Sub-rule (5), a party requesting the issuing of a summons shall file with the issuing officer a copy of the proposed summons and produce a form of the summons.

(5) Where a party requests the issue of several summonses to give evidence in similar terms but addressed to different persons, he need file only one copy, but that copy must contain the name of each person to whom any of the summonses is addressed.

(6) Unless the summons is issued in the Registry, the issuing officer shall note the date of issue on the copy filed with him and shall send the copy to the Registrar.

(7) A copy of the summons filed under this Rule shall not be open to inspection by any person except by leave of the Court.

### **6. Service. (37/7)**

(1) Service of a summons shall be effected in accordance with this Rule and not otherwise.

(2) Service of a summons may be effected by handing it to the person named.

(3) If, on tender of a summons to the person named, he refuses to accept it, the summons may be served by putting it down in his presence after he has been told of the nature of the summons.

(4) Where the person named in a summons is a party and has a solicitor in the proceedings, the summons may, with the consent of the solicitor, be served on the person named by leaving it at the solicitor's address for service.

### **7. Setting aside. (37/8)**

(1) The Court may, on motion by the person named in a summons, set aside the summons wholly or in part.

(2) Notice of a motion under Sub-rule (1) must be filed and served on the party on whose request the summons was issued.

***Division 2.—Evidence by Deposition.***

**8. Order for examination of witness. (27/1)**

The Court may, for the purpose of proceedings in the Court, make orders—

- (a) in Form 47 for the examination of any person on oath before an officer of the Court or before such other person as the Court may in Form 48 appoint as examiner at any place whether in or out of Papua New Guinea; or
- (b) in Form 49 for the sending of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.

**9. Letter of request. (27/2)**

(1) On the making of an order under Rule 8(b) for the sending of a letter of request, the party obtaining the order shall—

- (a) lodge with the Registrar—
  - (i) a form of the appropriate letter of request; and
  - (ii) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letter of request; and
  - (iii) where English is not an official language of the country to whose judicial authorities the letter of request is to be sent, a translation of each of the documents mentioned in Sub-paragraphs (i) and (ii) in an official language of that country appropriate to the place where the evidence is to be taken; and
- (b) file—
  - (i) a copy of each of the documents mentioned in Paragraph (a); and
  - (ii) an undertaking by the party obtaining the order or his solicitor to be responsible for all expenses incurred by the Court or by any person at the request of the Court in respect of the letter of request and, on being given notice of the amount of any such expenses, to pay the amount to the Registrar.

(2) A translation lodged under Sub-rule (1)(a)(iii) must be certified by the person making it to be a correct translation and the certificate must state his full name and address and his qualifications for making the translation.

**10. Documents for examiner. (27/3)**

(1) The party obtaining an order for examination before an examiner under Rule 8(a) shall furnish the examiner with copies of such of the documents in the proceedings as are necessary to inform the examiner of the questions to which the examination is to relate.

## **Order 11, Rule 11**

(2) Where the documents in the proceedings are not sufficient to inform the examiner of the questions to which the examination is to relate the Court shall, in the order for examination or in a later order, state the questions to which the examination is to relate.

### **11. Appointment for examination. (27/4)**

- (1) The examiner shall appoint a place and time for the examination.
- (2) The time appointed shall, having regard to the convenience of the person to be examined, and to the circumstances, be as soon as practicable after the making of the order.
- (3) The examiner shall give notice of an appointment under this Rule to the party obtaining the order and that party shall, not less than three days before the time appointed, give notice of the appointment to each other party.

### **12. Conduct of examination. (27/5)**

- (1) The examiner shall permit each party, his counsel and solicitor to attend the examination.
- (2) Subject to this Division, the proceedings before the examiner shall be in accordance with the procedure of the Court.
- (3) The examiner may administer an oath or affirmation.
- (4) A person examined before an examiner may, unless the Court otherwise orders, be cross-examined and re-examined.
- (5) The examination, cross-examination and re-examination of a person before an examiner shall, unless the Court otherwise orders, be conducted in like manner as at a trial.
- (6) The examiner may put any question to a person examined before him as to—
  - (a) the meaning of any answer made by that person; or
  - (b) any matter arising in the course of the examination.
- (7) The examiner may adjourn the examination from time to time or from place to place.

### **13. Examination of additional persons. (27/6)**

The examiner may, with the written consent of each party to the proceedings, examine any person in addition to the person named or provided for in the order for examination, and, if he does so, he shall annex to the deposition of that person the consent of each of the parties.

**14. Objection. (27/7)**

Where objection is taken to a question put to a person being examined before an examiner, or a person being so examined takes objection to answering a question put to him or to produce any document or thing—

- (a) the examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for the objection; and
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) must be set out in the deposition of that person or in a statement attached to the deposition; and
- (c) the Court may, on motion by any party, decide the validity of the ground for the objection; and
- (d) if the Court decides against the objector, the Court may order him to pay the costs occasioned by the objection.

**15. Taking of deposition. (27/8)**

(1) The deposition of a person examined before an examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner.

(2) The deposition must contain as nearly as may be the statement of the person examined.

(3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.

(4) Subject to Sub-rules (2) and (3) and Rule 14(b) the deposition need not set out every question and answer.

**16. Authentication and filing. (27/9)**

(1) The deposition of a person examined (or the shorthand notes of his examination) shall be read to him.

(2) The examiner shall, if any party so requests, ask the person examined to sign his deposition.

(3) The examiner shall authenticate the deposition by his signature.

(4) The examiner shall make on, or attach to, the deposition a note signed by him of the time occupied in the examination and the fees received by him in respect of the examination.

(5) The examiner shall send the deposition to the Registrar and the Registrar shall file it in the proceedings.

(6) The examiner shall, unless the Court otherwise orders, send the exhibits to the Registrar and the Registrar shall deal with the exhibits in such manner as the Court may direct.

## **Order 11, Rule 17**

### **17. Special report. (27/10)**

(1) The examiner may make to the Court a special report with regard to an examination before him and with regard to the absence of any person from, or the conduct of any person at, the examination.

(2) The Court may direct such proceedings to be taken, or make such order, on the report as the Court thinks fit.

### **18. Default of witness. (27/11)**

(1) Where a person has been required by a summons to attend before an examiner, and he refuses to be sworn or affirmed for the purposes of the examination or to answer any lawful question, or to produce any document or thing, the examiner shall, at the request of any party, give to that party a certificate, signed by the examiner, of the refusal.

(2) The Court may, on the certificate being filed, and on motion by any party—

(a) order that person to be sworn or affirmed, or to answer the question or to produce the document or thing, as the case may be; and

(b) order that person to pay any costs occasioned by his refusal.

### **19. Order for payment of expenses. (27/12)**

Where a party has given an undertaking as mentioned in Rule 9(1)(b)(ii) and does not, within seven days after service on him of notice of the amount of the expenses concerned, pay the amount of the expenses to the Registrar, the Court may, on application by the Registrar—

(a) order the party to pay the amount of the expenses to the Registrar; and

(b) stay the proceedings until payment so far as concerns the whole or any part of any claim for relief by that party.

### **20. Perpetuation of testimony. (27/13)**

(1) Witnesses shall not be examined to perpetuate testimony unless proceedings have been commenced for the purpose.

(2) Any person who would, in the circumstances alleged by him to exist, become entitled on the happening of any future event to any property, the right or claim to which cannot be tried before the happening of the future event, may commence proceedings to perpetuate any testimony which may be material for establishing the right or claim.

## **Order 11, Rule 22**

(3) Proceedings to perpetuate the testimony of witnesses shall not be set down for trial.

(4) Where proceedings to perpetuate testimony touch any matter or thing in which the State may have an interest, the Attorney-General may be made a defendant.

(5) Where, pursuant to Sub-rule (4) the Attorney-General is made a defendant to proceedings to perpetuate testimony, a deposition taken in those proceedings shall not be inadmissible in other proceedings by reason that the State was not a party to the proceedings to perpetuate testimony.

(6) Sub-rule (2) does not affect the right of any person to commence proceedings to perpetuate testimony in cases to which that Sub-rule does not apply.

### ***Division 3.—Affidavits.***

#### **21. Time for swearing. (38/1)**

An affidavit for use in any proceedings may be sworn before or after the commencement of the proceedings.

#### **22. Affidavit. (38/2)**

(1) An affidavit shall be made in the first person.

(2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he must certify in or below the jurat that—

(a) the affidavit was read in his presence to the deponent; and

(b) the deponent seemed to understand the affidavit.

(4) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with Sub-rule (3) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that he seemed to understand it.

(5) Each page of an affidavit shall be signed by the deponent and by the person before whom it is sworn.

(6) An affidavit shall be in Form 50.

## **Order 11, Rule 23**

### **23. Alterations. (38/3)**

(1) Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit—

- (a) the affidavit may nevertheless be filed, unless the Court otherwise orders; but
- (b) the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

(2) Sub-rule (1) applies to an account verified by affidavit as if the account were part of the affidavit.

### **24. Annexures and exhibits. (38/4)**

(1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

(3) An exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

### **25. Irregularity. (38/5)**

(1) An affidavit may, unless the Court otherwise orders, be filed notwithstanding any irregularity in form.

(2) An affidavit may, with the leave of the Court, be used notwithstanding any irregularity in form.

### **26. Filing. (38/6)**

An affidavit may not be used without leave of the Court unless it has been filed.

### **27. Service. (38/7)**

(1) A party intending to use an affidavit shall serve it on each other interested party a reasonable time before the occasion for using it arises.

(2) The Court may give directions concerning the service of affidavits.

### **28. Scandal, etc. (38/8)**

Where there is scandalous, irrelevant or otherwise oppressive matter in an affidavit, the Court may order that—

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

**ORDER 12.—JUDGEMENTS AND ORDERS.**

***Division 1.—General.***

**1. General relief. (40/1)**

The Court may, at any stage of any proceedings, on the application of any party, direct the entry of such judgement or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that judgement or order in any originating process.

**2. Written opinion. (40/2)**

Where the Court directs the entry of any judgement or makes any order and the opinion of the Court is reduced to writing, it shall be sufficient to state orally the opinion of the Court, without stating the reasons for the opinion, but the written opinion shall be then given by delivering it to an associate or to the Registrar or to an officer of the Registry.

**3. Date of effect. (40/3)**

(1) Where a judgement is entered pursuant to a direction of the Court the judgement shall take effect as of the date of the direction.

(2) Where a judgement is entered otherwise than pursuant to a direction of the Court the judgement shall take effect as of the date of entry.

(3) Subject to Sub-rules (1) and (2), an order shall take effect as of the date on which it is made.

(4) Notwithstanding Sub-rules (1), (2) and (3), the Court may order that a judgement at order take effect as of a date earlier or later than the date fixed by those Sub-rules.

**4. Time for compliance. (40/4)**

(1) Subject to Sub-rules (3) and (4), a judgement or order which requires a person to do an act shall specify the time within which he is required to do the act.

(2) The time shall, unless the Court otherwise orders, be 14 days after the date of service of a minute of the judgement or order on the person required to do the act.

(3) Sub-rules (1) and (2) apply to a judgement or order which requires a person to pay money.

(4) Sub-rules (1) and (2) do not apply to a judgement for possession of land or for delivery of goods.

(5) Where a judgement or order requires a person to do an act within a specified time, the Court may, by order, require him to do the act within another specified time.

## **Order 12, Rule 5**

(6) Where a judgement or order requires a person to do an act but does not specify a time within which he is required to do the act, the Court may, by order, require him to do the act within a specified time.

### **5. Fine. (40/6)**

(1) Where the Court imposes a fine, the Court shall order that the person on whom the fine is imposed pay the fine to the Registrar.

(2) The Registrar shall pay into the Consolidated Revenue Fund all moneys paid to him on account of any fine imposed by the Court.

### **6. Interest.**

(1) Where the Court directs the entry of judgement for the payment of money and makes an order for the payment of interest under the *Judicial Proceedings (Interest on Debts and Damages) Act 1962*, interest shall, unless the order otherwise provides, be payable on so much only of the money as is from time to time unpaid.

(2) The rate of interest for the purposes of Sub-rule (1) is 8% yearly.

### **7. Dismissal. (40/8)**

(1) Where under these Rules the Court makes an order for the dismissal of proceedings or for the dismissal of proceedings so far as concerns the whole or any part of any claim for relief, the order for dismissal shall not, subject to any terms or conditions on which the order for dismissal is made, prevent the plaintiff or claimant from bringing fresh proceedings or claiming the same relief in fresh proceedings.

(2) Where—

- (a) the Court makes an order for the dismissal of proceedings so far as concerns the whole or any part of any claim for relief by any party; and
- (b) the Court orders that party to pay any costs; and
- (c) before payment of the costs, that party brings against a party to whom the costs are payable further proceedings on the same or substantially the same cause of action as that on which that claim for relief was founded,

the Court may stay the further proceedings until those costs are paid.

### **8. Setting aside or varying judgement or order. (40/9)**

(1) The Court may, on terms, set aside or vary a direction for entry of judgement where notice of motion for the setting aside or variation is filed before entry of the judgement.

(2) The Court may, on terms, set aside or vary a judgement—

- (a) where the judgement has been entered pursuant to Order 12 Division 3 (default judgement); or

## **Order 12, Rule 11**

- (b) where the judgement has been entered pursuant to a direction given in the absence of a party, whether or not the absent party had notice of trial or of any motion for the direction; or
  - (c) when the judgement has been entered in proceedings for possession of land pursuant to a direction given in the absence of a person and the Court decides to make an order that the person be added as a defendant.
- (3) The Court may, on terms, set aside or vary an order—
- (a) where the order has been made in the absence of a party, whether or not the absent party is in default of giving a notice of intention to defend or otherwise in default, and whether or not the absent party had notice of motion for the order; or
  - (b) where notice of motion for the setting aside or variation is filed before entry of the order.
- (4) In addition to its powers under Sub-rules (1), (2) and (3), the Court may, on terms, set aside or vary any order (whether or not part of a judgement) except so far as the order determines any claim for relief or determines any question (whether of fact or law or both) arising on any claim for relief and excepting an order for dismissal of proceedings or for dismissal of proceedings so far as concerns the whole or any part of any claim for relief.
- (5) This Rule does not affect any other power of the Court to set aside or vary a judgement or order.

### **9. Judicial notice of order. (40/10)**

- (1) In any proceedings the Court may take judicial notice of any order of the Court in the proceedings.
- (2) In any proceedings, the Court may be informed of an order of the Court in the proceedings by (amongst other things) reference to a note made by the Judge making the order or by his associate or to a note made by the officer making the order.

### ***Division 2.—Minutes and Entry.***

#### **10. Lodgement. (41/3)**

Where the entry of a judgement or order is authorized, a party may lodge a draft minute of the judgement or order with the Registrar.

#### **11. Summary settlement. (41/4)**

Where a party lodges a draft minute of a judgement or order with the Registrar, the Registrar may settle the draft without an appointment for the attendance of the parties.

## **Order 12, Rule 12**

### **12. Appointment for settlement. (41/5)**

(1) Subject to Rule 11, where a party lodges a draft minute of a judgement or order with the Registrar, the Registrar shall appoint a time and place for attendance of the parties on settlement of the minute and shall notify the appointment to the party lodging the draft minute.

(2) The party lodging the draft minute shall, not less than two days before the appointed date, serve notice of the appointment on the other party.

### **13. Procedure on appointment. (41/6)**

(1) Where a party has been served with notice of an appointment to settle a draft minute of a judgement or order, but does not attend on the appointment, or where the party lodging the draft does not attend on the appointment, the Registrar may settle the draft minute in the absence of that party.

(2) The Registrar shall, on or after the appointment, settle the draft minute.

### **14. Settlement without lodgement. (41/7)**

(1) Where the entry of a judgement or order is authorized, the Registrar may, subject to Sub-rule (3), draw and settle a minute of the judgement or order.

(2) The Registrar may exercise his powers under Sub-rule (1)—

(a) notwithstanding that no party has lodged a minute or draft minute with him; and

(b) without appointing any time or place for attendance of the parties on settlement.

(3) The Registrar shall not exercise his powers under Sub-rule (1) unless—

(a) the Court so directs; or

(b) a party so requests.

### **15. Signature. (41/8)**

The Registrar shall, on settling a draft minute of a judgement or order, sign the draft or a fair copy of it.

### **16. Review. (41/9)**

Where the Registrar has signed a minute of judgement or order, but the judgement or order has not been entered, the Court may review the minute and give such directions as it thinks fit for varying the form and content of the minute.

### **17. Authority for entry. (41/10)**

(1) A judgement shall not be entered unless entry is authorized by these Rules or by a direction of the Court.

(2) Subject to Sub-rule (1), an order may be entered by authority of this Sub-rule and without any direction of the Court.

(3) The general form of judgement shall be as in Form 51.

**18. Order; Where entry required. (41/11)**

(1) An order shall be entered where—

- (a) the order is made by the signing of a minute of the order; and
- (b) a minute of the order is to be served; and
- (c) the order is to be enforced; and
- (d) there is an appeal from the order; and
- (e) the Court so directs.

(2) Subject to Sub-rule (3) an order shall, unless the Court otherwise directs, be entered where some step is to be taken under the order.

(3) Sub-rule (2) does not apply to an order which (in addition to any provision as to costs) merely—

- (a) makes an extension or abridgement of time; or
- (b) grants leave or makes a direction—
  - (i) to amend any document other than a minute of a judgement or order; or
  - (ii) to file any document; or
  - (iii) to do any act to be done by an officer of the Court other than a solicitor; or
- (c) gives directions concerning the conduct of proceedings.

(4) The general form of a minute of order shall be as in Form 52.

**19. Time for entry after settlement. (41/12)**

Where the Registrar has settled a minute of a judgement or order, the judgement or order shall not, unless the Court otherwise directs, be entered until seven days after the date on which the Registrar signs the minute.

**20. Manner of entry. (41/13)**

(1) Where the entry of a judgement or order is authorized, a party or, subject to Sub-rule (2) the Registrar, may enter the judgement or order by filing a minute of it signed by the Registrar or, in the case of an order, signed by the Judge or officer making the order.

(2) The Registrar shall not exercise his powers under Sub-rule (1) unless—

- (a) the Court so directs; or

## **Order 12, Rule 21**

(b) a party so requests.

### **21. Sealing. (41/14)**

On entry of a judgement or order, the Registrar shall seal the minute of the judgement or order with the seal of the Court.

### **22. Copies. (41/15)**

(1) The Registrar shall, on payment of the prescribed fee, furnish to any party to any proceedings a certified or office copy of the minute of any judgement or order entered in the proceedings.

(2) The Registrar may, on payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in any judgement or order entered in any proceedings a certified or office copy of the minute of the judgement or order.

### **23. Service. (41/16)**

A minute of a judgement or order need not be served unless these Rules require service or the Court directs service.

## ***Division 3.—Default Judgement. 24.***

### **Application of Division 3. (17/1)**

This Division applies to proceedings commenced by writ of summons.

### **25. Default. (17/2)**

A defendant shall be in default for the purposes of this Division—

- (a) where the originating process bears a note under Order 4 Rule 9, and the time for him to comply has expired but he has not given the notice; or
- (b) where he is required to file a defence and the time for him to his defence has expired but he has not filed his defence; or
- (c) where he is required under Order 8 Rule 24 to verify his defence and the time for him to verify his defence in accordance with that Rule has expired but he has not so verified his defence.

### **26. Procedure on default. (17/3)**

Where a defendant is in default, the plaintiff may—

- (a) take the steps mentioned in Rules 27 to 33 according to the nature of his claim for relief against the defendant in default; and
- (b) carry on the proceedings against any other party to the proceedings.

**27. Liquidated demand. (17/4)**

(1) Where the plaintiff's claim for relief against a defendant in default is for a liquidated demand only, the plaintiff may enter judgement against that defendant for a sum not exceeding the sum claimed in the statement of claim on that demand and for costs.

(2) Where a claim for a liquidated demand includes interest at an unspecified rate, interest accruing after the date of filing the statement of claim to the date of entry of judgement shall, for the purposes of judgement under this Division be reckoned at the rate of 8% yearly.

**28. Unliquidated damages. (17/5)**

Where the plaintiff's claim for relief against a defendant in default is for unliquidated damages only, the plaintiff may enter judgement against that defendant for damages to be assessed and for costs.

**29. Detinue. (17/6)**

Where the plaintiff's claim for relief against a defendant in default relates to the detention of goods only, the plaintiff may enter judgement against that defendant, within the limits of the plaintiff's claim for relief, either—

(a) for delivery of the goods or their value to be assessed and for costs; or

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

at the option of the plaintiff.

**30. Possession of land. (17/7)**

(1) Where the plaintiff's claim for relief against a defendant in default is for possession of land only, the plaintiff may, subject to this Rule, enter judgement for possession of the land as against that defendant and for costs.

(2) A plaintiff shall not enter judgement under Sub-rule (1) unless he files an affidavit—

(a) showing whether any and, if so, what persons, other than parties to the proceedings were, on the date of filing the statement of claim, in occupation of the whole or any part of the land; and

(b) proving, as to each of those persons (other than any person whose occupation he does not seek to disturb), either that the writ of summons and a notice pursuant to Order 4 Rule 14 has been served on him on a date not less than 10 days before the date on which the plaintiff seeks to enter judgement, or that he has ceased to be in occupation of any part of the land.

(3) Where, before entry of judgement under Sub-rule (1), any person has filed notice of motion for his addition as a defendant, a plaintiff shall not enter judgement under that Sub-rule until the motion is disposed of.

## **Order 12, Rule 31**

(4) Where a plaintiff claims possession of land against more than one defendant, judgement entered under this Division shall not, unless the Court otherwise orders, be enforced against any defendant until judgement for possession of the land is entered against each defendant against whom the claim is made.

### **31. Mixed claims. (17/8)**

Where the plaintiff's claim for relief against a defendant in default includes two or more of the claims for relief mentioned in Rules 27 to 30, and no other claim, the plaintiff may enter such judgement against that defendant on any of those claims for relief as he would be entitled to enter under those Rules if that were the plaintiff's only claim for relief against that defendant.

### **32. General. (17/9)**

(1) Whatever claims for relief are made by a plaintiff, where a defendant is in default, the Court may, on application by the plaintiff, direct the entry of such judgement against that defendant as the plaintiff appears to be entitled to on his writ of summons.

(2) Notwithstanding Sub-rule (1), the Court shall not, under that Sub-rule, direct the entry of judgement for the possession of land unless satisfied of the matters mentioned in Rule 30(2) and (4).

### **33. Judgement for costs alone. (17/10)**

(1) Where, under any of Rules 27 to 31 a plaintiff is entitled to enter judgement against a defendant in default for any relief and for costs, but it appears by affidavit that by reason of the defendant having satisfied the claims of the plaintiff it is unnecessary for the plaintiff to continue the proceedings against that defendant, the plaintiff may enter judgement against that defendant for costs alone.

(2) Whatever claims for relief are made by a plaintiff, where a defendant satisfies the claims of the plaintiff or complies with the demands of the plaintiff or for some other reason it becomes unnecessary for the plaintiff to continue the proceedings against that defendant, but the defendant is in default, the Court may, on application by the plaintiff, direct the entry of judgement against that defendant for costs.

(3) Order 6 Rule 14 (service by filing) does not apply to service of notice of a motion for judgement under Sub-rule (2).

### **34. Proof of service of writ.**

Judgement shall not be entered against a defendant under this Division unless—

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ of summons or notice of the writ on the defendant; or

- (b) the plaintiff produces the writ of summons endorsed by the defendants solicitor with a statement that he accepts service of the writ on the defendant's behalf,

and an affidavit is filed by or on behalf of the plaintiff proving the default of the defendant on which the plaintiff relies.

**35. Setting aside judgement.**

The Court may, on such terms as it thinks just, set aside or vary a judgement entered in pursuance of this Division.

**36. Other claims.**

(1) Where a writ of summons is endorsed with a claim of a description not mentioned in this Division and a defendant against whom the claim is made has not given notice of his intention to defend, the plaintiff may, after the time limited for giving notice of intention to defend and on filing an affidavit proving due service of the writ or notice of the writ on that defendant, proceed with the action as if that defendant had given notice of intention to defend.

(2) Where a writ of summons is endorsed with a claim of a description not mentioned in this Division but by reason of the defendant having satisfied the claims, or complied with the demands, of the plaintiff or any other like reason it has become unnecessary for the plaintiff to proceed with the action against that defendant, the plaintiff may, after the time limited for giving notice of intention to defend, apply to the Court by motion for leave to enter judgement against that defendant for costs.

(3) Order 6 Rule 14 does not apply to service of a notice of motion for leave to enter judgement under Sub-rule (2).

***Division 4.—Summary Disposal. 37.***

**Application of Division 4. (13/1)**

This Division applies to all proceedings except proceedings which include

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud; or
- (c) a claim for damages arising in respect of the death of any person or in respect of personal injuries to any person.

**38. Summary judgement. (13/2)**

(1) Where, on application by the plaintiff in relation to any claim for relief or any part of any claim for relief of the plaintiff—

- (a) there is evidence of the facts on which the claim or part is based; and

## **Order 12, Rule 39**

- (b) there is evidence given by the plaintiff or by some responsible person that, in the belief of the person giving the evidence, the defendant has no defence to the claim or part, or no defence except as to the amount of any damages claimed,

the Court may, by order, direct the entry of such judgement for the plaintiff on that claim or part, as the nature of the case requires.

(2) Without limiting Sub-rule (1), the Court may under that Sub-rule direct the entry of judgement for the plaintiff for damages to be assessed.

(3) In this rule, "damages" includes the value of goods.

### **39. Cross-claim. (13/3)**

(1) A party may apply under this Division notwithstanding that, by Rule 37 this Division does not apply to the proceedings in relation to a claim made by some other party.

(2) Where the Court directs the entry of judgement against a party under this Division, and that party claims relief against the party obtaining the direction, the Court may, on terms, stay execution on, or other enforcement of, the judgement until determination of the claim by the party against whom the judgement is directed to be entered.

### **40. Frivolity, etc. (13/5)**

(1) Where in any proceedings it appears to the Court that in relation to the proceedings generally or in relation to any claim for relief in the proceedings—

- (a) no reasonable cause of action is disclosed; or
- (b) the proceedings are frivolous or vexatious; or
- (c) the proceedings are an abuse of the process of the Court,

the Court may order that the proceedings be stayed or dismissed generally or in relation to any claim for relief in the proceedings.

(2) The Court may receive evidence on the hearing of an application for an order under Sub-rule (1).

### **41. Residue of proceedings. (13/6)**

Where, in any proceedings—

- (a) a party applies under this Division for—
  - (i) a direction for entry of judgement under Rules 38 or 39; or
  - (ii) an order for stay or dismissal under Rule 40; and

## **Order 12, Rule 43**

(b) the proceedings are not wholly disposed of by judgement or dismissal or the proceedings are not wholly stayed,  
the proceedings-

- (c) may be continued as regards any claim or part of a claim not disposed of by judgement or dismissal and not stayed; and
- (d) if commenced by writ of summons—shall, on the hearing of the application, be before the Court for directions.

### **42. Judgement for delivery up of chattel.**

Where the claim to which an application under Rule 38 or 39 relates is for the delivery up of a specific chattel and the Court gives judgement under this Division for the applicant it shall have the same power to order the party against whom judgement is given to deliver up the chattel without giving him an option to retain it on paying the assessed value as if the judgement had been given after trial.

### **43. Relief against forfeiture.**

A tenant shall have the same right to apply for relief after judgement has been given under this Division for possession of land on the ground of forfeiture for non-payment of rent, as if the judgement had been given after trial.

## **Order 13, Rule 1**

### **ORDER 13.—ENFORCEMENT OF JUDGEMENTS.**

#### ***Division 1.—General.***

##### **1. Interpretation of Division 1. (42/1)**

In this Division, unless the contrary intention appears—

- (a) "judgement" includes an order; and
- (b) a reference to a writ or other means for the enforcement of a judgement extends to any further writ or other means in aid of the first mentioned writ or means.

##### **2. Payment of money. (42/2)**

(1) A judgement for the payment of money (not for the payment of money into Court) may be enforced by one or more of the following means:—

- (a) levy of property; or
- (b) attachment of debts; or
- (c) charging order; or
- (d) appointment of a receiver; or
- (e) in a case in which Rule 6 applies but subject to Rule 8—
  - (i) committal; and
  - (ii) sequestration.

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

- (a) appointment of a receiver; or
- (b) in a case in which Rule 6 applies, but subject to Rule 8—
  - (i) committal; and
  - (ii) sequestration.

(3) Sub-rules (1) and (2) do not affect any other means of enforcement of a judgement for the payment of money.

##### **3. Possession of land. (42/4)**

(1) A judgement for possession of land may be enforced by one or more of the following means:—

- (a) writ of possession in Form 53; or
- (b) in a case in which Rule 6 applies, but subject to Rule 8—
  - (i) committal; and
  - (ii) sequestration.

## **Order 13, Rule 4**

(2) A writ of possession to enforce a judgement for possession of land shall not be issued without the leave of the Court.

(3) A person may move for leave for the purposes of this Rule without filing or serving notice of the motion.

(4) The Court may grant leave for the purposes of this Rule on terms.

(5) An applicant for leave for the issue of a writ of possession must show who was in occupation of each part of the land at the time of the commencement of the proceedings and who has been served with notice under Order 4 Rule 14.

(6) Where a person is, on the date of commencement of proceedings for possession of land, in occupation of the whole or any part of the land and he is not a party to the proceedings and notice under Order 4 Rule 14 is not served on him, the Court shall, when giving leave for the issue of a writ of possession, direct that the writ be restricted so as not to authorize disturbance of the occupation of that person.

(7) A writ of possession may include provision for enforcing the payment of money required to be paid by the judgement to be enforced by the writ.

### **4. Delivery of goods. (42/5)**

(1) In this rule, "writ of specific delivery" means a writ of delivery without alternative provision for recovery of the assessed value of the goods.

(2) A judgement for the delivery of goods which does not give a person bound the alternative of paying the assessed value of the goods may be enforced by one or more of the following means:—

(a) writ of specific delivery in Form 54; or

(b) in a case in which Rule 5 applies, but subject to Rule 7—

(i) committal; and

(ii) sequestration.

(3) A judgement for the delivery of goods or payment of their assessed value may be enforced by one or more of the following means:—

(a) writ of delivery in Form 55 to recover the goods or their assessed value; or

(b) with the leave of the Court—writ of specific delivery; or

(c) in a case in which Rule 5 applies, but subject to Rule 7—sequestration.

(4) A writ of specific delivery, and a writ of delivery to recover goods or their assessed value, may include provision for enforcing the payment of money required to be paid by the judgement to be enforced by the writ.

(5) A judgement for the payment of the assessed value of goods may be enforced by the same means as any other judgement or order for the payment of money (other than a judgement for the payment of money into Court).

## **Order 13, Rule 5**

### **5. Doing or abstaining from doing an act. (42/6)**

- (1) This Rule applies—
  - (a) where—
    - (i) a judgement requires a person to do an act within a time specified in the judgement; and
    - (ii) he refuses or neglects to do the act within that time or, if that time has been extended or abridged under Order 1 Rule 15, within that time as so extended or abridged; and
  - (b) where—
    - (i) a judgement requires a person to abstain from doing an act; and
    - (ii) he disobeys the judgement.
- (2) In a case in which this Rule applies, a judgement may, subject to Rule 8, be enforced by one or more of the following means:—
  - (a) committal of the person bound; or
  - (b) sequestration of the property of the person bound; or
  - (c) where the person bound is a corporation—
    - (i) committal of any officer of the person bound; and
    - (ii) sequestration of the property of any officer of the person bound.
- (3) Sub-rule (2) has effect subject to any Act limiting the right to attachment.
- (4) Where there is a judgement for the delivery of goods or payment of their assessed value the judgement shall not be enforced by committal under Sub-rule (2) but—
  - (a) the Court may order the person bound to deliver the goods within a specified time; and
  - (b) an order under Paragraph (a) may be enforced by committal under Sub-rule (2).

### **6. Attendance. (42/7)**

- (1) Where the Court, by summons or otherwise, makes an order in any proceedings for the attendance of a person—
  - (a) for the purpose of giving evidence; or
  - (b) for the production of any document or thing; or
  - (c) to answer a charge of contempt; or
  - (d) for any other purpose;

and the person defaults in attendance in accordance with the order, the Court may, on application by a party or of its own motion—

## **Order 13, Rule 7**

- (e) issue, or make an order for the issue of, a warrant to the Sheriff or such other person as the Court may appoint for the arrest of the person in default and for the production of the person in default before the Court or before an examiner or other person for the purpose of the proceedings and for his detention in custody in the meantime; and
- (f) order the person in default to pay any costs occasioned by the default.
- (2) Sub-rule (1) does not affect—
  - (a) the powers of the Court to punish for contempt; or
  - (b) the provisions of Order 14 Division 6 (contempt).

### **7. Service before committal or sequestration. (42/8)**

(1) Subject to these Rules, a judgement shall not be enforced by committal or sequestration unless—

- (a) a minute of the judgement is served personally on the person bound; and
- (b) if the judgement requires the person bound to do an act within a specified time, the minute is so served before that time expires.

(2) Subject to these Rules, where the person bound by a judgement is a corporation, the judgement shall not be enforced by committal of an officer of the person bound or by sequestration of the property of an officer of the person bound unless, in addition to service under Sub-rule (1) on the person bound—

- (a) a minute, in Form 56, of the judgement is served personally on the officer; and
- (b) if the judgement requires the person bound to do an act within a specified time, the minute is so served before that time expires.

(3) A minute of a judgement served under this Rule must bear a notice (naming the persons concerned) that the person served is liable to imprisonment or to sequestration of property if—

- (a) where the judgement requires the person bound to do an act within a specified time—the person bound refuses or neglects to do the act within that time; or
- (b) where the judgement requires the person bound to abstain from doing an act—the person bound disobeys the judgement or order.

(4) Subject to these Rules, where

- (a) a judgement requires the person bound to do an act; and
- (b) an order is made—
  - (i) under Order 12 Rule 4(5) or (6) requiring the person bound to do the act within a specified time; or

## **Order 13, Rule 8**

(ii) under Rule 5(4)(a) requiring the person bound to deliver goods within a specified time; and

(c) a minute of the order mentioned in Rule 5(4)(a) is served on a person pursuant to this Rule,

a minute of the judgement mentioned in Paragraph (a) must be served on that person before the expiry of that time.

(5) Subject to these Rules, where—

(a) a judgement requires the person bound to do an act within a specified time; and

(b) an order is made under Order 1 Rule 15 extending or abridging that time; and

(c) a minute of the judgement mentioned in Sub-rule (4)(a) is served on a person pursuant to this Rule,

a minute of the order under Order 1 Rule 15 must be served on that person before the expiry of that time as so extended or abridged.

(6) Where a person liable to committal or sequestration of his property by way of enforcement of a judgement has notice of the judgement—

(a) by being present when the judgement is directed to be entered or when the order is made; or

(b) by being notified of the terms of the judgement whether by telephone, telegram or otherwise,

the judgement may be enforced by committal of that person or by sequestration of his property notwithstanding that service has not been effected in accordance with this Rule.

(7) The Court may dispense with service under this Rule.

### **8. Substituted performance. (49/9)**

(1) Where a judgement requires the person bound to do an act and the person bound does not do the act, the Court may—

(a) direct that the act be done by a person appointed by the Court; and

(b) order the person bound to pay the costs incurred pursuant to the directions.

(2) Sub-rule (1) does not affect—

(a) any powers of the Court relating to the execution of instruments by order of the Court; or

(b) the powers of the Court to punish for contempt.

**9. Enforcement by or against non-party. (42/10)**

(1) Where, in any proceedings, a person who is not a party obtains an order, or an order is made in favour of a person who is not a party, he may enforce the order by the same means as if he were a party.

(2) Where, in any proceedings, obedience to a judgement may be enforced against a person who is not a party, the judgement may be enforced against him by the same means as if he were a party.

(3) Where, in any proceedings, obedience to a judgement may be enforced against a corporation which is not a party, an officer of the corporation shall be liable to the same process of enforcement as if the corporation were a party.

**10. Non performance of condition. (42/11)**

Where a person is entitled under a judgement subject to the fulfilment of a condition, and there is a failure to fulfil the condition, then, unless the Court otherwise orders—

- (a) he shall lose the benefit of the judgement; and
- (b) any other person interested may take any steps which—
  - (i) are warranted by the judgement; or
  - (ii) might have been taken if the judgement had not been entered or the order had not been made.

**11. Matters occurring after judgement. (42/12)**

(1) A person bound by a judgement may move the Court for a stay of execution of the judgement or for some other order, on the ground of matters occurring after the date on which the judgement takes effect and the Court may, on terms, make such order as the nature of the case requires.

(2) Sub-rule (1) does not affect the powers of the Court under Rule 21 (stay of execution).

**12. Committal. (42/13)**

A person shall not be committed except by or under an order of the Court.

***Division 2.—Discovery in Aid of Enforcement.***

**13. Order for examination or production. (43/1)**

(1) The Court may, on motion by a person entitled to enforce a judgement or order, order a person bound by the judgement or order in Form 57 to—

- (a) attend before the Registrar and be orally examined on the material questions; and

## **Order 13, Rule 14**

- (b) produce any document or thing in the possession, custody or power of the person bound relating to the material questions.
- (2) For the purposes of Sub-rule (1), the material questions are—
  - (a) as to so much of a judgement or order as requires the person bound to pay money—
    - (i) whether any and, if so, what debts are owing to the person bound; and
    - (ii) whether the person bound has any and, if so, what other property or means of satisfying the judgement or order; and
  - (b) as to so much of the judgement or order as does not require the person bound to pay money, such questions concerning or in aid of the enforcement or satisfaction of the judgement or order as may be specified in the order for examination or production.

### **14. Corporation. (43/2)**

Where the person bound is a corporation the Court may make orders as mentioned in Rule 13 for the examination of, or production by, an officer or former officer of the corporation.

### **15. Procedure. (43/3)**

- (1) A person may move for an order under Rule 13 or 14 without filing or serving notice of the motion.
- (2) An order under Rule 13 or 14 must be served personally on the person ordered to attend or to produce any document or thing.

### **16. Conduct money. (43/4)**

An order under Rule 13 or 14 shall not require a person to attend or to produce any document or thing on any day on which his attendance, or production by him, is required unless a sum sufficient to meet his reasonable expenses of complying with the order in relation to that day is paid or tendered to him at the time of service of the order or not later than a reasonable time before that day.

## ***Division 3.—Writs of Execution—General.***

### **17. Interpretation of Division 3. (44/1)**

In this Division, unless the contrary intention appears—

"judgement" includes an order;

"writ of execution" means—

- (a) a writ for levy of property, a writ of possession, a writ of delivery, a writ of sequestration; or
- (b) a writ in aid of a writ mentioned in Paragraph (a).

**18. Leave for issue: General. (44/2)**

(1) Notwithstanding Division 1, a writ of execution to enforce a judgement shall not be issued without the leave of the Court where—

- (a) 10 years or more have elapsed since the date of taking effect of the judgement; or
- (b) any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgement; or
- (c) the judgement is against the assets of a deceased person coming to the hands of his executor or administrator after the date of taking effect of the judgement, and the writ is against assets of that description; or
- (d) under the judgement a person is entitled subject to fulfilment of a condition; or
- (e) the writ is against property in the hands of a receiver appointed by the Court or of a sequestrator; or
- (f) the writ is in aid of another writ of execution.

(2) Sub-rule (1) does not affect any provision for the time being made by or under an Act which requires leave for the issue of a writ of execution.

(3) A person may, unless the Court otherwise orders, move for leave for the purposes of this Rule without filing or serving notice of the motion.

(4) The motion must be supported by evidence showing—

- (a) where the judgement is for the payment of money—the amount due on the date of the motion; and
- (b) where Sub-rule (1)(a) applies—the reasons for the delay; and
- (c) where Sub-rule (1)(b) applies—the change which has taken place; and
- (d) where Sub-rule (1)(c) or (d) applies—that a demand to satisfy the judgement has been made on the person liable to satisfy it and that he has not satisfied it; and
- (e) that the applicant is entitled to proceed to execution on the judgement; and
- (f) that the person against whom execution is sought to be issued is liable to execution on the judgement.

**19. Leave for issue; Sequestration. (44/3)**

(1) Notwithstanding Division 1, a writ of sequestration shall not be issued without the leave of the Court.

(2) An applicant for leave for the purposes of this Rule must—

- (a) file notice of the motion; and

## **Order 13, Rule 20**

(b) serve the notice and any affidavit in support of the motion personally on the person whose property is sought to be sequestered.

(3) The Court may dispense with service under Sub-rule (2)(b).

### **20. Terms of leave. (44/4)**

The Court may, on terms, grant leave for the purposes of Rule 18 or 19.

### **21. Stay of execution. (44/5)**

The Court may, on terms, stay execution of a judgement or order.

### **22. Separate execution for costs. (44/6)**

Where—

- (a) there is a judgement for the payment of money and for the payment of costs (whether the judgement is for any other matter or not); and
- (b) when the money (other than costs) becomes payable under the judgement—the costs have not become payable (because the costs have not been taxed or for any other reason),

a person entitled to enforce the judgement may—

- (c) have execution to enforce payment of the money (other than costs); and
- (d) when the costs become payable—have execution separately to enforce payment of the costs.

### **23. Issue. (44/7)**

(1) A person requiring the issue of a writ of execution shall—

- (a) produce to the Registrar a form of the writ; and
- (b) file a copy of the writ; and
- (c) where the writ is to enforce a judgement for the payment of money—file an affidavit, sworn not more than 14 days before the requirement, containing and verifying a statement of—
  - (i) the date of taking effect of the judgement; and
  - (ii) the amount of money originally payable under the judgement; and
  - (iii) the date and amount of each payment made on account of the judgement; and
  - (iv) the interest (if any) due on the date of swearing of the affidavit; and

## **Order 13, Rule 24**

- (v) such other particulars as are necessary to calculate the amount payable under the judgement on the date of swearing of the affidavit; and
  - (vi) the amount payable under the judgement on the date of swearing of the affidavit; and
  - (vii) the daily amount of interest (if any) which (subject to any future payment on account of the judgement) will accrue after the date of swearing of the affidavit.
- (2) A writ of execution shall be issued under seal and shall bear the date of its issue.
- (3) The person to whom a writ is directed shall, on executing a writ of execution, serve a copy of the affidavit on the debtor or leave it at the place where the writ is executed.
- (4) In every case of execution the party entitled to execution may levy poundage, fees and expenses of execution, over and above the sum recovered.
- (5) In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage or charge, the party entitled to execution may, over and above the sum recovered and in addition to the poundage fees and expenses referred to in Sub-rule (4), levy the fees and expenses properly paid on registering the judgement, or lodging the writ for levy of property against the freehold land or chattel real, or against the land, lease, mortgage or charge sought to be affected by the execution.

### **24. Duration. (44/8)**

- (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.
- (2) The Court may, on motion made while a writ of execution is valid for the purpose of execution, from time to time extend the validity of the writ for the purpose of execution for a period of not more than 12 months beginning with the date on which the order is made.
- (3) A person may move for an order under Sub-rule (2) without the prior filing or service of notice of the motion.
- (4) An order under Sub-rule (2) must be entered and a minute of it must be delivered to the Sheriff.
- (5) Where the validity of a writ for the purpose of execution has been extended under this Rule, the priority of the writ shall be determined by reference to the date on which it was originally delivered to the Sheriff.

## **Order 13, Rule 25**

### **25. Return. (44/9)**

A person at whose request a writ of execution is issued may deliver a notice to the Sheriff requiring him, within the time specified in the notice, to make on the writ a statement of the manner in which he has executed the writ and to send to that person a copy of the statement.

### **26. Costs of prior execution. (44/10)**

The amount for which a writ of execution may be issued shall, unless the Court otherwise orders, include the costs of any prior writ of execution on the same judgement, whether the prior writ was or was not productive.

## ***Division 4.—Levy of Property.***

### **27. Interpretation of Division 4. (45/1)**

In this Division, unless the contrary intention appears—

"sheriff" includes any person to whom a writ is directed;

"writ" means a writ for levy of property.

### **28. Name. (45/2)**

The writ formerly called a writ of *fiери facias* shall be called a writ for levy of property and shall be in Form 58.

### **29. Two or more writs. (45/3)**

(1) Not more than one writ shall be issued on a judgement, unless the Court otherwise orders.

(2) Sub-rule (1) has effect subject to Rule 22 (separate execution for costs).

### **30. Order of realization. (45/4)**

(1) Where it appears to the sheriff that the property subject to levy under a writ is more than sufficient to satisfy the money to be levied, he shall first take or realize so much of the property as appears to him to be sufficient.

(2) In taking or realizing property under Sub-rule (1), the sheriff shall take or realize the property—

(a) in such order as seems to him best for the speedy execution of the writ without undue expense; and

(b) subject to Paragraph (a)—in such order as the debtor may direct; and

(c) subject to Paragraphs (a) and (b)—such order as seems to the sheriff best for minimizing hardship to the debtor and other persons.

(3) This Rule does not affect any liability of the sheriff to the execution creditor.

**31. Time of sale. (45/5)**

(1) Subject to Rule 30, the sheriff shall put up for sale all property liable to sale under the writ as early as may be with due regard to the interests of the parties and to the avoidance of sacrifice of the reasonable value of the property.

(2) All property real and personal taken in execution shall be offered for sale by the sheriff by public auction.

**32. Place of sale. (45/6)**

The sheriff shall put up for sale property liable to sale under a writ at the place which seems to him best for a beneficial realization of the property.

**33. Advertisement of sale. (45/7)**

(1) The sheriff shall, before putting property up for sale under a writ, give notice of the time and place of sale and of particulars of the property in the manner which seems to him best to give due publicity to the sale.

(2) Unless the Court, on application by the judgement creditor, otherwise directs, a copy of the notice referred to in Sub-rule (1) shall be served personally on the judgement debtor in the same manner as a writ of summons is required to be served.

**34. Account. (45/8)**

The sheriff shall give to any party interested an account of all proceeds of sale and other money received by him under a writ and of his charges and the manner of disposal of the money.

***Division 5.—Sheriff's Interpleader.***

**Subdivision A.—Preliminary.**

**35. Interpretation of Division 5. (56/1)**

In this Division, unless the contrary intention appears

"claimant" means a person making a claim to property in dispute; "execution creditor" means a person on whose behalf process is issued; "process" means process for execution issued by or under the authority of the Court;

"property in dispute" means any debt or property which is the subject of proceedings under this Division;

"sheriff" includes any officer charged with the execution of process.

## **Order 13, Rule 36**

### **Subdivision B.—Sheriff's Interpleader.**

#### **36. Notice of claim. (56/5)**

(1) Where the sheriff takes or intends to take any personal property in execution under process, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice in Form 59 of his claim to the sheriff.

(2) A notice of claim given under this Rule shall—

- (a) specify the claim; and
- (b) state the name and place of abode of the claimant; and
- (c) state an address for service; and
- (d) be accompanied by a copy of the notice.

(3) Where a person who is entitled to give notice under this Rule does not, within a reasonable time after having knowledge of the facts, give notice under this Rule, the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by that person of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the process after the time when that person might reasonably have given notice under this Rule.

(4) Subject to Sub-rule (5), the sheriff may apply for an order under Sub-rule (3) by motion in the proceedings in which the process is issued and, if he so applies, he shall serve notice of the motion personally on the person against whom the order is sought.

(5) If the proceedings to which Sub-rule (3) applies are brought in the Court against the sheriff, an application by him for an order under that Sub-rule restraining the continuance of those proceedings shall be made by motion in those proceedings.

#### **37. Notice to execution creditor. (56/6)**

(1) The sheriff shall, on being given notice of claim under Rule 36, serve the notice on the execution creditor.

(2) The execution creditor may serve on the sheriff notice that he admits the claim.

#### **38. Admission of claim. (56/7)**

(1) Where an execution creditor admits a claim by notice under Rule 37—

- (a) he shall not be liable to the sheriff for any fees or expenses incurred by the sheriff under the process after the notice under that Rule is given; and

## **Order 13, Rule 41**

- (b) the sheriff shall withdraw from possession of the property claimed; and
- (c) the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by the person whose claim is admitted of proceedings in any Court against the sheriff for or in respect of anything done by the sheriff in execution of the process.

(2) If proceedings to which Sub-rule (1)(c) applies are brought in the Court against the sheriff, an application by him for an order under that Sub-rule restraining the continuance of those proceedings shall be made by motion in those proceedings.

(3) Subject to Sub-rule (2), the sheriff may apply for an order under Sub-rule (1)(c) by motion in the proceedings in which the process is issued.

### **39. Interpleader motion. (56/8)**

(1) Where a sheriff has, under Rule 37, served a notice of claim on the execution creditor and the execution creditor does not, within four days after service of the notice under that Rule, serve on the sheriff notice that he admits the claim, and the claim has not been withdrawn, the Court may, on application by the sheriff, grant relief by way of interpleader.

(2) An application of the sheriff under this Rule shall be by motion in the proceedings in which the process is issued.

(3) The sheriff moving pursuant to this Rule shall serve notice of the motion on each party to the proceedings who claims any interest in the property in dispute and on each claimant.

### **40. Order to apply.**

(1) Order 14 Division 7 shall apply, with the necessary modifications, to an interpleader under this Division as it applies to a stakeholder's interpleader.

(2) Where a sheriff applies for relief by way of interpleader, the Court may require the sheriff to satisfy the Court on the matters mentioned in Order 14 Rule 57(1) and the Court may, if not satisfied on those matters, dismiss the application.

## ***Division 6.—Sheriff's Rules.***

### **41. Interpretation of Division 6. (62/1)**

In this Division, unless the contrary intention appears

"bill" means bill of fees of the Sheriff;

"fees" includes charges and poundage;

## **Order 13, Rule 42**

"person interested" in relation to the fees of the Sheriff in respect of the service or execution of any process, means—

- (a) a party who lodges the process with the Sheriff for service or execution; or
- (b) a solicitor who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or
- (c) in the case of a writ of execution authorizing the Sheriff to levy the fees on any property, the person on whose property the levy is authorized;

"process" includes a writ.

### **42. Notice to Sheriff not to pay creditor.**

When the Sheriff, by virtue of any writ directed to him, receives any moneys, and has been served with notice by any person claiming to be interested in those moneys not to pay over the same, the Sheriff may retain those moneys in his hands, to abide the order of the Court, and, if no application is made by the party giving the notice to the Court, within four days after the date of that notice, the Sheriff may pay over those moneys in pursuance of the writ, without regard to the notice.

### **43. Suspension of execution. (62/3)**

(1) The Sheriff shall not suspend the execution of any process, except on an absolute instruction in writing to that effect lodged with him by the party by whom the process is lodged.

(2) A party who has lodged an instruction to suspend the execution of any process may withdraw the instruction by lodging with the Sheriff an instruction to execute the process.

### **44. Detention at nearest corrective institution.**

When any person is arrested by the Sheriff on any civil process of the Court, the person shall be lodged in the corrective institution nearest to the place of his arrest, and be there detained until the Court orders his discharge.

### **45. Rate of poundage.**

In the execution of process, poundage shall be chargeable under a writ for levy of property or a writ of *venditioni exponas* on the money obtained by the seizure at the rate of 5% up to K200.00, and at the rate of 2½ % for the excess when the money so obtained exceeds K200.00 and under a writ of possession at the rate of 5% on the annual value of the property delivered up to K200.00 and at the rate of 2½ % for the excess when the annual value exceeds K200.00.

**46. Levy of poundage.**

(1) The Sheriff shall, as far as practicable, levy the poundage and other fees and the expenses of the execution in addition to the amount directed to be recovered.

(2) In cases where there is an agreement between the parties as to the rate of interest that shall be secured by the judgement or order, the Sheriff shall levy interest at the rate so agreed.

**47. Security. (62/5)**

(1) Where a party to any proceedings lodges any process with the Sheriff for service or execution, the Sheriff may, on lodgement and from time to time after lodgement—

(a) require the party to deposit with him money in an amount fixed by him to be applied in or towards satisfaction of his fees; or

(b) as to the whole or any part of the fees, take an undertaking by the party's solicitor to pay them instead of requiring a deposit.

(2) Where a party required to make a deposit under Sub-rule (1) objects to the amount fixed by the Sheriff, the Court, on motion by the party may, by order, fix the amount to be deposited.

(3) The Sheriff may defer service or execution of any process until a deposit is made or an undertaking is given in accordance with this Rule.

(4) Where it appears that the amount deposited under this Rule exceeds the fees of the Sheriff, the Sheriff shall repay the excess to the party depositing the money or to his solicitor.

**48. Liability of solicitor. (62/6)**

Where a party, by his solicitor, lodges with the Sheriff any process for service or execution, the solicitor shall be liable for the fees of the Sheriff, whether or not the solicitor has given an undertaking under Rule 47(1)(b).

**49. Bill. (62/7)**

(1) The Sheriff shall, on the request of a person interested, furnish him with a bill.

(2) The Sheriff may serve a bill on any person interested.

**50. Taxation. (62/8)**

(1) Subject to Sub-rule (2), the Court may, on motion by a person interested, order that fees be taxed.

(2) Where a bill has been served on or furnished to a person interested, he may not apply for an order for taxation of the fees, except on notice of motion filed within seven days after the date of service or furnishing of the bill.

## **Order 13, Rule 51**

(3) Where the Court orders that fees be taxed, an application to proceed with the taxation shall be made by the Sheriff to a taxing officer by motion in the proceedings.

(4) Order 22 Division 3 and Order 22 Rules 51, 52, 53, 57 and 59 apply to a taxation under this Rule as they apply to a taxation of costs and as if the Sheriff were a party.

### **51. Determination. (62/9)**

(1) Where a bill is served on or furnished to a person interested by the Sheriff, the amount of fees shown in the bill shall, unless the Court otherwise orders, be binding as between the Sheriff and the person interested unless the person interested obtains an order for taxation under Rule 50.

(2) Where the fees are taxed pursuant to an application by a person interested under Rule 50, the amount fixed on taxation shall, subject to any alteration on reconsideration, review or appeal, be binding as between the Sheriff and the person interested.

### **52. Default by solicitor. (62/10)**

Where, in any proceedings, a solicitor has given an undertaking to pay, or is otherwise liable to pay, any fees of the Sheriff, and the solicitor does not pay the fees within seven days after the amount has become binding under Rule 51 as between the solicitor and the Sheriff, the Court may, on motion in the proceedings by the Sheriff, order the solicitor to pay the fees to the Sheriff.

## ***Division 7.—Garnishee Proceedings.***

### **53. Interpretation of Division 7. (46/1)**

In this Division, unless the contrary intention appears—

"garnishee" means a person from whom a judgement creditor claims that a debt is due or accruing to the judgement debtor;

"judgement creditor" means a person entitled to enforce a judgement or order for the payment of money (not into Court);

"judgement debtor" means a person required by a judgement or order to pay money (not into Court).

### **54. Bank account. (46/2)**

(1) A sum standing to the credit of a judgement debtor in an account in a bank shall, for the purpose of this Order, be a sum due or accruing to the judgement debtor, notwithstanding that any condition relating to demand of payment is unsatisfied.

## **Order 13, Rule 56**

(2) A sum standing to the credit of a judgement debtor in a deposit account in a bank shall, for the purposes of this Order, be a sum due or accruing to the judgement debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied:—

- (a) a condition that notice is required before money is withdrawn; or
- (b) a condition that a personal application must be made before money is withdrawn; or
- (c) a condition that a deposit book must be produced before money is withdrawn; or
- (d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

### **55. Salary or wages not yet payable.**

Salary or wages not yet payable to a judgement debtor shall, for the purposes of this Order, be deemed to be a debt accruing to the judgement debtor from the garnishee.

### **56. Garnishee notice. (46/3)**

(1) A judgement creditor may, with the leave of the Court, but subject to any Act, file and serve on the garnishee a garnishee notice in Form 60—

- (a) of attachment, to the extent of an amount specified in the notice, of debts due or accruing to the judgement debtor from the garnishee; and
- (b) of motion for payment under this Division.

(2) A judgement creditor may move for leave under Sub-rule (1) without filing or serving notice of the motion.

(3) The Court shall not give leave under Sub-rule (1) unless it appears to the Court that—

- (a) the judgement or order is unsatisfied; and
- (b) there is a debt due or accruing to the judgement debtor from the garnishee.

(4) The Court shall, in giving leave under Sub-rule (1), fix the amount for specification in the garnishee notice under Sub-rule (1)(a).

(5) Subject to Sub-rule (6) the amount to be fixed by the Court for specification in the garnishee notice shall be the sum of—

- (a) the amount due under the judgement or order on the date on which leave is given; and

## **Order 13, Rule 57**

(b) such amount as the Court may determine having regard to—

- (i) interest on the judgement debt accruing after the date on which leave is given; and
- (ii) costs of the garnishee proceedings.

(6) The amount to be fixed by the Court from salary or wages payable to the judgement debtor shall not exceed two-thirds of the sum payable each normal pay-day until the extent of the attachment is satisfied but the judgement debtor may apply to the Court at any time for a variation of the sum fixed, with notice to the judgement creditor.

(7) A garnishee notice shall include such particulars of the debt attached as are known to, or reasonably capable of ascertainment by the judgement creditor and as are necessary to enable the garnishee to identify the debt, including, where the garnishee is a banker or other person carrying on business at more than one place, the place of keeping of the account on which the debt is due or accruing, so far as that place is known to, or reasonably capable of ascertainment by, the judgement creditor.

### **57. Service of garnishee notice. (46/4)**

(1) Subject to Sub-rule (2), the judgement creditor shall, not less than three days before the date fixed by the garnishee notice for the motion for payment under this Division, serve the garnishee notice and each affidavit used on the motion for leave under Rule 56 on the garnishee personally and on the judgement debtor.

(2) Service on a garnishee under Sub-rule (1) may not be effected outside Papua New Guinea.

### **58. Attachment of debts. (46/5)**

(1) On service of a garnishee notice on a garnishee, all debts mentioned in the garnishee notice and due or accruing to the judgement debtor from the garnishee shall, subject to Sub-rule (2), be attached and bound in the hands of the garnishee to the extent of the amount specified in the garnishee notice.

(2) Where, after service of a garnishee notice on the garnishee, the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment, but nevertheless pays to the judgement debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy as between the garnishee and the judgement debtor, the whole or any part of the debt attached, the Court may order that, for the purpose of the garnishee proceedings, the debt attached be reduced to the extent of the payment or satisfaction.

### **59. Payment into Court. (46/6)**

(1) A garnishee may pay into Court all debts attached under this Division to the extent of the attachment.

## **Order 13, Rule 63**

(2) If a garnishee pays money into Court under Sub-rule (1) before the day fixed by the garnishee notice for the motion for payment under this Division—

- (a) he may retain out of the debts attached the sum of K10.00 for his costs and
- (b) he shall not, unless he takes some further step in the proceedings, be liable for any costs of the garnishee proceedings.

(3) For the purposes of Sub-rule (2), a garnishee shall be taken to pay money into Court under Sub-rule (1) notwithstanding that the amount paid in is calculated on the footing that the amount of the debts attached is reduced by the sum referred to in Sub-rule (2)(a) for its costs.

### **60. Payment out of Court. (46/7)**

Subject to Rules 62 and 63, where a garnishee pays money into Court, the Court shall, on motion pursuant to the garnishee notice, order payment out of Court to the judgement creditor of the money paid in or so much of that money as is required to satisfy the judgement or order out of which the garnishee proceedings arise, together with interest and such costs of the garnishee proceedings as may be payable to the judgement creditor out of the debt attached.

### **61. Payment to judgement creditor. (46/8)**

Subject to Rules 62 and 63, the Court may, on motion pursuant to the garnishee notice, order the garnishee to pay to the judgement creditor the debt attached to the extent specified in the garnishee notice, or so much of the debt attached to the extent so specified as is required to satisfy the judgement or order on which the garnishee proceedings are taken together with interest and such costs of the garnishee proceedings as may be payable to the judgement creditor out of the debt attached.

### **62. Dispute of liability by garnishee. (46/9)**

Where, on the hearing of a motion by the judgement creditor pursuant to the garnishee notice, the garnishee disputes liability to pay the debt attached, the Court may hear and determine the questions in dispute and direct the entry of such judgement, or make such order, as the nature of the case requires.

### **63. Claim by other person. (46/10)**

Where it appears to the Court that any person other than the judgement debtor is, or claims to be, entitled to money paid into Court under Rule 59 or to the debt attached or to any charge or lien on, or other interest in that money or debt, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim, and may direct the entry of such judgement, or make such order in respect of the claim, as the nature of the case requires.

## **Order 13, Rule 64**

### **64. Discharge of garnishee. (46/11)**

(1) Where—

- (a) a garnishee pays money into Court under this Division; or
- (b) a garnishee pays money in compliance with an order made in the garnishee proceedings; or
- (c) execution is levied against a garnishee in pursuance of an order made in the garnishee proceedings,

the payment or levy shall be a discharge of the liability of the garnishee to the judgement debtor to the extent of the amount paid or levied.

(2) Sub-rule (1) shall have effect notwithstanding that the garnishee proceedings are subsequently set aside or that the judgement or order from which the garnishee proceedings arise is subsequently reversed.

(3) Sub-rule (1) does not apply to a payment or levy on account of costs which the garnishee is ordered to pay.

### **65. Costs. (46/12)**

(1) The costs of the judgement creditor of garnishee proceedings shall, unless the Court otherwise directs, be retained by the judgement creditor out of the money recovered by him in the garnishee proceedings, and in priority to the debt under the judgement or order from which the garnishee proceedings arise.

(2) Where the garnishee incurs trouble or expense in giving effect to the attachment of a debt under this Division, or in doing anything required of or permitted to the garnishee in the garnishee proceedings—

- (a) the Court may order the judgement creditor to pay to the garnishee such sum as the Court thinks fit by way of recompense for the trouble or expense; and
- (b) any sum paid by the judgement creditor under Paragraph (a) shall, unless the Court otherwise orders, be included in the costs of the judgement creditor of the garnishee proceedings.

(3) Sub-rule (2) does not limit the general powers of the Court in relation to costs.

## ***Division 8.—Charging and Stop Orders.***

### **66. Charge on partnership interest. (47/2)**

(1) An application under Section 24 of the *Partnership Act* 1951 (procedure against partnership property for a partner's separate debt) shall be made—

- (a) if the judgement is a judgement in proceedings in the Court—by motion on notice in the proceedings; or

## Order 13, Rule 67

- (b) if the judgement is not a judgement in proceedings in the Court—by originating summons joining the judgement debtor and his partners as defendants.

(2) An application under Section 24 of the *Partnership Act* 1951 made by a partner of the judgement debtor in consequence of an application by the judgement creditor shall be made by motion on notice in the proceedings in which the judgement creditor applies.

(3) An originating summons or notice of motion filed under this Rule and an order made on an application under Section 24 of the *Partnership Act* 1951 shall be served on the following persons (other than the applicant):—

- (a) the judgement creditor; and
- (b) the judgement debtor; and
- (c) such of the partners of the judgement debtor as are within Papua New Guinea.

(4) An originating summons, notice of motion or order served in accordance with this Rule shall have effect as if served on all the partners.

### **67. Stop orders. (47/3)**

(1) Where there are funds in Court and—

- (a) the interest of any person in the funds has been mortgaged, charged or assigned; or
- (b) a person having an interest in the funds is a debtor under a judgement or order of the Court,

the Court may, on application by the mortgagee, chargee, assignee or creditor under the judgement or order, make an order prohibiting the transfer, sale, delivery out, payment or other dealing with the whole or any part of the funds or of the income of the funds, without notice to the applicant.

(2) An application under Sub-rule (1) shall be made—

- (a) if there are any proceedings in the Court relating to the funds in Court—by motion on notice in the proceedings; or
- (b) if there are no proceedings in the Court relating to the funds in Court—by originating summons joining as defendants all persons whose interests may be affected by the application.

(3) The notice of motion or originating summons—

- (a) shall be served on each person whose interest may be affected by the application; but
- (b) shall not be served on any other person.

## **Order 13, Rule 68**

(4) The Court may, on terms, dispense with the joinder of any person as defendant and dispense with service on any person.

(5) The Court may order the applicant for an order under Sub-rule (1) to pay the costs of any party to any proceedings in which the funds are in Court, or of any person interested in the funds.

(6) Sub-rule (5) does not affect the general powers of the Court as to costs.

(7) In this Rule, "funds" includes effects.

### ***Division 9.—Enforcement of External Judgements.***

#### **68. Interpretation of Division 9.**

(1) In this Division, "the Act" means the *Reciprocal Enforcement of Judgements Act 1976*.

(2) In this Division, all expressions have the same meaning as the like expressions in the Act.

(3) The Rules contained in this Division shall have effect with respect to foreign judgements which may be enforced under the provisions of the Act and subject to any such provisions contained in notices made by the Minister under Section 2 of the Act as are declared by the notices to be necessary for giving effect to agreements made between the State and foreign countries.

#### **69. Commencement of proceedings. (59/2)**

(1) Proceedings for registration of a judgement under Part II of the Act shall be commenced by originating summons joining the judgement creditor as plaintiff and the judgement debtor as defendant.

(2) The judgement creditor may, unless the Court otherwise orders, proceed without service of the summons on the judgement debtor.

#### **70. Evidence. (59/3)**

(1) The evidence in support of an application for registration of a judgement shall include—

- (a) the judgement or a verified or certified or otherwise duly authenticated copy of the judgement; and
- (b) where the judgement is not in English, a translation of the judgement in English, certified by a notary public or authenticated by evidence; and
- (c) the name and trade or business, and the usual or last known place of abode or of business of the judgement creditor and of the judgement debtor, so far as known to the deponent or witness giving the evidence; and

## **Order 13, Rule 73**

- (d) evidence to the best of the information or belief of the deponent or witness giving evidence—
  - (i) that the judgement creditor is entitled to enforce the judgement; and
  - (ii) of the amount in which the judgement is unsatisfied; and
- (e) a statement of the amount in Papua New Guinea currency represented by the amount originally payable under the judgement and by the amount in which the judgement is unsatisfied, calculated at the rate of exchange on the date of the judgement.

### **71. Order for registration. (59/4)**

(1) Where the Court orders that a judgement be registered, the Court shall fix a time within which the judgement debtor may file notice of a motion for an order setting aside the registration.

(2) The time fixed under Sub-rule (1) shall not, save in exceptional circumstances, be less than 14 days after service on the judgement debtor of notice of the registration.

(3) An order for registration of a judgement in Form 61 shall specify the amount (exclusive of costs of and incidental to the registration of the judgement) for which the judgement may be enforced.

### **72. Registration. (59/5)**

(1) A register of external judgements shall be kept in the Registry.

(2) On entry of an order for registration of a judgement, the judgement shall be entered in the register.

### **73. Notice of registration. (59/6)**

(1) Notice of registration of a judgement in Form 62 shall be served on the judgement debtor.

(2) Service of the notice shall be personal unless the Court otherwise orders.

(3) The notice of registration shall state—

- (a) particulars of the judgement and of the order for registration; and
- (b) the right of the judgement debtor to apply for an order setting aside the registration; and
- (c) the time within which the judgement debtor may file notice of a motion for an order setting aside the registration.

(4) Where the summons has not been served on the judgement debtor, the notice of registration shall also state the address for service of the judgement creditor.

## **Order 13, Rule 74**

### **74. Setting aside registration. (59/7)**

(1) The Court may, before the expiry of time fixed by an order for registration or by an order under this Sub-rule as the time within which the judgement debtor may file notice of a motion for an order setting aside the registration, extend the time so fixed.

(2) Subject to Sub-rule (3), the Court may, on motion by the judgement debtor, make an order, on terms, setting aside the registration.

(3) Notice of motion for the order must be filed within the time fixed under Rule 71(1) or under Sub-rule (1).

### **75. Enforcement. (59/8)**

(1) Subject to this Rule, on registration of a judgement, the judgement may, to the extent of the amount for which the judgement may be enforced as specified in the order for registration and costs, be enforced as a judgement of the Court in the proceedings in which the judgement is registered, and in any of the manners in which a judgement for the payment of money (not for the payment of money into Court) may be enforced.

(2) The judgement creditor shall not take any step for enforcement of the judgement until an affidavit of service of the notice of registration is filed or the Court is otherwise satisfied that the requirements of these Rules as to service of the notice of registration have been fulfilled.

(3) During the period before the expiry of the time fixed under Rule 71(1) or 74(1), within which the judgement debtor may file notice of a motion for an order setting aside the registration—

- (a) the judgement creditor shall not apply for the issue of a writ for levy of property or for a writ of sequestration; and
- (b) the judgement creditor shall not move for payment pursuant to a garnishee notice under Division 7; and
- (c) the judgement creditor shall not, except by leave of the Court, take any other step for enforcement of the judgement.

(4) Where the judgement debtor files, within the time fixed under Rule 71(1) or 74(1), notice of motion for an order setting aside the registration, the judgement creditor shall not, except by leave of the Court, take any step for enforcement of the judgement until after the disposal of the motion.

(5) Sub-rules (3) and (4) do not limit the operation of Sub-rules (1) and (2).

**ORDER 14.—MISCELLANEOUS POWERS OF COURT.**

***Division 1.—Accounts and Inquiries—General.***

**1. Account: Summary order. (48/1)**

(1) Subject to Sub-rule (2), where a party claims an account or makes a claim which involves taking an account, the Court may, on application by that party at any stage of the proceedings—

- (a) order that an account be taken; and
- (b) order that any amount certified on taking the account to be due to any party be paid to him.

(2) The Court shall not make an order under Sub-rule (1)(a)—

- (a) as against a defendant who has not given notice of his intention to defend unless he is in default of giving that notice; or
- (b) if it appears that there is some preliminary question to be determined.

**2. Account or inquiry at any stage. (48/2)**

The Court may, on application by a party at any stage of proceedings, make orders for the taking of any account or the making of any inquiry.

**3. Account: Directions. (48/3)**

Where the Court makes an order for the taking of an account, the Court, by the same or a subsequent order—

- (a) may give directions concerning the manner of taking or vouching the account; and
- (b) without limiting Paragraph (a) may direct that in taking the account the relevant books of account shall be evidence of the matters contained in them.

**4. Account: Form and verification. (48/4)**

- (1) The items on each side of an account shall be numbered consecutively.
- (2) An accounting party shall, unless the Court otherwise orders, verify his accounts by affidavit and the account shall be made an exhibit to the affidavit.

**5. Account: Filing and service. (48/5)**

An accounting party shall, unless the Court otherwise orders—

- (a) file his account and verifying affidavit; and
- (b) serve the account and affidavit on each other party on the date of filing.

## **Order 14, Rule 6**

### **6. Account: Notice of charge or error. (48/6)**

(1) Where a party seeks to charge an accounting party with an amount beyond that of which the accounting party by his account admits receipt, he shall give to the accounting party notice of the charge, stating, so far as he is able, the amount which he seeks to charge, with brief particulars.

(2) Where a party alleges that any item in the account of an accounting party is erroneous in amount or otherwise, he shall give to the accounting party notice of the allegation, stating the grounds for alleging the error.

### **7. Account: Allowances. (48/7)**

In taking an account under a judgement or order, all just allowances shall be made.

### **8. Delay. (48/8)**

Where it appears to the Court that there is delay in the prosecution of any account, inquiry or other matter under a judgement or order, the Court may make such orders as it thinks fit for staying or expediting the proceedings or for the conduct of the proceedings.

## ***Division 2.—Interim Preservation, etc.***

### **9. Order before commencement of proceedings. (28/1)**

In an urgent case, the Court may, on the application of a person who intends to commence proceedings—

- (a) grant an injunction; or
- (b) make any order which the Court might make in proceedings in the nature of an application for habeas *corpus ad subjiciendum*; or
- (c) make orders for the custody of minors; or
- (d) appoint a receiver,

to the same extent as if the applicant had commenced the proceedings and the application were made in the proceedings.

### **10. Preservation of property. (28/2)**

(1) In proceedings concerning any property, or in proceedings in which any question may arise as to any property, the Court may make orders for the detention, custody or preservation of the property.

(2) An order under Sub-rule (1) may authorize any person to enter any land or to do any other thing for the purpose of giving effect to the order.

(3) In proceedings concerning the right of any party to a fund, the Court may order that the fund be paid into Court or otherwise secured.

**11. Disposal of personal property. (28/3)**

Where, in proceedings concerning any property (other than land) or in proceedings in which any question may arise as to any property (other than land), it appears to the Court that—

- (a) the property is of a perishable nature or is likely to deteriorate; or
- (b) for any other reason it is desirable that the property should be sold or otherwise disposed of,

the Court may make an order for the sale or other disposal of the whole or any part of the property by such person, in such manner, and on such terms (if any) as the Court may direct.

**12. Interim distribution. (28/4)**

Where, in proceedings concerning property, it appears to the Court that the property is more than sufficient to answer the claims on the property for which provision ought to be made in the proceedings, the Court may allow any part of the property to be conveyed, transferred or delivered to any person having an interest in the property.

**13. Interim income. (28/5)**

Where, in proceedings concerning property, it appears to the Court that the whole or any part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceedings, the Court may allow that income or part to be paid, during such period as the Court may determine, to all or any of the persons having an interest in the income.

**14. Payment before ascertainment of all persons interested. (28/6)**

Where two or more persons are entitled to share in a fund, the Court may order or allow immediate payment to any of those persons of his share without reserving any part of his share to meet the subsequent costs of ascertaining any other of those persons.

**15. Directions. (28/7)**

Where, in proceedings commenced by writ of summons, a party applied for any order under Rule 10 or 11, the Court may order that the proceedings be before the Court for directions either immediately or on such date as the Court may appoint.

**16. Terms: Time for order. (28/8)**

The Court may make orders under this Division on terms and at any stage of the proceedings.

## **Order 14, Rule 17**

### ***Division 3.—Receivers.***

#### **17. Address for service. (29/1)**

A receiver shall, within seven days after his appointment, file a notice specifying an address for service.

#### **18. Security. (29/2)**

(1) Where the Court appoints a receiver, the Court may give directions for the filing by the receiver of security in accordance with this Rule.

(2) Where the Court directs the appointment of a receiver, then, unless the Court otherwise orders, a person shall not be appointed receiver pursuant to the direction until he has filed a security in accordance with this Rule.

(3) Sub-rules (1) and (2) have effect subject to any provision for the time being in force made by or under any Act.

(4) The security in Form 63 to be filed in accordance with this Rule shall be a security approved by the Court that the receiver will account for what he receives as receiver and will deal with what he receives as the Court may direct.

(5) Where a security has been filed under this Rule, the Court may make orders for the vacation of the security.

#### **19. Remuneration. (29/3)**

A receiver shall be allowed such remuneration (if any) as may be fixed by the Court.

#### **20. Accounts. (29/4)**

(1) A receiver shall file accounts at such intervals or on such dates as the Court may direct.

(2) The receiver shall, on the day on which he files an account, obtain an appointment to pass the account and serve the account, with a note of the appointment, on each party interested who has an address for service in the proceedings.

(3) The receiver shall, unless the Court otherwise orders, attend on the appointment to pass the account.

#### **21. Default. (29/5)**

(1) Where a receiver—

(a) is required by these Rules or by an order or direction of the Court—

- (i) to file any account or affidavit; or
- (ii) to attend on an appointment to pass his account; or
- (iii) to do any other thing; and

(b) does not carry out the requirement,  
the Court may make such orders and give such directions as the Court thinks fit,  
including orders and directions for—

- (c) the discharge of the receiver; and
- (d) the appointment of another receiver; and
- (e) the payment of costs.

(2) Without limiting Sub-rule (1), where a receiver is required by these Rules or by an order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not carry out the requirements, the Court may charge him with interest at the rate of 5% yearly on that sum while in his possession as receiver.

(3) This Rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

**22. Powers. (29/6)**

(1) The Court may authorize a receiver to do (either in his own name or in the name of the parties or any of them and either generally or in any particular instance) any act or thing which the parties or any of them might do if of full age and capacity.

(2) Sub-rule (1) has effect notwithstanding that the parties or any of them are not of full age and capacity.

(3) This Rule does not limit the powers of the Court apart from this Rule to authorize the receiver to do any act or thing.

**23. Account on death. (29/7)**

(1) Where a receiver in any proceedings dies, the Court may, on motion in the proceedings, make such orders as the Court thinks fit for the filing and passing of accounts by the representative of the deceased receiver and for the payment into Court of any amount shown to be due.

(2) The Court shall not make any order under Sub-rule (1) unless notice of the motion has been served on the representative.

(3) Notice of a motion under this Rule may be served in any manner in which a writ of summons may be served.

## **Order 14, Rule 24**

### ***Division 4.—Security.***

#### **Subdivision A.—Security for Costs.**

#### **24. Interpretation of Division 4. (53/1)**

In this Division—

- (a) references to a plaintiff extend to any person who makes a claim for relief in any proceedings; and
- (b) references to a defendant extend to any person against whom a claim for relief is made in any proceedings.

#### **25. Cases for security. (53/2)**

(1) Where in any proceedings, it appears to the Court on the application of a defendant—

- (a) that a plaintiff is ordinarily resident outside Papua New Guinea; or
- (b) that a plaintiff is suing, not for his own benefit, but for the benefit of some other person and there is reason to believe that that plaintiff will be unable to pay the costs of the defendant if ordered to do so; or
- (c) subject to Sub-rule (2), that the address of a plaintiff is not stated or is mis-stated in his originating process; or
- (d) that a plaintiff has changed his address after the commencement of the proceedings with a view to avoiding the consequences of the proceedings,

the Court may order that plaintiff to give such security as the Court thinks fit for the costs of the defendant of and incidental to the proceedings and that the proceedings be stayed until the security is given.

(2) The Court shall not order a plaintiff to give security by reason only of Sub-rule (1)(c) if it appears to the Court that the failure to state his address or the mis-statement of his address was made without intention to deceive.

#### **26. Manner of giving security. (53/3)**

Where the Court orders a plaintiff to give security for costs, the security shall be given in such manner, at such time, and in such terms (if any) as the Court may by order direct.

#### **27. Failure to give security. (53/4)**

Where a plaintiff fails to comply with an order under this Division, the Court may, on terms, order that the proceedings on any claims by the plaintiff for relief in the proceedings be dismissed.

**28. Saving. (53/5)**

This Division does not affect the provisions of any Act under which the Court may require security for costs to be given.

**Subdivision B.—Security for Future Conduct, and Recognizances.**

**29. Security for future conduct. (53/6)**

- (1) Where, for the purpose of security for future conduct, the Court—
  - (a) requires any person to pay money into Court or otherwise to deposit money; or
  - (b) puts any person on terms of payment into Court or other deposit of money; or
  - (c) puts any person on terms of procuring payment into Court or other deposit of money by some other person,

the Court shall, by order, specify the events in which the money so paid or deposited is to be forfeited, returned or otherwise disposed of.

- (2) Where, for the purposes of security for future conduct, the Court—
  - (a) requires any person to submit to an order for the payment of money; or
  - (b) puts any person on terms of submitting to an order for the payment of money; or
  - (c) puts any person on terms of procuring some other person to submit to an order for the payment of money,

the Court shall, by order, specify the events in which the order for the payment of money may be made and may, by order, specify the manner in which the submission is to be made.

**30. Restriction as to recognizances. (53/7)**

(1) In this Rule "recognizance" means an instrument or memorandum of acknowledgement by the terms of which any sum of money may be made or levied by execution on any property, except execution by way of enforcement of a judgement or order of the Court.

(2) Subject to any Act, the Court shall not require any person to give a recognizance and shall not put any person on terms of giving or procuring a recognizance.

(3) Where, but for Sub-rule (2), the Court might have required a person to give a recognizance, the Court may, subject to Sub-rule (2) and to Rule 29, require that person to give such security for future conduct as the Court may by order direct, or as the case may be, put him on terms of giving or procuring such security for future conduct as the Court may by order direct.

## **Order 14, Rule 31**

### **31. Forfeited recognizances. (53/8)**

(1) Execution shall not be levied on a forfeited recognizance except on an order for payment made under Sub-rule (3).

(2) Where it appears to the Court that the amount of a recognizance has been deposited with any justice or other person, and the Court forfeits the recognizance, the Court shall order that the amount so deposited be paid into the Consolidated Revenue Fund.

(3) Subject to Sub-rule (2), where the Court forfeits a recognizance, the Court shall order the recognizer to pay the amount of the recognizance to the Registrar.

(4) Where the Court forfeits a recognizance in the absence of the recognizer, the Registrar shall post to the recognizer notice of the forfeiture and of the order made under Sub-rule (2) or (3).

(5) Where the Court forfeits a recognizance in the absence of the recognizer, the Court, on application by the recognizer, may, by order, revoke the forfeiture and vary or discharge any order made under Sub-rule (2) or (3).

(6) The recognizer may apply for orders under Sub-rule (5) by filing an affidavit of the facts on which he relies and, if the recognizer does so apply, the Registrar shall deliver the affidavit to the Court for determination of the application.

(7) An application for orders under Sub-rule (5) shall not be made except on a notice of motion or affidavit filed within 28 days after the date of posting of a notice under Sub-rule (4).

(8) The Registrar shall not, unless the Court otherwise orders, take any step for the enforcement of an order made under Sub-rule (3) until the expiration of 28 days after posting of a notice under Sub-rule (4), or, if in the meantime an application is made under Sub-rule (5), until disposal of the application.

(9) The Registrar shall pay into the Consolidated Revenue Fund all moneys received by him under an order for payment of the amount of a forfeited recognizance.

### ***Division 5.—Disposal of Land.***

#### **32. Interpretation of Division 5. (30/1)**

In this Division "land" includes any interest in or right over land.

#### **33. Power to order sale. (30/2)**

In proceedings relating to land, other than proceedings for possession of land, the Court may, at any stage of the proceedings—

- (a) order that the whole or any part of the land be sold; and

- (b) order that any party in receipt of the rents or profits of the land or otherwise in possession of the land deliver possession to such person as the Court may direct.

**34. Manner of sale. (30/3)**

- (1) This Rule applies where the Court has made an order under Rule 33 that land be sold.
- (2) The Court may appoint a party or other person to have the conduct of the sale.
- (3) The Court may permit the person having the conduct of the sale to sell the land in such manner as he thinks fit.
- (4) The Court may direct any party to join in the sale and conveyance or transfer or in any other matter relating to the sale.
- (5) The Court may give such further directions as it thinks fit for the purpose of effecting the sale, including directions—
  - (a) fixing the manner of sale, that is to say, whether the sale is to be by contract conditional on approval of the Court, by private treaty, by public auction, by tender, or by some other manner; or
  - (b) fixing a reserve or minimum price; or
  - (c) requiring payment of the purchase money into Court or to trustees or other persons; or
  - (d) for settling the particulars and conditions of sale; or
  - (e) for obtaining evidence of value; or
  - (f) fixing the remuneration to be allowed to any auctioneer, real estate agent or other person.

**35. Certificate of sale. (30/4)**

- (1) Where, pursuant to this Division, land is sold by public auction, the auctioneer shall, unless the Court otherwise orders, certify the result of the sale.
- (2) Where, pursuant to this Division, land is sold otherwise than by public auction, the solicitor of the person having the conduct of the sale shall, unless the Court otherwise orders, certify the result of the sale.
- (3) The Court may require that the certificate be verified by affidavit of the person certifying.
- (4) The person the sale shall file the certificate and affidavit (if any).

## **Order 14, Rule 36**

### **36. Mortgage, exchange or partition. (30/5)**

Where the Court makes an order for the mortgage, exchange or partition of land, Rules 34 and 35, so far as applicable and with the necessary modifications, apply to the mortgage, exchange or partition as those Rules apply to a sale under this Division.

### ***Division 6.—Contempt of Court.***

#### **Subdivision A.—Preliminary.**

### **37. Interpretation of Division 6. (55/1)**

In this Division "contemnor" means a person guilty or alleged to be guilty of contempt of the Court.

#### **Subdivision B.—Contempt in the Face or Hearing of the Court.**

### **38. Arrest. (55/2)**

Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of Court, committed in the face of the Court or in the hearing of the Court, the Court may—

- (a) by oral order direct that the contemnor be brought before the Court; or
- (b) issue a warrant for the arrest of the contemnor.

### **39. Charge, defence and determination. (55/3)**

Where a contemnor is brought before the Court, the Court shall—

- (a) cause him to be informed orally of the contempt with which he is charged; and
- (b) require him to make his defence to the charge; and
- (c) after hearing him, determine the matter of the charge; and
- (d) make an order for the punishment or discharge of the contemnor.

### **40. Interim custody. (55/4)**

- (1) The Court may, pending disposal of the charge—
  - (a) direct that the contemnor be kept in such custody as the Court may determine; or
  - (b) direct that the contemnor be released.
- (2) The Court may make a direction under Sub-rule (1)(b) on terms, which may include a requirement that the contemnor give security, in such sum as the Court directs, for his appearance in person to answer the charge.

**Subdivision C.—Motion or Proceedings for Punishment.**

**41. Application. (55/5)**

This Subdivision does not apply to a case in which the Court proceeds under Rules 38 to 40.

**42. Procedure generally. (55/6)**

(1) Where contempt is committed in connection with proceedings in the Court, an application for punishment for the contempt must be made by motion on notice in the proceedings, but, if separate proceedings for punishment of the contempt are commenced, the proceedings so commenced may be continued unless the Court otherwise orders.

(2) Where contempt is committed, but not in connection with proceedings in the Court, proceedings for punishment of the contempt must be commenced by originating summons, but, if an application for punishment of the contempt is made by motion on notice in any proceedings, the application may be heard and disposed of in the latter proceedings, unless the Court otherwise orders.

**43. Statement of charge. (55/7)**

A statement of charge, that is, a statement specifying the contempt of which the contemnor is alleged to be guilty, shall be subscribed to, or filed with, the notice of motion or originating summons.

**44. Evidence. (55/8)**

(1) Subject to Sub-rule (2), the evidence in support of the charge shall be by affidavit.

(2) The Court may, on terms, permit evidence in support of the charge to be given otherwise than by affidavit.

**45. Service. (55/9)**

The notice of motion or summons, the statement of charge, and the affidavits shall be served personally on the contemnor.

**46. Arrest. (55/10)**

Where—

- (a) notice of a motion for punishment of a contempt has been filed or proceedings have been commenced for punishment of a contempt; and

## **Order 14, Rule 47**

- (b) it appears to the Court that the contemnor is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,

the Court may issue a warrant in Form 64 for the arrest of the contemnor and his detention in custody until he is brought before the Court to answer the charge, unless he, in the meantime, gives security in such manner and in such sum as the Court directs, for his appearance in person to answer the charge and to submit to the judgement or order of the Court.

### **47. Motion or proceedings by Registrar. (55/11)**

(1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the court or of any other court, the Court may, by order, direct the Registrar to apply by motion for, or to commence proceedings for, punishment of the contempt.

(2) Sub-rule (1) does not affect the right that any person other than the Registrar may have to apply by motion for, or to commence proceedings for, punishment of contempt.

### **Subdivision D.—General.**

#### **48. Warrant. (55/12)**

A warrant in Form 65 for the arrest and detention under this Division of a contemnor shall be addressed to the Sheriff and may be issued under the hand of the Judge presiding in the Court directing the arrest or detention.

#### **49. Punishment. (55/13)**

(1) Where the contemnor is not a corporation, the Court may punish contempt by committal to prison or fine or both.

(2) Where the contemnor is a corporation the Court may punish contempt by sequestration or fine or both.

(3) The Court may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment where the contemnor gives security in such manner and in such sum as the Court may approve for good behaviour and performs the terms of the security.

#### **50. Discharge. (55/14)**

Where a contemnor is committed to prison for a term, the Court may order his discharge before the expiry of the term.

***Division 7.—Interpleader.***

**Subdivision A.—Preliminary.**

**51. Interpretation of Division 7. (56/1)**

In this Division, unless the contrary intention appears—

"claimant" means a person making a claim to property in dispute; "execution creditor" means a person on whose behalf process is issued; "process" means process for execution issued by or under the authority of the Court;

"property in dispute" means any debt or property which is the subject of proceedings under this Division;

"sheriff" includes any officer charged with the execution of process;

"stakeholder" means an applicant under Rule 52.

**Subdivision B.—Stakeholder's Interpleader.**

**52. Case for relief. (56/2)**

Where—

- (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and
- (b) he is sued, or expects to be sued, in any court, for or in respect of the debt or property by two or more persons making adverse claims to the debt or property,

the Court may, on application by him, grant relief by way of interpleader.

**53. Application in pending proceedings. (56/3)**

(1) Where a stakeholder has, in proceedings in the Court, been sued for or in respect of the property in dispute, the application shall be by motion in the proceedings.

(2) A stakeholder applying under Sub-rule (1)—

- (a) shall serve notice of the motion on each party to the proceedings who claims any interest in the property in dispute; and
- (b) shall serve notice of the motion personally on each claimant who is not a party to the proceedings.

## **Order 14, Rule 54**

### **54. Commencement of proceedings.**

In a case to which Rule 53 does not apply, a stakeholder applying for relief by way of interpleader shall commence proceedings by summons, joining each claimant as a defendant.

### **Subdivision C.—General. 55.**

#### **Powers generally. (56/9)**

On application for relief by way of interpleader—

- (a) the Court may make such orders and directions as it thinks fit for the hearing and determination of all matters in dispute; and
- (b) without limiting the generality of Paragraph (a) the Court may—
  - (i) where proceedings in the Court are pending in which the applicant is sued for or in respect of any of the property in dispute, order that any claimant be added as a defendant in those proceedings in addition to or in substitution for the applicant, or order that those proceedings be stayed or dismissed; and
  - (ii) where proceedings in any other court are pending in which the applicant is sued for or in respect of any of the property in dispute—restrain the further continuance of those proceedings; and
  - (iii) order the applicant to pay or transfer any or all of the property in dispute into Court or otherwise to dispose of any or all of the property in dispute; and
  - (iv) where a claimant claims to be entitled by way of security for debt to any or all of the property in dispute—make orders for the sale of any or all of the property in dispute and for the application of the proceeds of sale; and
  - (v) on request by any party—summarily determine any or all questions of fact or law in which the requesting party is interested arising on the application; and
  - (vi) make orders for the settlement and trial of issues; and
  - (vii) make such order, or direct the entry of such judgement, as the nature of the case requires.

### **56. Default by claimant. (56/10)**

- (1) Where a claimant—
  - (a) has been given due notice of the hearing of an application for relief by way of interpleader and does not appear at the hearing; or

(b) does not comply with an order made in the proceedings on such an application,  
the Court may, subject to Sub-rule (2), order that the claimant and those claiming under him be barred from prosecuting his claim against the applicant and those claiming under him.

(2) An order under Sub-rule (1) shall not affect the rights of the claimants amongst themselves.

**57. Neutrality of applicant. (56/11)**

(1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or direct entry of judgement against the applicant unless the Court is satisfied that the applicant—

- (a) claims no interest in the property in dispute except for charges or costs and
- (b) does not collude with any claimant.

(2) This Rule does not affect the power of the Court in other cases to dismiss the application or to direct entry of judgement against the applicant.

**58. Order in several proceedings. (56/12)**

(1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any or all of the property in dispute, the Court may make an order in any two or more of those several proceedings.

(2) A minute of an order made under Sub-rule (1) shall be entitled in all the proceedings in which it is made and the order shall be binding on all the parties to them.

**59. Trial. (56/13)**

Where, in proceedings for relief by way of interpleader, the Court directs the trial of any issue, Order 10 Division 2 shall, with the necessary modifications, but subject to such directions as the Court may give, apply to the trial.

**60. Disposal. (56/14)**

The Court before which an issue is tried under this Division may direct the entry of such judgement, or make such order, as the nature of the case requires including a judgement or order finally disposing of all questions arising in the proceedings.

***Division 8.—Arbitration.***

**61. Application. (72/1)**

This Division relates to proceedings after an order is made under Section 13 of the *Arbitration Act 1951*.

## **Order 14, Rule 62**

### **62. Interpretation of Division 8. (72/2)**

In this Division unless the contrary intention appears—

"arbitrator" includes referee;

"award" includes report.

### **63. Notice of hearing. (72/3)**

The arbitrator shall give to the parties not less than seven days' notice of the time and place of hearing and may, on the application of a party, extend the time for hearing.

### **64. Hearing in absence of party. (72/4)**

If a party does not appear at the hearing after notice has been given to him the arbitrator may proceed in the absence of that party.

### **65. Examination on oath. (72/5)**

The arbitrator may take the examination on oath of any witness.

### **66. Deposit. (72/6)**

The Court may make orders for the payment into Court of a deposit for the remuneration of the arbitrator.

### **67. Time for award. (72/7)**

The arbitrator shall make his award within such time as the Court may order.

### **68. Proceeding on making award. (72/8)**

The arbitrator shall, within seven days after making his award—

- (a) send it to the Registrar in a sealed envelope together with a copy of the award for each party; and
- (b) send to the Registrar a statement showing the time occupied and the amount expended by him in connection with the hearing of the matter so referred; and
- (c) notify the parties that he has sent the award to the Registrar.

### **69. Remuneration. (72/9)**

- (1) The Registrar shall immediately bring the statement before the Court.
- (2) Where the Court has determined the remuneration to be paid to the arbitrator the Registrar shall notify the parties of the amount determined.

**70. Ascertaining award. (72/10)**

On payment by any party of the remuneration determined by the Court in excess of the sum deposited under Rule 66, the envelope containing the award shall be opened by the Registrar.

**71. Service of award. (72/11)**

The Registrar shall serve on the parties by post a copy of the award.

**72. Setting aside award. (72/12)**

If a party be dissatisfied with the award he may, within 28 days after service of the copy of the award referred to in Rule 71, apply to the Court for an order that the award be set aside or referred back.

## **Order 15, Rule 1**

### **ORDER 15.—ADMINISTRATION AND TRUSTS.**

#### **1. Interpretation of Order 15. (68/1)**

In this Order—

"administration proceedings" means proceedings for the administration of an estate or the execution of a trust under the direction of the Court;

"estate" means estate of a deceased person.

#### **2. Relief without general administration. (68/2)**

(1) Proceedings may be brought for any relief which could be granted in administration proceedings.

(2) Proceedings may be brought for the determination of any question which could be determined in administration proceedings, including any question—

- (a) arising in the administration of an estate or in the execution of a trust; or
- (b) as to the composition of any class of persons having a claim against an estate or a beneficial interest in an estate or in property subject to a trust; or
- (c) as to the rights or interests of a person claiming to be—
  - (i) a creditor of an estate; or
  - (ii) entitled under the will or on the intestacy of a deceased person; or
  - (iii) beneficially entitled under a trust.

(3) Proceedings may be brought for an order directing an executor, administrator or trustee—

- (a) to furnish accounts; or
- (b) to verify accounts; or
- (c) to pay funds of the estate or trust into Court; or
- (d) to do or abstain from doing any act. (4)

Proceedings may be brought for an order—

- (a) approving any sale, purchase, compromise or other transaction by an executor, administrator or trustee; or
- (b) directing any act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate were being administered, or the trust were being executed, under the direction of the Court.

(5) None of Sub-rules (1) to (4) limits the operation of any other of them.

(6) In proceedings brought under this Rule a claim need not be made for the administration of the estate, or the execution of the trust, under the direction of the Court.

**3. Application of Rules 4 to 9. (68/3)**

Rules 4 to 9 apply to administration proceedings and to proceedings brought pursuant to Rule 2.

**4. Parties; Executors, etc. (68/4)**

(1) In proceedings relating to an estate, all the executors of the will of the deceased, or all the administrators of the estate, must be parties.

(2) In proceedings relating to a trust, all the trustees must be parties.

(3) Where proceedings are brought by executors, administrators or trustees, any executor, administrator or trustee who does not consent to being joined as a plaintiff shall be made a defendant.

**5. Parties: Beneficiaries and claimants. (68/5)**

(1) In proceedings relating to an estate, all the persons having a beneficial interest in or claim against the estate need not be parties.

(2) In proceedings relating to a trust, all the persons having a beneficial interest under the trust need not be parties.

(3) In proceedings relating to an estate or a trust, the plaintiff may make parties, as he thinks fit, of the persons referred to in Sub-rules (1) and (2).

(4) This Rule has effect notwithstanding Order 5 Rule 3 (parties and causes of action) but does not limit the powers of the Court under that Order.

**6. Claim under judgement. (68/6)**

Where, in the taking of an account of debts or liabilities under a judgement or order in proceedings relating to an estate or trust, a person not a party makes a claim—

(a) a party other than the executors or administrators of the estate or trustees under the trust shall not be entitled to appear in relation to that claim except by leave of the Court; and

(b) the Court may, on terms, direct or allow any party to appear either in addition to or in substitution for the executors, administrators, or trustees.

## **Order 15, Rule 7**

### **7. Relief in proceedings by summons. (68/7)**

(1) The Court may make any certificate or order and grant any relief to which the plaintiff is entitled by reason of any breach of trust, wilful default or other misconduct of a defendant notwithstanding that the proceedings were commenced by summons.

(2) Sub-rule (1) does not affect the power of the Court under Order 4 Rule 35 (continuation on pleadings of proceedings commenced by summons).

### **8. General administration. (68/8)**

(1) The Court need not direct the entry of judgement or make an order for the administration of an estate or the execution of a trust under the direction of the Court unless the judgement or order is necessary for the determination of the questions arising between the parties.

(2) When it appears to the Court that a judgement or order for the administration of an estate or the execution of a trust under the direction of the Court is necessary to prevent proceedings by creditors of the estate or by persons claiming to be entitled under the will or on the intestacy of the deceased or to be beneficially entitled under the trust, the Court—

(a) may direct the entry of judgement; and

(b) may further order that no steps shall be taken under any account or inquiry directed. without the leave of the Court.

### **9. Conduct of sale. (68/9)**

Where the Court makes an order for the sale of property comprised in an estate, or of trust property, the executors or administrators or the trustees, as the case may require, shall, unless the Court otherwise orders, have the conduct of the sale..

**ORDER 16.—APPLICATIONS FOR JUDICIAL REVIEW.**

**1. Cases appropriate for application for judicial review. (UK. 53/1)**

(1) An application for an order in the nature of *mandamus*, prohibition, *certiorari* or *quo warranto* shall be made by way of an application for judicial review in accordance with this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order of *mandamus*, prohibition or *certiorari*; and
- (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

**2. Joinder of claims for relief. (UK. 53/2)**

On an application for judicial review any relief under Rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

**3. Grant of leave to apply for judicial review. (UK. 53/3)**

(1) An application for judicial review shall not be made unless the leave of the Court has been obtained in accordance with this Rule.

(2) An application for leave must be made by originating summons ex parte to the Court, except in vacation when it may be made to a Judge in chambers, and must be supported—

- (a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
- (b) by affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application to the Secretary for Justice not later than two days before the application is made and must at the same time lodge with the Secretary copies of the statement and every affidavit in support.

(4) Without prejudice to its powers under Order 8 Division 4, the Court hearing an application for leave may allow the applicants statement to be amended, whether by specifying different or additional grounds for relief or otherwise, on such terms (if any) as it thinks fit.

## **Order 16, Rule 4**

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

(6) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgement, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where leave to apply for judicial review is granted, then—

(a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders; and

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

### **4. Delay in applying for relief. (UK. 53/4)**

(1) Subject to this Rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which Sub-rule (2) applies, the application for leave under Rule 3 is made after the relevant period has expired, the Court may refuse to grant—

(a) leave for the making of the application; or

(b) any relief sought on the application,

if, in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an order of *certiorari* to remove any judgement, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of Sub-rule (1) is four months after the date of the proceeding.

(3) Sub-rule (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

### **5. Mode of applying for judicial review. (UK. 53/5)**

(1) Subject to Sub-rule (2), when leave has been granted to make an application for judicial review, the application shall be made by Notice of Motion to the Court.

## **Order 16, Rule 6**

(2) The Notice of Motion must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made in them, the Notice of Motion must also be served on the clerk or Registrar of the court and, where any objection to the conduct of the Judge is to be made, on the Judge.

(3) Unless the court granting leave has otherwise directed, there must be at least 14 days between the service of the Notice of Motion and the day named in it for the hearing.

(4) Within 21 days after grant of leave the Notice of Motion shall be allocated a date of hearing by the Registrar after consultation with the parties.

(5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the Notice of Motion must be filed before the Notice of Motion is entered for hearing and, if any person who ought to be served under this Rule has not been served, the affidavit must state that fact and the reason for it, and the affidavit shall be before the Court on the hearing of the Notice of Motion.

(6) If on the hearing of the Notice of Motion the Court is of opinion that any person who ought, whether under this Rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the Notice of Motion may be served on that person.

### **6. Statements and affidavits. (UK. 53/6)**

(1) Copies of the statement in support of an application for leave under Rule 3 must be served with the Notice of Motion and, subject to Sub-rule (2), no grounds shall be relied on or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the Notice of Motion allow the applicant to amend this statement, whether by specifying different or additional grounds for relief or otherwise, on such terms (if any) as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under Rule 3.

## **Order 16, Rule 7**

### **7. Claim for damages. (UK. 53/7)**

(1) On an application for judicial review the Court may, subject to Sub-rule (2), award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under Rule 3 a claim for damages arising from any matter to which the application relates; and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 8, Division 2, shall apply to a statement relating to a claim for damages as it applies to a pleading.

### **8. Application for discovery, interrogatories, cross-examination etc. (UK. 53/8)**

(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any Judge of the Court notwithstanding that the application for judicial review has been made and is to be heard by another Judge.

(2) In this sub-rule "interlocutory application" includes an application for an order under Order 9 Divisions 1 and 2, or Order 11 Division 3, or for an order dismissing the proceedings by consent of the parties.

(3) This Rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the State.

### **9. Hearing of application for judicial review. (UK. 53/9)**

(1) On the hearing of any Notice of Motion under Rule 5, any person who desires to be heard in opposition to the Notice of Motion, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the Notice of Motion.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the Notice of Motion he has lodged with the Secretary for Justice a copy verified by affidavit or accounts for his failure to do so to the satisfaction of the court hearing the summons.

(3) Where an order of *certiorari* is made in any case referred to in Sub-rule (2), the order shall, subject to Sub-rule (4), direct that the proceedings shall be quashed immediately on their removal to the Court.

(4) Where the relief sought is an order of *certiorari* and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

**10. Saving for person acting in obedience to mandamus. (UK. 53/10)**

An action or proceeding shall not be begun or prosecuted against any person in respect of anything done in obedience to an order of *mandamus*.

**11. Appeal.**

An appeal by way of motion to the Supreme Court may be made to set aside or discharge any order of the Court or a Judge granting or refusing an application for leave under Rule 3 or an application for judicial review.

**12. Service on the Secretary for Justice.**

Service on the Secretary for Justice may be effected by leaving the document at his office in the Department of Justice, with the person apparently occupying the position of personal secretary to that Secretary.

Order 16 of the *National Court Rules* is amended by inserting the following:

**13. Judicial Review (Amendment) Rules 2005.<sup>8</sup>**

**Purpose.**

The purpose of these Rules is to prescribe procedures for the conduct of judicial review cases in the National Court with the establishment of a separate *Judicial Review List*. The conduct of this list will be administered by a judge assigned by the Chief Justice. These Rules replace previous practice directions and notes issued by the Registrar on the conduct of judicial review matters in the National Court. As from the date of coming into operation of these Rules, all previous practice directions & notes on judicial review will cease to apply. These Rules are intended to improve the disposition of judicial review cases in the National Court in a quick, fair and cheap manner.

These Rules are intended to be read consistently with the judicial review procedure contained in Order 16 of the *National Court Rules*.

<sup>8</sup> ~~Signed by the Judges on 27<sup>th</sup> September 2005~~

## **Order 16, Rule 13(1)**

Judicial Review proceedings involve a review of the decision-making process of statutory tribunals or authorities. They involve applications in the nature of *mandamus*, prohibition, *certiorari* or *quo warranto* under the procedure set out in *Order 16* of the *National Court Rules* and they include actions for:-

§ *commanding or otherwise requiring a public body or a public officer to perform a public duty;*

§ *prohibiting or otherwise restraining a public body or public officer from performing or purporting to perform an act;*

§ *determining by declaration or otherwise any matter concerning the powers of a public body or public officer;*

§ *in appeals and applications to the Court in respect of decisions of quasi-judicial tribunal or a public body or a public officer, under any statute.*

The grounds of review include those specified by statute and subject to the *Constitution* or any relevant statute, those grounds recognized by common law, including:-

§ *"Ultra vires" – lack of jurisdiction.*

§ *Breach of procedures prescribed by statute or sub-ordinate legislation designed to ensure procedural fairness in decision-making.*

§ *Acting under dictation.*

§ *Real or apprehended bias.*

§ *Bad faith.*

§ *Inflexible application of a government policy.*

§ *Taking into account irrelevant considerations.*

§ *Failing to take into account relevant considerations.*

§ *Extraneous (improper) purpose.*

§ *Error of law on the face of the record.*

§ *"Wednesbury" principle of unreasonableness.*

### **1. Judicial Review List.**

The Registrar shall maintain a *Judicial Review List* which contains all judicial review cases pending determination in the National Court. The list shall be updated at the end of every circuit month.

**2. File Reference.**

Judicial review matters bearing the following file reference shall be listed in the *Judicial Review List* –

OS (JR) No. ....of ..... – Application for judicial review commenced by Originating Summons.

**3. Judge.**

The Chief Justice may assign a judge(s) to conduct the *Judicial Review List* as determined in the *Annual Circuit Calendar* issued by the Chief Justice.

**4. Clerk.**

The Registrar shall assign a Clerk(s) to manage the *Judicial Review List*.

**5. Directions to be issued at time of grant of leave.**

Immediately after granting leave to apply for judicial review, the judge granting leave shall consider and issue directions as to, amongst other things, the following:-

- (1) *Filing of Notice of Motion and supporting affidavits under Order 16 rule 5 (1).*
- (2) *Identification of all persons directly affected by the decision the subject of the review, who may be served with the Notice of Motion including the Clerk or Registrar of the Court or Tribunal which made the decision.*
- (3) *Service of the order granting leave including directions issued hereunder and Notice of Motion and supporting affidavits and any other documents filed for purposes of the leave application, on persons identified under (2) and filing proof of service.*
- (4) *Availability of decision and reasons for decision together with any other relevant documents or depositions of the tribunal or public authority which made the decision the subject of review.*
- (5) *Fix a date for Directions Hearing to take place within fourteen (14) days there-from. This date shall be entered on the Notice of Directions Hearing issued by the Registrar under Rule 6 (1) here-under.*

**6. Directions Hearing.**

(1) The Registrar shall give Notice of the Directions Hearing in the form in *Schedule A*.

(2) At the Directions Hearing, where parties are represented by a lawyer, the lawyer must be familiar the matter.

(3) A person who is served with the Notice of Motion is entitled to attend the Directions Hearing.

## **Order 16, Rule 13(7)**

(4) At the Directions Hearing, the Judge may consider and determine and issue directions or orders for the prompt hearing of the application, amongst other things, the following:

- a. Question of legal representation.*
- b. Identification of persons served or who ought to have been served with the Notice of Motion.*
- c. Joinder of persons served with the Notice of Motion as parties to the proceedings.*
- d. Filing and service of affidavits by the Respondents.*
- e. The grounds of review.*
- f. Amendment of grounds of review.*
- g. Identification of legal issues.*
- h. Statement of agreed and disputed facts.*
- i. Identification of factual issues and manner of proof of disputed facts.*
- j. Provision of records including decision and reasons for decision by the Clerk or Registrar of the Court or Tribunal or statutory authority which made the decision.*
- k. Issue of notices for discovery, notice to admit facts, exchange of interrogatories, notices under Evidence Act, etc.*
- l. Issue of witnesses summonses.*
- m. Filing of extract of submissions.*
- n. Compilation of a Review Book.*
- o. Fix a date for the Pre- hearing Conference to take place within seven (7) days there-from.*

## **7. Review Book.**

- (1) The Applicant or his/her lawyer is responsible for compiling the Review Book.
- (2) The Respondent or his/her lawyer is responsible for ensuring that the decision the subject of the review and other documents considered relevant for purpose of the review are included in the Review Book.
- (3) The Clerk, Registrar or the officer responsible for keeping the records of the tribunal or public authority which made the decision shall certify the documents referred to.

**Order 16, Rule 13(7)(6)(a)**

The certification shall be as follows:

*"I....., Clerk/Registrar of the....., hereby certify that I have examined these documents with the original and certify that they are true copies.*

*Dated this..... day of.....2005.*

*.....*

*Clerk/Registrar."*

(4) Where proceedings have been taken to challenge the decision of a public body or public official, because of the difficulties which at times arise in ascertaining the decision-making process and the reasons for the decision, the judge may at a directions hearing direct a body or person whose decision is under review to furnish to the applicant within a specified time, a statement in writing setting out the reasons for decision including:

- (i) findings on material questions of fact referring to evidence or other material on which those findings were based;
- (ii) the body or person's understanding of the applicable law and the reasoning process leading to the decision; or

(5) Where Rule (4) is not applicable, the judge may make orders for such matters to be ascertained by way of particulars, discovery or interrogatories. Subject to this Rule, orders for discovery or interrogatories will only be made in exceptional cases, and such orders will then be confined to particular issues.

(6)

(a) The Review Book shall contain the following:-

- (i) *Title page.*
- (ii) *Index.*
- (iii) *Originating Summons.*
- (iv) *Statement in Support filed under Order 16 Rule 3(a).*
- (v) *Any Amendment to the statement in support.*
- (vi) *Affidavit Verifying Statement in Support filed under Order 16 Rule 3(b).*
- (vii) *Order granting leave.*
- (viii) *Notice of Motion filed under Order 16 Rule 5(1).*
- (ix) *Affidavit of service of Notice of Motion filed under O. 16 R. 5(5).*

## **Order 16, Rule 13(8)**

*(x) Extract of submissions for the Applicant.*

*(xi) Extract of submissions for the Respondent.*

*(xii) Certified copy of decision and other relevant documents of the decision-making tribunal or statutory authority.*

*(xiii) Any other relevant documents filed in the National Court including affidavits, Notice of Motion and orders.*

(b) All pages must be numbered.

(c) If both parties are not represented by a lawyer, subject to the Applicant meeting the cost, the Registrar may prepare the Review Book.

(d) A Review Book must be prepared, filed and served on the other party seven (7) days before the date fixed for the Pre-hearing Conference.

### **8. Pre – Hearing Conference.**

(1) At the Pre-hearing Conference, the Judge may confirm compliance with directions issued at the directions hearing, under Rule 5 and Rule 6, and may determine or issue directions, amongst other things:-

*a. Confirm correctness of the Review Book.*

*b. Summarily determine any proceedings which fail to comply with the directions or the requirements of Order 16 rule 5 of the National Court Rules.*

*c. Confirm grounds of review.*

*d. Confirm legal or factual issues, if any.*

*e. Filing of extract of submissions.*

*e. Length of hearing time*

*f. Fix a date for the hearing.*

(2) Upon fixture of a date for the hearing under (1) (f), the Registrar shall prepare and issue to both parties an Appointment for the Hearing.

(3) The judge may adjourn the Pre-hearing as may be necessary for the parties to fully comply with the directions issued at the Directions Hearing or Pre-hearing Conference.

### **9. Pre – Hearing Conference Form.**

Upon completion of the Pre-Hearing Conference, the judge's Associate shall record a summary of the details of the pre-hearing conference in the form provided in *Schedule "B"* and place it in the Court file.

**10. Status Conference.**

A status conference shall be conducted by the judge on the first day of the circuit month to confirm that all relevant directions and orders issued during directions and pre-hearing conference have been complied with and that the matter is ready for hearing.

**11. The Hearing.**

(1) The Hearing shall proceed on the date fixed by the Judge at the Pre-hearing Conference, unless otherwise ordered.

(2) An application shall not be adjourned generally; it must be adjourned to a specific date and time.

(3) The hearing shall be by affidavit evidence only. Cross-examination on the affidavit shall not be allowed except with leave of the Court.

(4) At the hearing, the judge may summarily determine any application which fails to comply with the procedures prescribed under Order 16 of the *National Court Rules* or directions issued under Rules 5, 6 and 8 hereof.

(5) After the application is heard and determined, the Registrar or Clerk shall forward a copy of the order together with a copy of the written decision to the Clerk or Registrar of the Court, Tribunal or statutory authority which made the decision. If there is no written judgment handed down, a copy of the oral judgment transcribed by the Court Reporting Service, shall be forwarded.

**12. Adjournments.**

Proceedings in a Directions Hearing, Pre-hearing Conference or Hearing will not be adjourned or stood over generally, even by consent. If parties require time to consider their position or negotiate a settlement, proceedings may, with the judge's approval, be adjourned to a comparatively lengthy period, but always to a fixed date with (if appropriate) liberty to restore the matter to the Directions Hearing or Pre-hearing Conference within that time.

**13. Other matters.**

**(1) Motions.**

All interlocutory applications shall be made by Notice of Motion. The practice and procedure shall be those prescribed by the *National Court Rules* from time to time.

**(2) Summary disposal.**

- a. Any application for judicial review may be determined summarily for failing to comply with directions or orders issued under the Order 16 of the *National Court Rules* or under these Rules or on any other competency grounds.

## **Order 16, Rule 13(14)**

- b. The Court may summarily determine a matter:
  - (a) on application by a party; or
  - (b) on the Court's own initiative; or
  - (c) upon referral by the Registrar in accordance with the procedure set out in (3) below.
- c. Where the Registrar refers a matter for summary determination, the following procedure shall apply:
  - i. A notice letter in the form in *Schedule C* is issued by the Registrar which gives notice to the Applicant of his intention to refer the matter to the judge for summary determination on the grounds stated in the letter. The letter also gives the Applicant thirty (30) days to respond and fixes a return date and time for the matter to come before the judge. A copy of the same letter is sent to the respondent. In appropriate cases, the notice letter may be published in the media.
  - ii. If the Registrar receives a response, either in writing or verbal, he shall place on the file the response or note of the verbal response and advise the Applicant to appear in Court on the date and time fixed.
  - iii. Upon expiry of 30 days, the Registrar shall forward the file to the judge together with any response received.
  - iv. The judge may determine the application summarily based on the response received or report by the Registrar together with any explanation given by the Applicant and/or the respondent in court.
  - v. if the parties are unrepresented by a lawyer, the Registrar shall draft and settle the Court Order and forward sealed copies to the parties.
  - vi. The Registrar shall also forward a sealed copy of the Order together with a copy of the judgment, if any, to the Clerk of the Court or tribunal which made the decision.
  - vii. The file shall be closed and forwarded to Archives for storage.

### **14. Dispensation with requirements of these Rules.**

The judge may dispense with any requirements of these Rules in an appropriate case.

**15. Commencement of these Rules.**

These Rules shall commence on the date they are signed by the Judges.

## Schedule "A" – Notice for Directions Hearing

### SCHEDULE "A"

(Title)

#### NOTICE FOR DIRECTIONS HEARING

TO THE:

Applicant:

Respondents:

Take note that the substantive application for judicial review is fixed for Directions Hearing before a judge of the National Court at \_\_\_\_\_ (Courthouse) at \_\_\_\_\_ a.m. / p.m. on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

You are required to attend at the Directions Hearing. You must be prepared to assist the judge deal with the matters listed below.

At the Directions hearing, the Court will consider and determine or issue directions, amongst others, the following:

- a. Question of legal representation.*
- b. Identification of other persons directly affected by the decision under review and who have been served or ought to have been served with the Notice of Motion.*
- c. Joinder of persons served or ought to have been served with Notice of Motion as parties to the proceedings.*
- d. Grounds of review.*
- e. Filing and service of affidavits.*
- f. Availability of records of the decision and reasons for decision of tribunal or public authority which made the decision.*
- g. Identification of legal issues.*
- h. Identification of factual issues if any and manner of proof.*
- i. Compilation of Review Book.*
- j. Filing of written submissions.*
- k. Fix a date for the Pre-hearing Conference to take place within seven (7) days there-from.*

*Dated this day of 20\_\_ .*

*Issued by:*

.....

Registrar

## **Schedule "B" – Pre-hearing Conference Form**

### **SCHEDULE "B"**

#### **PR-HEARING CONFERENCE FORM**

*(to be completed by Judge's Associate after Pre-hearing Conference)*

#### **Title of Proceedings:**

1. Lawyer for the Applicant & Counsel:
2. Lawyer for the Respondent(s) & Counsel:
3. Grounds of review pursued:
4. Issues:
5. Number of affidavits for applicant:
6. Applicant's witnesses required for cross examination on their affidavits:
7. Number of Respondent's affidavits:
8. Respondent's witnesses required for cross examination on their affidavits:
- 10 Witnesses summonsed:
11. Review Book filed:
12. Duration of hearing:
13. Date & time of Hearing:

Dated this .....day of ....., 20 .....

.....  
(Judge's Associate's name & signature )

**Schedule "C" – Notice to Show Cause**

**SCHEDULE "C"**

*(Notice letter for Summary Determination of Application for Judicial Review)*

Date:

To: Messrs: \_\_\_\_\_

(Name of Applicant or Lawyer & address.

Copy to: \_\_\_\_\_

(Name of Respondent or Lawyer & address)

**Title of proceedings:**

**RE: NOTICE TO SHOW CAUSE WHY YOUR APPLICATION FOR JUDICIAL REVIEW SHOULD NOT BE SUMMARILY DISMISSED.**

I refer to the above matter and advise that this matter is listed for summary determination before the National Court at \_\_\_\_\_ (Courthouse) at \_\_\_\_\_ a.m./p.m. on the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

The grounds or reasons are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

You are required to attend Court on the date and time fixed above to show cause why your application should not be summarily dismissed for the reason(s) stated above.

If you wish to give an explanation before appearing in Court, you may do so by letter addressed to the Registrar within 30 days from the date of this letter.

Yours Sincerely,

.....  
Registrar

**ORDER 17.—APPLICATION FOR WRIT OF HABEAS CORPUS.**

**1. Application for writ of habeas corpus. (UK. 54/1)**

(1) An application for a writ of habeas corpus must be made by way of originating summons to the Court or—

- (a) in vacation or at any time when no Judge is sitting in court, it may be made to a Judge otherwise than in court; and
- (b) in cases where the application is made on behalf of an infant, it must be made to a Judge otherwise than in court.

(2) An application for such writ may be made *ex parte* and, subject to Sub-rule (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by Sub-rule (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

(4) Any refusal to grant application shall be subject of appeal by motion to the Supreme Court only, and further application shall not be made to the Court or another Judge sitting otherwise than in court, unless other or further evidence is adduced in support of the application.

**2. Power of Court to whom *ex parte* application made. (UK. 54/2)**

(1) The Court or Judge sitting otherwise than in court to whom an application under Rule 1 is made *ex parte* may make an order immediately for the writ to issue, or may adjourn the application so that notice of the writ may be given.

(2) The notice and summons must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least eight clear days between the service of the notice and summons and the date named in the summons for the hearing of the application.

(3) A notice directed by the Court of adjourned application for writ of habeas corpus shall be in Form 119 and an order for writ of habeas corpus shall be in Form 122.

**3. Copies of affidavits to be supplied. (UK. 54/3).**

Every party to an application under Rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

## **Order 17, Rule 4**

### **4. Power to order release of person restrained. (UK. 54/4)**

(1) Without prejudice to Rule 2(1), the Court or Judge hearing an application for a writ of habeas corpus may in its or his discretion order that the person restrained be released, and such order shall be sufficient warrant to any superintendent of a corrective institution, police constable or other person for the release of the person under restraint.

(2) Where such an application in a criminal cause or matter is heard by a Judge and the Judge does not order the release of the person restrained, he shall direct that the application be made by motion to the Supreme Court.

### **5. Directions as to return to writ. (UK. 54/5)**

Where a writ of habeas corpus is ordered to issue, the Court or Judge by whom the order is made shall direct the date on which the writ is returnable.

### **6. Service of writ and notice. (UK. 54/6)**

(1) Subject to Sub-rules (2) and (3), a writ of habeas corpus must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a corrective institution, police officer or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in the manner provided by this Rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice in Form 121 stating the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

### **7. Return to the writ. (UK. 54/7)**

(1) The return of a writ of habeas corpus must be endorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another term substituted for it, by leave of the Court or Judge before whom the writ is returnable.

### **8. Procedure at hearing of writ. (UK. 54/8)**

(1) When a return to a writ of habeas corpus is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the State, and then counsel for the person restrained in reply.

## **Order 17, Rule 10**

(2) If the respondent does not appear, and the body is not produced, application may be made to the Court or Judge supported by affidavit of service and disobedience, for committal for contempt.

(3) An order for committal shall be in Form 123.

### **9. Writ of habeas corpus.**

A writ of habeas corpus shall be in Form 120.

### **10. *Bail Act* excluded.**

This Order shall not or be deemed to apply to persons covered by the *Bail Act* 1977.

## Order 18, Rule 1

### PART 3.—APPELLATE JURISDICTION.

#### ORDER 18.—APPEAL RULES.

Order 18 Division 1, Rules 1 – 14 of the National Court Rules is hereby repealed and replaced with the following:

#### **Division 1 A. – Appeals from the District Court and other statutory tribunals.**

##### **Purpose.**

The purpose of these Rules is to prescribe procedures for the conduct of appeal cases in the National Court with the establishment of a separate Appeals List. The Appeals List is conducted by a judge(s) assigned by the Chief Justice.

These Rules includes a consolidation of previous Practice Directions and Notes issued by the Registrar in relation to appeals, which are contained in Practice Direction Book 2004. Upon commencement of these Rules, those practice directions and notes will cease to apply. These Rules are intended to improve the disposition of appeal cases in the National Court, in a quick, fair and cheap manner.

The National Court's appellate jurisdiction is conferred by various statutes, the main one being the *District Court Act* (Ch No. 240). The procedure for appeals in relation to appeals from the District Court is prescribed by this Act. Other statutes which provide for appeals from other statutory tribunals either prescribe their own procedure or adopt the procedure under the District Court Act, e.g. s. 49 of the *Workers' Compensation Act* (Ch No. 172). Other statutes are silent, e.g. s. 58 of the *Lawyers Act* 1986, in which case the procedure under the *District Courts Act* is usually adopted. These Rules are to be read subject to those provisions.

##### **1. Appeals List.**

The Registrar shall maintain an Appeals List which shall contain all appeals cases pending determination in the National Court. This list shall be updated at the end of every circuit month.

##### **2. File Reference.**

Appeal matters bearing the following file reference shall be listed in the Appeal List:

CA No.	of	(year)	- Criminal appeals commenced by Notice of Appeal
CIA No.	of	(year)	- Civil appeals commenced by Notice of Appeal.
OS (App) No	of	(year)	- Applications for leave to extend time to appeal, dispensation of condition precedent to the right of appeal, etc; commenced by Origination Summons.

**3. Judge.**

The Chief Justice may assign a judge(s) to conduct the Appeals List as may be determined in the *Annual Circuit Calendar* issued by the Chief Justice.

**4. Senior Clerk.**

The Registrar shall assign a Senior Clerk and such other Clerks to manage the Appeal List and to perform duties of the Registrar given under these Rules.

**5. Directions Hearing.**

(1) Upon receipt of the Notice of Appeal by the Registrar, the Registrar shall fix a date for Directions Hearing before the Judge to take place within 14 days.

(2) Notice of the Directions Hearing shall be in the form in Schedule A, and it shall be given to the Appellant at the time the Notice of Appeal is filed, and cause a copy to be forwarded to the Respondent.

(3) The Directions Hearing shall be conducted by the Judge, every Mondays except on the Monday of the Supreme Court week.

(4) Where parties are represented by a lawyer, a lawyer who has knowledge of the case must attend the Directions Hearing.

(5) At the Directions Hearing, the judge may consider and determine and give such directions as may be necessary for the prompt disposition of the appeal, amongst other things, the following:-

*(a) Question of legal representation.*

*(b) Failure to comply with any condition precedent to the right of appeal prescribed by statute.*

*(c) Dispensation or waiver of any condition precedent to the right of appeal prescribed by Statute.*

*(d) The grounds of appeal.*

*(e) The issues on appeal.*

*(f) Availability of Court or tribunal's depositions including the Magistrate's or decision-maker's Reasons for decision or report.*

*(g) Typing of transcript of the proceeding.*

*(h) Compilation of the Appeal Book.*

*(i) Manner of presentation of arguments including filing of extract of arguments.*

*(j) The filing of fresh affidavit evidence, if any, by leave of the Court.*

*(k) Length of hearing time.*

*(l) Fix a date for a Pre-hearing Conference to take place within 30 days.*

## Order 18, Rule 6

### 6. Appeal Book.

(1) The Appellant or his/her lawyer is responsible for compiling the Appeal Book.

(2) The Appellant or his/her lawyer is responsible for ensuring that the Court depositions are provided by the Clerk of Court or appropriate officer of the tribunal or authority which made the decision and received by the National Court.

(3) *Transcripts of District Court*

Where a handwritten transcript is provided by a Magistrate, then the lawyer must ensure that they are typed by the lawyer and sent back to the Clerk with the hand-written original from whom the transcript has been received to certify in the following words:

***"I,....., Clerk of the Court hereby certify that I have examined the attached transcript with the original and certify that it is correct.***

***Dated the .....day of .....20 .....***

.....

***(Clerk)***

This Certificate entitled with the name and number of the National Court appeal and place of hearing of appeal shall be prepared for signature of the Clerk of Court by the lawyer for the appellant.

(4) *Transcripts -Other Courts, Executive Bodies and Tribunals*

Where a hand-written transcript is provided by a person other than a Magistrate, then lawyers must ensure that they are typed by the lawyer and sent back to the Clerk of the appropriate body with the hand-written original from whom the transcript has been received to certify in the following words:

***"I,, Clerk of the , hereby certify that I have examined the attached transcript with the original and certify that it is correct.***

***Dated this .....day of .....20 .....***

.....

***"Appropriate officer of Authority or Tribunal".***

(5) Appeal Book

1. The Appeal Book shall contain the following information:

*i. Title page.*

*ii. Index.*

## **Order 18, Rule 6(5)(g)**

*iii. Notice of Appeal.*

*iv. Any Amended Notice of Appeal.*

*v. A summary of the argument of the Appellant.*

*vi. A summary of the response by the Respondent.*

*vii. Magistrate's Reasons – where delivered when the Decision is handed down by the Magistrate.*

*viii. Typed copy of the Transcript – signed by a Clerk of Court certifying that the Transcript is correct.*

*ix. Any other documents filed in the District Court including Complaint, Summons, Notice of Motion, Affidavits, Court orders, etc.*

*x. Any other documents filed on the National Court file, including Orders to Appeal out of time, that are deemed relevant on Appeal.*

(b) All documents must be numbered and where there is reference to the transcript, the lines on the transcript must be numbered.

(c) If the Magistrate fails to provide Reasons for Decision when the decision is handed down by the Magistrate, then no such Reasons can be included in the Appeal Book. If a Magistrate gives verbal Reasons at the time when the Decision is announced in Court but this is not recorded in the transcript or where the Magistrate gives no reasons for his/her decision, then a Report from the Magistrate requested by the Registrar of the National Court and supplied by the Magistrate under s. 225 of the *District Court Act* must be included in the Appeal Book, under Rule 6 (5) vii.

(d) The provisions of Order 7 Rule 43 of the Supreme Court Rules shall be adopted and applied as far as appropriate and applicable to the matter subject to the above modifications.

(e) Where both parties are represented by lawyers, then both parties must certify the correctness of the Appeal Book, and if there is any dispute as to the correctness of the index and the contents of the Appeal Book, the Registrar or a Deputy Registrar may on seven (7) days notice by the Registrar settle the Appeal Book - such Notice of Appointment to be prepared for signing by the Appellant's lawyer.

(f) If both parties are not represented by a lawyer, subject to parties meeting the cost of preparing the Appeal Book, the Registrar may give such assistance to the parties as is necessary to compile the Appeal Book.

(g) An Appeal Book must be delivered to the Court and served on the other party seven (7) days before the date fixed for the Pre-hearing Conference.

## **Order 18, Rule 7**

### **7. Pre-Hearing Conference.**

(1) At the Pre-hearing Conference, the judge may amongst other things, issue further directions as may be necessary to make the proceedings ready for hearing, amongst other things:

(a) Confirm parties' compliance with directions issued at the Directions Hearing in respect to various matters set out in Rule 5.

(b) *Confirm the correctness of the Appeal Book.*

(c) *Summary determination of appeals which fail to comply with directions issued at the Directions Hearing or otherwise fail to comply with procedures prescribed by the relevant statute.*

(d) *Length of hearing time.*

(e) *Filing of extract of submissions.*

(f) *Fix a date for the hearing of the substantive appeal.*

(2) The Judge may adjourn the Pre-hearing Conference as may deem necessary for the parties to fully comply with the directions.

(3) Upon fixing a date for the hearing of the substantive appeal, the Registrar shall issue to all parties a Notice of Hearing in the form prescribed by the District Court Act.

### **8. Pre-hearing Form.**

Upon completion of Pre-hearing Conference, the judge's Associate shall record a summary of the Pre-hearing Conference details in the form provided in Schedule "B" and place it on the Court file.

### **9. Status Conference.**

A status conference shall be conducted by the judge on the first day of the circuit month to confirm that all relevant directions and orders issued during the directions and pre-hearing conferences have been complied with and that the appeal is ready for hearing.

### **10. The Hearing.**

(1) The hearing shall proceed on the date and time fixed in the Notice of Hearing of Appeal.

(2) If an appeal is not heard, it must not be adjourned generally. It must be fixed or adjourned to a specific date and time.

(3) Any fresh evidence introduced by a party shall be by leave of Court only and by affidavit evidence only. Cross-examination on the affidavit shall not be allowed except with leave of the Court.

## **Order 18, Rule 12(3)**

(4) At the hearing, the judge may summarily hear and determine any appeal which fails to comply with the procedure prescribed by the relevant statute or in which the parties fail to comply with directions issued at a Directions Hearing or Pre-Hearing Conference.

(5) After the appeal is heard and decision is made by the Judge, the Registrar shall forward a copy of the Order together with a copy of the written judgment to the Clerk of the Court or tribunal from which the decision is appealed. If there is no written judgment, a transcribed copy of the oral judgment that has been transcribed by the Court Reporting Service, shall be provided.

### **11. Adjournments.**

Proceedings in a Directions Hearing, Pre-hearing Conference or Hearing shall not be adjourned generally, even by consent. If parties require time to consider their position or negotiate a settlement, the proceedings may, with the approval of the judge, be adjourned to a comparatively lengthy period, but always to a fixed date (if appropriate) with liberty to restore the matter to the Directions Hearing or Pre-hearing Conference within that time.

### **12. Other matters.**

#### **(1) Originating Summons.**

Applications for extension of time to appeal or dispensation or waiver of any condition precedent to the right of appeal prescribed by statute must be instituted by Originating Summons and made *ex parte*.

#### **(2) Motions.**

(a) An application for stay of enforcement of order appealed from or any other interlocutory application may be made before the judge by Notice of Motion.

(b) The practice and procedure for Motions shall be those applying to Motions under the National Court Rules.

(c) Motions shall be heard on dates in the week as directed by the judge except in the Supreme Court week or in the Judgment Writing Week. The practice in Waigani for the time being is that Motions will be heard on Tuesday and Thursday of each week.

(d) Where the Court determines an application for stay, a sealed copy of the Order shall be forwarded to the Clerk or appropriate officer of the statutory authority or tribunal which made the decision.

#### **(3) Urgent Applications.**

Urgent *ex parte* applications for stay or other interlocutory applications may be made before the judge by prior arrangement with the Registrar. If the Judge is not available, they may be moved before the Motions Judge who is the Duty Judge for the circuit month.

## **Order 18, Rule 13**

### **(4) Summary Disposal.**

- (a) The Court may summarily determine an appeal:
  - (i) on application by a party; or
  - (ii) on the Court's own initiative; or
  - (iii) upon referral by the Registrar in accordance with the procedure set out in (2) below.
- (b) Where the Registrar refers a matter to the judge for summary determination, the following procedure shall be followed:-
  - (i) A notice letter in the form in Schedule "C" is issued by the Registrar which gives notice to the Appellant of his intention to refer the matter to the judge for summary determination on the grounds stated in the letter. The letter will also give the Appellant thirty (30) days to respond and fix a return date and time for the matter to come before the judge. A copy of the same letter is sent to the respondent. Where appropriate, the Registrar may publish the notice letter in the media.
  - (ii) If the Registrar receives any response, either verbal or in writing, he shall place on the file the response or a note of the verbal response received and advise the Appellant to appear in Court on the date fixed.
  - (iii) Upon the expiry of 30 days, the Registrar shall forward the file to the Judge together with any response received.
  - (iv) The judge may determine the appeal summarily based on the response received or report by the Registrar and any representations made by the parties or issue any directions as may seem necessary for the future conduct of the proceedings.
  - (v) If the parties are unrepresented, the Registrar shall draft the Court Order, enter it and forward sealed copies to the parties.
  - (vi) The Registrar shall also forward a sealed copy of the Order together with a copy of the judgment, if any, to the Clerk of the Court or Tribunal which made the decision.
  - (vii) The file is closed and forwarded to Archives for storage.

### **13. Relief from compliance with the Rules.**

The judge may dispense with the requirements of these Rules.

### **14. Commencement of these Rules.**

These Rules shall commence operation on the date they are signed by the Judges.

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<sup>9</sup> The National Court Appeal Rules were signed by the Judges on 27<sup>th</sup> September 2005.

## **Schedule "A" Notice for Directions Hearing**

### **SCHEDULE "A"**

(Title of proceedings)

#### **NOTICE FOR DIRECTIONS HEARING**

**To:**

Appellant /Lawyer:

Respondent/Lawyer:

Take note that the appeal is listed for Directions Hearing before a judge of the National Court at .....(Courthouse) at .....a.m./p.m. on the day of .....20 .....

You are required to attend at the Directions Hearing to assist the judge deal with the matters listed below.

At the Directions Hearing, the judge will consider, amongst other things, the following:

- (a) Question of legal representation.*
- (b) Failure to comply with any condition precedent to the right of appeal prescribed by statute.*
- (c) Dispensation or waiver of any condition precedent to the right of appeal prescribed by statute.*
- (d) The grounds of appeal.*
- (e) The issues on appeal.*
- (f) Availability of Court or Tribunal depositions including reasons for decision or report.*
- (g) Compilation of Appeal Book.*
- (h) Manner of presentation of arguments including filing of extract of arguments.*

**SCHEDULE "B"**

**PRE-HEARING CONFERENCE FORM**

*(to be completed by Judge's Associate after Pre-hearing Conference)*

**Title of proceedings:** \_\_\_\_\_

1. Lawyer for the Plaintiff & Counsel:
2. Lawyer for Defendant & Counsel:
3. Nature of claim:
4. Issues of fact:
5. Legal issues:
6. Statement of agreed and disputed facts filed:
7. Number of witnesses for Plaintiff -
  - Giving affidavit evidence only:
  - Giving oral evidence:
8. Number of Defence witnesses -
  - Giving affidavit evidence only:
  - Giving oral evidence:
9. Expert witnesses:
10. Documentary and physical evidence:
11. Witnesses summonsed to give evidence:
12. Pleadings Book filed:
13. Duration of trial:
14. Whether out of court settlement attempted and exhausted:
15. Whether all necessary interlocutory processes have been completed:
16. Date and time of trial:

Dated this .....day of .....20.....

Prepared by:

.....

Name and signature of Associate to Judge

**SCHEDULE "C"**

**(Notice letter for summary determination).**

**Date:**

**To:** \_\_\_\_\_  
(Name of Plaintiff/Lawyer & Address)

**Copy to:** \_\_\_\_\_  
(Name of Defendant/Lawyer & address)

Title of proceedings: \_\_\_\_\_

I refer to the above matter and advise that this matter is listed for summary determination before the Listings Judge in the National Court at

.....  
(Courthouse) at .....am/pm on the..... day of .....  
20.....

The grounds or reasons are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

You are required to attend Court on the date and time fixed above to show cause why your matter should not be summarily dismissed for the reason(s) stated above.

If you wish to given an explanation before appearing in Court, you may do so by letter addressed to the Registrar, within thirty (30) days from the date of this letter.

Yours Sincerely,

.....  
Registrar

## **Order 18, Rule 14A**

### ***Division 2.—Taxation Appeals.***

#### **14A. Interpretation of Division 2.**

In this Division a reference to the "Act" shall mean the *Income Tax Act* 1959 (Adopted) and the terms "Commissioner General of Internal Revenue", "objection", "reference", "Review Tribunal" and "taxpayer" shall have the same meaning as in that Act.

#### **15. Appeals from disallowance of objection.**

When the Commissioner General of Internal Revenue has been requested under the Act to forward an objection to the Court he shall—

- (a) forward the notice of the objection to the Court within the time prescribed by law, or if no time has been so prescribed, then within 30 days after the date of the receipt by him of the request, or within such further time as is agreed between him and the taxpayer; and
- (b) within seven days after the date on which he has forwarded or referred the notice of objection—give to the taxpayer written notice that the objection has been forwarded.

#### **16. Documents to accompany notice of objection.**

(1) The Commissioner General of Internal Revenue shall also forward, together with the notice of objection, to the proper officer of the Court—

- (a) the assessment in respect of which the objection was made (including any amendment of the assessment); and
- (b) the notice of the disallowance of the objection; and
- (c) the request for the forwarding or reference of the objection to the Court; and
- (d) any other documents in his possession or power which are necessary for the hearing of the appeal.

(2) If a dispute arises concerning the documents to be forwarded or as to their genuineness or the correctness of a copy of the documents, the Court may, on application made by a party to the appeal by motion, make such order as it thinks fit with respect to the dispute.

#### **17. Setting down appeal for hearing.**

(1) The taxpayer shall, within 14 days after the receipt by him of a notice that his objection has been forwarded, set down the appeal for hearing at the next available sittings of the Court appointed for the hearing of such appeals.

(2) The taxpayer shall give to the Commissioner General of Internal Revenue notice of the setting down at least 14 days before the day for which the appeal has been set down.

**18. Appeals from the Review Tribunal.**

An appeal to the Court from a decision of the Review Tribunal shall be instituted by a notice of appeal.

**19. Notice of appeal.**

- (1) The notice of appeal shall—
  - (a) be signed by the appellant or by his solicitor; and
  - (b) be entitled "In the National Court of Justice"; and
  - (c) state—
    - (i) the decision of the Review Tribunal from which the appeal is brought; and
    - (ii) whether the appeal is from the whole or part only, and if so what part, of the decision; and
    - (iii) the question or questions of law involved in the decision; and
    - (iv) concisely the grounds of the appeal.

(2) On the hearing of the appeal, the appellant shall be limited to the grounds stated in the notice of appeal unless the Court allows an amendment of the notice of appeal.

(3) The notice of appeal may be amended by leave of the Court at the hearing on such terms as the Court thinks fit.

**20. Procedure by appellant.**

(1) Within 30 days after the Review Tribunal's decision the party desiring to appeal from the decision shall—

- (a) file the notice of appeal in the Registry at the place where it is desired that the appeal be heard; and
- (b) serve a copy of the notice of appeal on the opposite party; and
- (c) serve a copy of the notice of appeal on the Review Tribunal.

(2) Service of a copy of a notice of appeal under this Rule may be effected by sending the copy in a pre-paid letter through the post properly addressed to the person to be served at his usual or last known place of residence or business, or, in the case of the Review Tribunal, at its proper office.

(3) A copy of a notice of appeal served by post under Sub-rule (2) shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post.

**21. Procedure by Review Tribunal.**

(1) Within 14 days from the service of the copy of a notice of appeal on the Review Tribunal, the Review Tribunal shall cause to be forwarded to the Registrar—

- (a) a copy of its assessment, determination or decision; and

## **Order 18, Rule 22**

- (b) a copy of any statement made by the Review Tribunal of its findings of fact and its reasons in law for its decision; and
- (c) a copy of the assessment or notice of assessment (including any amendment of the assessment or notices) the subject matter of the proceedings before the Review Tribunal; and
- (d) a copy of any notice of objection, so far as relevant; and
- (e) a copy of any decision on the objection; and
- (f) a copy of the request for the forwarding or reference of the objection or decision to the Review Tribunal; and
- (g) a copy of the document forwarding or referring the objection or decision to the Review Tribunal; and
- (h) a copy of any other document necessary for hearing the appeal which is in the possession or power of the Review Tribunal.

(2) If a dispute arises concerning a document forwarded, or to be forwarded, under Sub-rule (1), or as to the genuineness of such a document or the correctness of a copy, the Court may, on application made by a party to the appeal, make such order as it thinks fit with respect to the dispute.

(3) Not later than the expiration of seven clear days after the date on which any documents have been forwarded under this Rule to the Registry in which the appeal is pending, the person who forwarded the documents shall cause to be served on every party to the appeal a notice of the date on which the documents were forwarded.

### **22. Setting of appeal.**

(1) The appeal shall be set down by the appellant for hearing at the first sittings of the Court, appointed to commence after the notice of appeal has been filed.

(2) The appellant shall give the respondent 14 days' notice of the date of the sittings for which the appeal has been set down to be heard.

### **23. References of questions of law.**

Where the Review Tribunal has been requested, pursuant to the Act, to refer a question of law arising before the Review Tribunal to the Court, the Review Tribunal shall, within 14 days of the request cause to be forwarded to the Registrar a statement of the question of law arising together with copies of all documents relevant to the question of law and shall, at the same time give notice to the parties of compliance with this Rule.

**24. Hearing of questions of law.**

Within 14 days of receipt of the notice referred to in Rule 23 the party requesting the reference of the question of law shall—

- (a) enter the matter for hearing at the first sittings of the Court appointed to commence after the expiration of 28 days from the entry for hearing; and
- (b) give to the other party 14 days notice of the date of the sittings for which the matter has been entered for hearing.

## **Order 19, Rule 1**

### **PART 4.—PROBATE JURISDICTION.**

#### **ORDER 19.—PROBATE RULES.**

##### ***Division 1.—Preliminary.***

##### **1. Interpretation of Order 19. (78/1)**

In this Order, unless the contrary intention appears—

"the Act" means the *Wills, Probate and Administration Act* 1966;

"administration" includes administration with the will annexed,  
administration *de bonis non* and limited and special administration;

"administrator" means a person to whom administration is granted;

"estate" includes real estate and personal estate;

"grant" means a grant of probate or administration;

"resealing" means sealing, under Section 118 of the Act, probate or letters of  
administration;

"will" includes codicil;

and words in this Order have the same meaning as they have in the Act.

##### **2. Transition. (78/2)**

(1) Proceedings for a grant or for resealing to which Division 3 applies, which were commenced before the commencement date, may be continued to grant or resealing in accordance with the practice, procedure, requirements and forms in force immediately before the commencement date.

(2) Where the proceedings are commenced in accordance with Sub-rule (1) the notice of address filed in the proceedings shall have effect as if it were the applicant's address for service stated in proceedings commenced by summons under Division 3.

##### **3. Heading, title and backsheets. (78/3)**

(1) This Rule applies to any document in proceedings where the powers of the Court may be exercised by the Registrar.

(2) The document shall be headed "In the National Court of Justice", shall be entitled "The estate of" with a reference to the name of the deceased and his place of residence and his occupation at the time of his death, and, where a grant or reseal has been made in the estate, shall show the number given in the Registry to the grant or reseal.

(3) A document prepared by a party shall have a backsheet headed, entitled and showing the number (if any) of the grant or reseal as provided by Sub-rule (2) and showing also—

(a) a description of the document; and

## **Order 19, Rule 5**

- (b) the name, address and telephone number of the solicitor for the party and, if the solicitor acts in the proceedings by an agent, the name, address and telephone number of the agent.
- (4) Where a party is not represented by a solicitor, Sub-rule (3)(b) does not apply, but the backsheet shall show the name and address for service of the party.
- (5) The backsheet of an affidavit shall be endorsed with the name of the deponent and the date of swearing.
- (6) Order 2 Rules 22 and 23 (heading and title) and Order 2 Rule 27 (backsheets) do not apply.

### **4. Serial number of proceedings. (78/4)**

Order 2 Rule 20 (serial number) does not apply to proceedings where the powers of the Court may be exercised by the Registrar.

## ***Division 2.—Registrar.***

### **5. Powers of Registrar. (78/5)**

(1) Subject to Section 42 of the Act, the Registrar may exercise the powers of the Court in and about—

- (a) proceedings to which Division 3 applies (including making a grant on presumption of death and giving leave in the grant to distribute the estate); or
- (b) granting leave to creditors to commence proceedings for a grant of administration; or
- (c) assigning guardians of minors; or
- (d) settling and issuing citations; or
- (e) appointing next friends or guardians at law of disabled persons; or
- (f) passing the accounts of executors, administrators and trustees, including the allowing of commission or percentage to executors, administrators and trustees for their pains and trouble and costs in connection with the accounts; or
- (g) granting further time to executors, administrators or trustees to file or to file and pass their accounts; or
- (h) enlarging time under Section 91 of the Act; or
- (i) revocation or rescission of grants of probate or administration where the revocation or rescission is not contested; or

## **Order 19, Rule 6**

- (j) authorization of the sale, lease or mortgage of any of the real estate as to which any person dies intestate where the gross value of such real estate does not exceed K400.00, and no objection is raised to the sale, lease or mortgage.

(2) Where the Court refers any matter to the Registrar for the exercise in respect of that matter of any of the powers of the Court, the Registrar may exercise in respect of that matter that power.

(3) In respect of any of the matters referred to in Sub-rule (1) or (2), the Registrar may exercise the power of the Court under Order 1 Rule 7 (relief from the Rules).

(4) Where in any of the matters referred to in Sub-rule (1) or (2) the Registrar has doubt or difficulty or is requested by any person to refer the matter to the Court, he shall refer the matter to the Court.

### **6. Non application of Order 2 Rule 18. (78/6)**

Order 2 Rule 18 (review of act or decision by Registrar) does not apply in respect of the Registrar.

## ***Division 3.—Non-contentious Proceedings for Grant or Resealing.***

### **7. Application of Division 3. (78/7)**

This Division applies to proceedings for a grant or for resealing where—

- (a) there is no defendant; and
- (b) no person is cited to see the proceedings.

### **8. Commencement of proceedings. (78/8)**

(1) Proceedings for the grant or resealing shall be commenced by summons in Form 70.

(2) Notwithstanding Order 6 Rule 7(1), the address for service of the plaintiff need not be that of a place within 15 km of the Registry but shall be that of a place within Papua New Guinea.

### **9. Hearing. (78/9)**

- (1) The proceedings may be heard—
  - (a) in the absence of the public; and
  - (b) without the appearance before the Court of any person.
- (2) The proceedings shall be heard without an appointment being obtained for the hearing.
- (3) Order 4 Division 4 (originating summons) does not apply.

**10. Publication of notice of intended application. (78/10)**

(1) Notice, in the form prescribed of an intended application for a grant or for resealing shall be published in one Port Moresby daily newspaper.

(2) A notice under Sub-rule (1) shall state the date or dates of any will and each codicil (if any) sought to be proved or where the document bears no date a statement of this fact and of the approximate date, if known.

(3) Where it is intended to apply for dispensing with an administration bond, or with one or both of the sureties, or for reduction of the penalty of the bond, the notice under Sub-rule (1) shall require creditors to send in their claims.

(4) The Court may require further advertisement.

(5) Forms for use under this Rule shall be Forms 71, 72 or 73, as the case requires.

**11. Delay. (78/11)**

Where proceedings for a grant—

(a) are not commenced until six months or more after the death of the deceased; and

(b) are the first proceedings for a grant,

the plaintiff shall file an affidavit explaining the delay.

**12. Domicile out of Papua New Guinea. (78/12)**

Where it appears in proceedings for a grant or for resealing that the deceased was domiciled out of Papua New Guinea, the Court may require evidence of—

(a) the domicile of the deceased; and

(b) the requirements of the law of the domicile as to the validity of any will made by the deceased; and

(c) the law of the domicile as to the persons entitled in distribution of the estate.

**13. Identity. (78/13)**

The Court may, in proceedings for a grant, require proof of the identity of the deceased or of the plaintiff.

**14. Renunciation. (78/14)**

(1) Where a person has renounced probate or administration, he shall not be granted representation of the deceased in another capacity.

(2) A renunciation by an executor of probate may be made in Form 74.

## **Order 19, Rule 15**

### **15. Will not sufficiently attested. (78/15)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will which does not contain a sufficient attestation clause or contains no attestation clause.

(2) The plaintiff shall file an affidavit in Form 75 of one or more of the attesting witnesses as to due execution of the will.

(3) Where the plaintiff is unable to comply with Sub-rule (2), he shall file an affidavit explaining the reason for the inability and an affidavit by some person, other than an attesting witness, who was present when the will was executed.

(4) Where the plaintiff is unable to comply with Sub-rule (2) or (3), he shall furnish evidence, on affidavit, of the reason for the inability and of the identity of the signature of the testator and of the attesting witnesses respectively or of any other facts from which it may be inferred that the will was duly executed.

### **16. Testator's knowledge and approval of contents. (78/16)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and—

- (a) the will appears to have been signed by a blind testator; or
- (b) the will appears to have been signed by an illiterate testator; or
- (c) the will appears to have been signed by another person by direction of the testator; or
- (d) there are circumstances which raise doubt whether the testator, at the time of execution of the will, knew and approved of its contents.

(2) The plaintiff shall furnish evidence on affidavit which establishes that the testator at the time of execution of the will, knew and approved of its contents.

(3) Where any of the evidence is that of an attesting witness or other person present at the time of execution, his affidavit shall state the manner in which the will was executed.

### **17. Further evidence as to execution. (78/17)**

Where in proceedings for a grant the plaintiff seeks to prove a will and notwithstanding that the plaintiff has complied with Rules 15 and 16, the Court considers that there is some doubt about the execution of the will or that any circumstances in connection with the execution requires explanation, the Court may require further evidence.

### **18. Date of execution. (78/18)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and the will is undated or there appears to be doubt as to the date on which it was executed.

- (2) The Court may require evidence establishing the date of execution.

**19. Interlineations, obliterations and alterations. (78/19)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and—

- (a) an interlineation, obliteration or alteration appears in the will; and
- (b) the interlineation, obliteration or alteration has not been duly authenticated or otherwise validated.

(2) The Court may require evidence establishing whether the interlineation, obliteration or alteration was made before the execution of the will.

**20. Documents referred to or attached. (78/20)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and—

- (a) the will contains a reference to a document that suggests that the document may be incorporated in the will; or
- (b) there are marks on the will from which it appears that a document has been attached to it.

(2) The Court may require—

- (a) production of the document; and
- (b) evidence in regard to it.

**21. Part of will paper torn off or cut off. (78/21)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and it appears that part of the paper on which the will was written has been torn off or cut off.

(2) The Court may require—

- (a) production of the part torn off or cut off; and
- (b) evidence in regard to it.

**22. Burning, tearing or other sign of revocation. (78/22)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and—

- (a) the appearance of the will suggests that there may have been an attempted destruction of it by burning, tearing or otherwise; or
- (b) there are other circumstances which suggest that the testator may have revoked the will.

(2) The circumstances shall be fully explained on affidavit.

## **Order 19, Rule 23**

### **23. Inoperative will. (78/23)**

(1) This Rule applies where in proceedings for a grant the plaintiff seeks to prove a will and it appears that the will is or may be inoperative or partly inoperative by reason of the executors and beneficiaries all predeceasing the testator or for any other reason.

(2) The Court may require evidence—

- (a) as to matters relevant to whether the will is inoperative or partly inoperative; and
- (b) showing what persons would be entitled in distribution of the estate on intestacy.

### **24. Evidence and documents in application for probate. (78/24)**

(1) An application for probate shall be supported by an affidavit—

- (a) in Form 76, of the death of the testator; and
- (b) in Form 77—
  - (i) of the full residential address of the plaintiff; and
  - (ii) that the testator has left a will and the date of the will; and
  - (iii) of the names of the subscribing witnesses to the will; and
  - (iv) whether the deceased married after making the will; and
  - (v) that the deceased left an estate within Papua New Guinea; and
  - (vi) that the plaintiff is over the age of 21 years; and
  - (vii) where an executor has died or has renounced probate—of the date of his death or renunciation; and
- (c) in Form 78—
  - (i) of publication of the notice of intention to apply for probate; and
  - (ii) of search for a will of the testator deposited in the Registry; and
  - (iii) whether a caveat relating to the application has been lodged; and
  - (iv) where two years or more have elapsed since the death of the deceased—whether any prior application for any grant or resealing has been made in connection with the estate.

(2) Where an executor has renounced probate evidence of the renunciation shall be furnished and where a renunciation has been signed by the executor, the renunciation shall be filed.

(3) Where an executor has died, evidence of his death shall be furnished.

(4) Where an executor is not joining in the application and leave is sought to be reserved to him to come in and apply for probate, evidence shall be furnished that he has been served, not less than 14 days before the proceedings for grant are commenced with notice of the intended proceedings or that he is not in Papua New Guinea, or that he is a minor.

(5) The notice referred to in Sub-rule (4) may be served personally or by sending the notice by registered post to the executor and obtaining from the postal authorities a written acknowledgment, purporting to be signed by him, of receipt of the registered article.

(6) An affidavit of the plaintiff stating his means of identifying the will shall be filed and the will shall be marked by him and by the person before whom the affidavit is sworn.

(7) An oath in writing of the plaintiff in Form 79, administered by a person before whom an affidavit of the plaintiff might be sworn, shall be filed.

(8) The Court may require further evidence to be furnished, further documents to be filed, and notices to be given.

**25. Evidence and documents in support of applications for administration.  
(78/25)**

- (1) An application for administration shall be supported by affidavits—
  - (a) in Form 76, of the death of the deceased; and
  - (b) in Form 80—
    - (i) of the full residential address of the plaintiff; and
    - (ii) that the deceased died intestate; and
    - (iii) of the searches which have been made for a will; and
    - (iv) where the deceased died without issue—whether he was born legitimate; and
    - (v) that the deceased left an estate within Papua New Guinea; and
    - (vi) of the relationship (if any) of the plaintiff to the deceased; and
    - (vii) of the names and ages of the persons entitled in distribution of the estate (annexing appropriate marriage, birth, death or other certificate); and
    - (viii) that the plaintiff is over the age of 21 years; and
    - (ix) that the plaintiff is not an undischarged bankrupt and has not assigned or encumbered his interest (if any) in the estate; and
    - (x) of the plaintiff's knowledge of claims against the estate; and

## **Order 19, Rule 25(1)(c)**

(c) in Form 78—

- (i) of publication of the notice of intention to apply for administration; and
- (ii) of search for a will of the deceased deposited in the Registry; and
- (iii) whether any caveat relating to the application has been lodged; and
- (iv) where two years or more have elapsed since the death of the deceased—whether any prior application for a grant or for resealing has been made in connection with the estate.

(2) A certificate of searches by the Registrar-General for adoptions and legitimations shall be filed.

(3) Where the grant is applied for by less than all the persons who are in Papua New Guinea and are entitled to a grant of administration, the application must be supported by—

- (a) the consent, in Form 81, of each such person entitled to a grant but not applying for the grant, to the grant being made to the plaintiff, with an affidavit verifying the consent endorsed on the document containing the consent; or
- (b) an affidavit as to service, not less than 14 days before the proceedings are commenced, on each of those persons whose consent to the grant is not filed, of notice of intention to make the application.

(4) The notice referred to in Sub-rule (3)(b) may be served personally or by sending the notice by registered post to the person to be served and obtaining from the postal authorities a written acknowledgment purporting to be signed by him, of receipt of the registered article.

(5) Subject to Sub-rule (6)—

- (a) an administration bond, in Form 82, shall be filed; and
- (b) except where the bond is given by a guarantee company approved by the Court, there shall be two sureties to the bond.

(6) The Court may—

- (a) dispense with the bond; or
- (b) dispense with one or both of the sureties; or
- (c) reduce the penalty of the bond.

(7) Where dispensing with the bond or with one or both of the sureties or reduction of the penalty of the bond, is sought, an affidavit shall be filed in support of the dispensing or the reduction.

## **Order 19, Rule 27**

(8) Where there is a surety to a bond, an affidavit of justification by the surety in Form 83 shall be filed.

(9) An oath in writing of the plaintiff in Form 79, administered by a person before whom an affidavit of the plaintiff might be sworn, shall be filed.

(10) The Court may require further evidence to be furnished, further documents to be filed and notices to be given.

### **26. Evidence and documents in support of application for administration with will annexed. (78/26)**

(1) An application for administration with the will annexed shall be supported by—

- (a) the affidavits and documents, so far as appropriate, referred to in Rule 25; and
- (b) the affidavits and documents which, if the application were an application for probate of the will, would be required by Rule 24(1)(b)(ii), (iii) and (iv) and (2) and (3); and
- (c) evidence on affidavit of the name and full residential address of any executor appointed by the will.

(2) An affidavit of the plaintiff pursuant to Sub-rule (1) shall be in Form 84.

(3) Where the executor or the executors named in the will renounces or renounce probate in favour of the Public Curator, in Form 85, administration with the will annexed may be granted to the Public Curator without the consent or citation of any person.

(4) The Court may require further evidence to be furnished, further documents to be filed, and notices to be given.

### **27. Evidence and documents in support of application for resealing. (78/28)**

(1) An application for resealing shall be supported by affidavits—

- (a) in Form 86—
  - (i) of the full residential address of the plaintiff; and
  - (ii) that the deceased left an estate in Papua New Guinea; and
  - (iii) of particulars of the grant sought to be sealed; and
  - (iv) of particulars of the persons beneficially entitled under the grant sought to be sealed; and

## **Order 19, Rule 28**

- (v) annexing certified copies of any relevant powers of attorney and other relevant documents; and
- (vi) where the application is for resealing of letters of administration—that the plaintiff is not a bankrupt and has not assigned or encumbered his interest (if any) in the estate; and
- (vii) that the plaintiff is over the age of 21 years; and
- (viii) where the application is for resealing letters of administration—of the plaintiff's knowledge of claims against the estate; and

(b) in Form 78—

- (i) of publication of the notice of intention to apply for the resealing; and
- (ii) of search for a will of the deceased deposited in the Registry; and
- (iii) whether any caveat relating to the resealing has been lodged; and
- (iv) where two years or more have elapsed since the death of the deceased, whether any prior application for a grant or resealing has been made in connection with the estate.

(2) Rule 25(5), (6), (7) and (8) apply as if the application were an application for administration.

(3) A copy of the document sought to be sealed, certified by the Court or by the court which made the grant, must be filed.

(4) All relevant original documents must be produced.

(5) The Court may require further evidence to be furnished, further documents to be filed, and notices to be given.

### ***Division 4.—Administration During Minority.***

#### **28. Administration during minority. (78/29)**

(1) The Court may grant administration during minority, for the use and benefit of minors, to—

- (a) the legal or testamentary guardian of the minors; or
- (b) a guardian elected as provided by Rule 29; or
- (c) a guardian of the minors, assigned on his application, by the Court.

(2) A grant of administration during minority shall be subject to such limitations and conditions as the Court thinks fit.

**29. Elected guardians. (78/30)**

(1) A minor who is aged 16 years or upwards may elect a guardian for the purpose of applying for a grant of administration.

(2) The elected guardian may act also for minors who are less than 16 years of age but who are in the same family as the minor who elected.

(3) Notwithstanding the election of a guardian the Court may grant administration to any person who is referred to in Rule 28(1)(a) or (c) and whom it considers to be more appropriate or better fitted to act as guardian.

(4) A grant shall not be made to an elected guardian unless evidence of his election and of his appropriateness and fitness to be guardian is furnished.

**30. Assigned guardians. (78/31)**

(1) Application by a person for an order assigning him as the guardian of minors for the purpose of applying for administration shall be made by originating summons.

(2) There shall be no defendant in the proceedings.

(3) The proceedings may be heard—

(a) in the absence of the public; and

(b) without the appearance before the Court of any person.

(4) The proceedings shall be heard without an appointment being obtained for the hearing.

(5) The application shall be supported by evidence of the relationship (if any) of the proposed guardian to the minors and of his appropriateness and fitness to act as guardian.

(6) A draft minute of the order sought shall be lodged with the Registrar.

(7) The order shall be entered.

(8) The order may be entered at any time after the minute of it is signed.

***Division 5.—Application by Creditors for Administration.***

**31. Leave to commence proceedings. (78/32)**

(1) A creditor shall not, without the leave of the Court, commence proceedings for a grant of administration.

(2) The Court may, if it thinks fit, refuse or withhold a grant to a creditor, notwithstanding that he has obtained leave to commence proceedings for the grant.

## **Order 19, Rule 32**

### **32. Conditions. (78/33)**

(1) Where a creditor desires to commence proceedings for a grant of administration and the deceased left a will, he shall—

- (a) where an executor is appointed by the will and has not renounced probate—serve on the executor a citation to take probate; and
- (b) if the executor fails to comply with the citation to take probate—serve on the widow or widower of the deceased and on every beneficiary under the will and, where there is a partial intestacy, on every person entitled in administration of the estate on intestacy, a citation to pray for administration.

(2) Where the executor has been served with a citation to take probate and has failed to comply with the citation, it is not necessary, unless the Court otherwise directs, to serve him with a citation to pray for administration.

(3) Where an executor is appointed by the will and has not renounced probate, the creditor shall not serve a citation to pray for administration unless he has complied with Sub-rule (1)(a) and the executor has failed to comply with the citation to take probate.

(4) Where a creditor desires to commence proceedings for a grant of administration and the deceased did not leave a will, he shall serve on the widow or widower of the deceased and on every person entitled in administration of the estate on intestacy a citation to pray for administration.

### **33. Proceedings for leave. (78/34)**

(1) Proceedings for an order that a creditor have leave to commence proceedings for a grant of administration shall be commenced by originating summons.

(2) There shall be no defendant in the proceedings.

(3) The proceedings may be heard—

- (a) in the absence of the public; and
- (b) without the attendance before the Court of any person.

(4) The proceedings shall be heard without an appointment being obtained for the hearing.

(5) The creditor shall file—

- (a) an affidavit in proof of the debt to him; and
- (b) an affidavit of compliance with Rule 32 and that none of the persons cited has complied with the citation; and
- (c) an administration bond in Form 82; and
- (d) an affidavit of justification, in Form 83, of any surety to the bond.

## **Order 19, Rule 38**

- (6) Except where the bond is given by a guarantee company approved by the Court, there shall be two sureties to the bond.
- (7) A draft minute of the order sought shall be lodged with the Registrar.
- (8) The order shall be entered.
- (9) The order may be entered at any time after the minute of it is signed.
- (10) The Court may require further evidence to be furnished, further documents to be filed, further citations to be served, and notices to be given.

### ***Division 6.—Contentious Proceedings for Grant or Resealing.***

#### **34. Application of Division 6. (78/35)**

This Division applies to applications for a grant or for resealing where—

- (a) there is a defendant; or
- (b) a person is cited to see the proceedings.

#### **35. Commencement of proceedings. (78/36)**

(1) Where there is a defendant the proceedings shall be commenced by writ of summons.

(2) Where there is no defendant the proceedings shall be commenced by originating summons.

#### **36. Admissions. (78/37)**

Order 9 Rule 30 (judgement on admissions) does not apply to proceedings to which this Division applies.

### ***Division 7.—Proceedings for Revocation of Grant.***

#### **37. Deposit of grant. (78/38)**

Where proceedings have been commenced for revocation of a grant the Court may on the application of the plaintiff, or of its own motion, order the executor or administrator to deposit the grant in the Registry.

#### **38. Order before commencement of proceedings. (78/39)**

In an urgent case the Court may, on the application of a person who intends to commence proceedings for revocation of a grant, order the executor or administrator to deposit the grant in the Registry to the same extent as if the applicant had commenced the proceedings and the application were made in the proceedings.

## **Order 19, Rule 39**

### **39. Commencement of non-contentious proceedings. (78/40)**

Proceedings for revocation of a grant shall, where there is no defendant, be commenced by summons in Form 87.

### **40. Hearing with no defendant. (78/41)**

- (1) Where there is no defendant, proceedings may be heard—
  - (a) in the absence of the public; and
  - (b) without the appearance before the Court of any person.
- (2) The proceedings shall be heard without an appointment being obtained for the hearing.

### **41. Minute of order. (78/42)**

- (1) A draft minute of the order sought shall be lodged with the Registrar before any order is made on the summons.
- (2) The order shall be entered.
- (3) The order may be entered at any time after the minute of it is signed.

### **42. Commencement of contentious proceedings. (78/43)**

Proceedings for revocation of a grant shall, where there is a defendant, be commenced by a writ of summons.

## ***Division 8.—Contentious Proceedings Generally.***

### **43. Cross-claim. (78/44)**

- (1) A party in proceedings may cross-claim for a grant or for resealing.
- (2) Where notice of the intended application has not been published the party shall within 30 days of filing the cross-claim, cause notice of the intended application to be published in the manner and with such variations as the circumstances require, in the form required by Rule 10.

### **44. Intervention. (78/45)**

- (1) An application to intervene in proceedings for a grant shall be by motion on notice in the proceedings for an order that the person applying be added as a party.
- (2) Before filing the notice of motion the person applying shall give notice of his intention to defend the proceedings.

***Division 9.—Citations.***

**45. Request for issue. (78/46)**

- (1) Application for issue of a citation shall be made by filing a request in Form 88.
- (2) The person requesting issue of a citation shall—
  - (a) file an affidavit verifying the averments contained in the proposed citation; and
  - (b) lodge two copies of the proposed citation.

**46. Citation to be settled. (78/47)**

A citation must be settled by the Court before it is issued.

**47. Seal. (78/48)**

A citation shall be under seal.

**48. Registrar to file copy. (78/49)**

Where a citation is issued the Registrar shall file a copy of it.

**49. Citation to bring in abolished. (78/50)**

- (1) A citation to bring in a grant, will or other document shall not be issued.
- (2) This Rule does not limit the power of the Court to order a person to deposit in the Registry a grant, will or other document.
- (3) An application under Section 47 of the Act for a show cause summons shall be made by originating summons.
- (4) A show cause summons under Section 47 of the Act shall be in Form 89.
- (5) Order 4 Rules 24, 26, 28, 30, 31, 32, 35 and 36 shall, with any necessary modifications, apply to a summons to show cause under this Rule as they apply to an originating summons.

**50. Citation to pray for administration. (78/51)**

- (1) A requirement of a person to pray for administration shall be by citation which may be in Form 90.
- (2) An answer to a citation to pray for administration shall be in Form 91.

**51. Citation to take probate. (78/52)**

- (1) A requirement of an executor named in a will to take probate shall be by citation which may be in Form 92.
- (2) An answer to a citation to take probate shall be in Form 93.

## **Order 19, Rule 52**

### **52. Citation to see proceedings. (78/53)**

(1) On the application of any party to proceedings to which Division 6 applies, a citation may be issued against any person who is not a party to the proceedings but who has an adverse interest to the applicant notifying him that if he does not answer the citation by giving a notice of his intention to defend the proceedings, the proceedings may be heard and determined in his absence.

(2) The citation may be in Form 94.

(3) Where a person cited to see proceedings has given a notice of intention to defend the proceedings, he shall be entitled to such notice of the hearing or trial of the proceedings as if he were a defendant in the proceedings.

### **53. Time for answer to citation. (78/54)**

(1) This Rule applies to any citation other than a citation to see proceedings.

(2) In settling the citation the Court shall fix the time limited by the citation for answer to it.

(3) Subject to Sub-rule (4) the time limited by the citation for answer to it shall be—

(a) in the case of service within Papua New Guinea—14 days; and

(b) in the case of service outside Papua New Guinea—three months.

(4) The Court may, in settling the citation, fix shorter or longer periods than the periods referred to in Sub-rule (3).

(5) Where the applicant for issue of the citation wishes shorter or longer periods to be fixed, he shall include in his request for issue of the citation a statement of the period or periods which he requests be fixed and file an affidavit in support of that period or those periods being fixed.

### **54. Service. (78/55)**

(1) A citation shall be served personally on the person cited.

(2) A citation may be served outside Papua New Guinea.

(3) Order 6 Division 2 (service outside Papua New Guinea) does not apply.

(4) Service of a citation on a disabled person shall not be effected otherwise than in accordance with Sub-rules (5) to (8).

(5) Where the person to be served is a minor, the citation may be served—

(a) if he is aged 16 years or upwards—on him; or

(b) on a parent of him or a guardian of his person or of his estate; or

(c) if he has no parent and has no guardian of his person or of his estate on a person with whom he resides or in whose care he is.

(6) Where the person to be served is a mentally disabled person, the citation may be served—

(a) if he has a curator—on the curator; or

(b) if he has no curator—on a person with whom he resides or in whose care he is.

(7) The citation may be served on any person (including the disabled person) who the Court may, before or after the service, approve.

(8) A citation served pursuant to any of Sub-rules (5) to (7) must be served in the manner required by the Rules with respect to personal service of a document.

**55. Appearance of person cited. (78/56)**

(1) Subject to Sub-rule (2), Order 7 (notice of intention to defend) applies to notice of intention to defend by a person cited to see proceedings as if the person cited were a defendant in the proceedings.

(2) Order 7 Rules 7 (conditional notice) and 8 (setting aside originating process) do not apply.

**56. Election to be a defendant. (78/57)**

(1) A person cited to see proceedings may, except where he has lodged a caveat requiring proof in solemn form of a will to which the proceedings relate, include in his notice of appearance a statement that he elects to be a defendant in the proceedings.

(2) Where the person cited elects under Sub-rule (1) to be a defendant in the proceedings he shall become a defendant in the proceedings and the proceedings shall continue as if he were joined as a defendant by the originating process and he were served with the originating process on the day on which he was served with the citation to see the proceedings.

(3) Where the person cited has lodged a caveat requiring proof in solemn form of a will to which the proceedings relate he may, after giving notice of intention to defend the proceedings, apply for an order adding him as a party in the proceedings.

**57. Disabled persons. (78/58)**

(1) This Rule applies where a citation is served on a disabled person.

(2) Service of the citation shall not take effect before the appointment of a next friend for the disabled person.

(3) The disabled person may answer the citation by his next friend but not otherwise.

## **Order 19, Rule 58**

(4) Order 5 Division 2 (disability) does not apply to appointment of a next friend for the disabled person.

(5) Application for the appointment of a next friend for the disabled person shall be by originating summons.

(6) There shall be no defendant in the proceedings for appointment of the next friend.

(7) The proceedings for appointment of the next friend shall be heard without an appointment being obtained for the hearing.

(8) The proceedings for appointment of the next friend may be heard—

(a) in the absence of the public; and

(b) without the appearance before the Court of any person.

(9) A draft minute of the order sought shall be lodged with the Registrar before any order is made on the summons.

(10) The order shall be entered.

(11) The order may be entered at any time after the minute of it is signed.

(12) Where a mentally disabled person has a Curator or committee who has or may be given authority under any law, to answer the citation on behalf of the mentally disabled person, no person other than that curator or committee shall unless the Court otherwise orders, act as next friend.

(13) A next friend shall not be appointed unless—

(a) he is the person applying for appointment; or

(b) evidence of his consent to act as next friend is furnished.

(14) Where a citation to see proceedings has been served on a disabled person and a next friend of the disabled person is appointed to answer the citation, the appointment shall extend to the next friend electing on behalf of the disabled person to become a defendant in the proceedings in which the citation was served and defending those proceedings (including cross-claiming in them).

### **58. Application of Order 5 Division 2. (78/59)**

Where a disabled person elects by his next friend to become a defendant in the proceedings in which the citation was served, Order 5 Division 2 (disability) applies as if his next friend had been appointed as provided by that Division.

### **59. Proof of service of citation to see. (78/60)**

A party at whose request a citation to see proceedings has been issued shall not, without the leave of the Court, be entitled to be heard at the hearing or trial of the proceedings unless he has furnished evidence on affidavit—

(a) that the person cited has not been served with the citation; or

- (b) where the person cited has not given a notice of intention to defend the proceedings—that the citation has been served on him.

***Division 10.—Caveats.***

**60. Caveat in respect of grant. (78/61)**

- (1) A person claiming to have an interest in an estate may lodge in the Registry a caveat in Form 95 in respect of any grant or reseal being made in the estate.
- (2) The caveat shall state fully the nature of the interest claimed by the caveator and an address for service.
- (3) Where a person, to the knowledge of the caveator, is making or is intending to make application for a grant or resealing in the estate, the caveator shall, within seven days of the lodging of the caveat. serve a copy of the caveat on him.

**61. Caveat for solemn form. (78/62)**

- (1) A person having an interest in an estate may lodge in the Registry a caveat in Form 96 requiring proof in solemn form of any will.
- (2) The caveat shall state fully the nature of the interest of the caveator and an address for service.
- (3) Where a person, to the knowledge of the caveator, is making or intending to make application for a grant or reseal in the estate, the caveator shall, within seven days of the lodging of the caveat. serve a copy of the caveat on him.

**62. Duration. (78/63)**

- (1) A caveat shall take effect as of the date of lodgement and shall, unless the Court otherwise orders, remain in force for six months.
- (2) The Court may extend the period of duration of a caveat.

**63. Leave to withdraw caveat: No proceedings for grant. (78/64)**

- (1) This Rule applies to an application for leave to withdraw a caveat where there are no proceedings for a grant or resealing in the estate.
- (2) The application shall be made by originating summons.
- (3) There shall be no defendant in the proceedings for leave.
- (4) A draft minute of the order sought shall be lodged with the Registrar before any order is made on the summons.
- (5) The order shall be entered.
- (6) The order may be entered at any time after the minute of it is signed.

## **Order 19, Rule 64**

### **64. Leave to withdraw caveat: Proceedings for grant. (78/65)**

(1) This Rule applies to an application for leave to withdraw a caveat where there are proceedings for a grant or resealing in the estate.

(2) Where the caveator has not given notice of his intention to defend the proceedings for grant or resealing, he shall do so.

(3) The application for leave to withdraw the caveat shall be made by motion on notice in the proceedings.

### **65. Withdrawal. (78/66)**

(1) Where leave is given to withdraw a caveat, the caveator may withdraw it by himself or his solicitor writing in the margin of the caveat "I withdraw this caveat" and dating and signing the endorsement.

(2) Where a caveator withdraws a caveat he shall, within seven days of the withdrawal, serve notice of the withdrawal on any person who, to the knowledge of the caveator, is making or intending to make application for a grant or for resealing in the estate.

### **66. Recoupment of costs. (78/67)**

Where a caveat is withdrawn, and the person on whose application a grant or resealing is made is unable to recover from the caveator costs which the caveator has been ordered to pay to him, that person shall be entitled to be recouped by the estate the amount of the costs properly incurred by him in addition to other costs to which he is entitled out of the estate.

### **67. Citation of caveator to see proceedings. (78/68)**

Where there is in force a caveat requiring proof of a will in solemn form the caveator shall, in proceedings for a grant or for resealing in which the plaintiff seeks to prove a will to which the caveat relates, be cited to see the proceedings.

### **68. Order that caveats cease to be in force. (78/69)**

(1) Where a person intends to apply for a grant or for resealing and there is in force a caveat, or more than one caveat, in respect of any grant or resealing being made in the estate, that person may bring proceedings for an order that the caveat or each of the caveats, cease to be in force in respect of the intended application.

(2) The proceedings shall be commenced by originating summons.

(3) The caveator, or each of the caveators, shall be a defendant in the proceedings.

(4) Where in respect of the caveat or any of the caveats, the Court considers that the evidence does not show—

(a) that the caveator has an interest in the estate or has a reasonable prospect of establishing such an interest; and

## **Order 19, Rule 71**

(b) some matter occasioning doubts as to whether the grant ought to be made, the Court may order that the caveat cease to be in force in respect of the intended application.

(5) Order 12 Division 4 (summary disposal) does not apply to the proceedings.

(6) Where the Court does not, pursuant to Sub-rule (4) order that the caveat, or each of the caveats, cease to be in force in respect of the intended application, the Court may give such directions as appear best adapted for the just, quick and cheap determination of the grant or resealing (if any) which should be made in the estate and of related matters.

(7) Directions which the Court may give pursuant to Sub-rule (6) include a direction to a caveator to commence proceedings.

(8) Where the Court pursuant to Sub-rules (6) and (7) directs a caveator to commence proceedings, it may order that if the caveator does not commence the proceedings within such time as the Court fixes, the caveat shall cease to be in force in respect of the intended application referred to in Sub-rule (1) or generally.

(9) An order under Sub-rule (8) may be made at the time the caveator is directed to commence proceedings or at any subsequent time.

### **69. Proceedings by writ of summons. (78/70)**

(1) Where there is in force a caveat in respect of any grant or resealing being made in an estate, proceedings for a grant or for resealing in the estate shall be commenced by writ of summons.

(2) Unless the Court otherwise directs, the caveator shall be a party in the proceedings.

### ***Division 11.—Grant of Probate or Administration on Presumption of Death.***

#### **70. Applications under Section 40 of the Act.**

An application under Section 40 of the Act for leave to distribute the estate of a person presumed dead, or for directions under that section, may be made by originating summons.

#### **71. Lodging, withdrawal or removal of caveats.**

The lodging, withdrawal and removal of a caveat referred to in Section 40 of the Act shall be governed, with the necessary modifications, by Division 10.

## **Order 19, Rule 72**

### ***Division 12.—Inventory, Accounts and Commission.***

#### **72. Form of inventory.**

(1) An inventory required to be exhibited by a personal representative under Section 59 of the Act shall be in Form 97.

(2) The inventory shall be filed and shall be verified by an affidavit in Form 98.

#### **73. Filing accounts.**

(1) The account required to be exhibited by a personal representative under Section 59 of the Act shall be in Form 99.

(2) The account shall be filed within 12 months after grant or resealing and shall be verified by an affidavit in Form 100.

#### **74. Order to file or to pass. (78/74)**

Proceedings for an order that an executor, administrator or trustee—

- (a) file accounts; or
- (b) file and pass accounts; or
- (c) pass accounts filed,

shall be commenced by originating summons.

#### **75. Commencement of proceedings for passing or commission. (78/75)**

(1) Proceedings by an executor, administrator or trustee for—

- (a) an order passing his accounts; or
- (b) an order passing his accounts and for commission,

shall be commenced by originating summons for a hearing to be appointed.

(2) On the filing of the summons the plaintiff shall obtain from the Registry an appointment to vouch his accounts before an accounts clerk.

#### **76. Notice to be published. (78/76)**

(1) At least 14 days before the appointment to vouch his accounts the plaintiff shall cause to be published a notice in Form 101 of the filing of his accounts, the order or orders claimed in the proceedings and the appointment to vouch the accounts.

- (2) The notice shall be published in one Port Moresby daily newspaper.
- (3) The plaintiff shall file an affidavit of compliance with this Rule.

**77. Sureties.**

(1) At least 14 days before the appointment to vouch his accounts the plaintiff shall serve on any surety to any administration bond in the estate a copy of the notice referred to in Rule 76(1).

(2) The plaintiff shall file an affidavit of compliance with Sub-rule (1).

(3) Instead of or in addition to complying with Sub-rules (1) and (2) in respect of any surety, the plaintiff may file the consent in the form prescribed of that surety to an order passing the accounts and an affidavit in the form prescribed verifying the consent.

**78. Inspection and appearance. (78/78)**

(1) Where proceedings have been commenced for an order passing accounts or for an order passing accounts and for commission, and the hearing of the proceedings has not been completed, any person may—

(a) unless the Registrar otherwise directs—inspect the accounts without the leave of the Court; and

(b) at any time before the completion of the hearing—give a notice of intention to defend the proceedings.

(2) A person giving a notice under Sub-rule (1) shall be a defendant in the proceedings.

**79. Vouching. (78/79)**

(1) On the day appointed under Rule 75(2) and afterwards as convenient the accounts clerk shall proceed with the vouching before him of the accounts where—

(a) the plaintiff has complied with the rules; or

(b) the Registrar directs him to proceed.

(2) Where the accounts clerk does not proceed with the vouching of the accounts, the plaintiff shall obtain from the Registry a further appointment to vouch his accounts.

**80. Procedure and vouching. (78/80)**

(1) The plaintiff may vouch his accounts in person, by his solicitor, or by any person authorized by the solicitor.

(2) Any person, whether or not he is a defendant in the proceedings, may attend on the vouching of the accounts unless the Court, of its own motion, otherwise orders.

## **Order 19, Rule 81**

(3) The accounts clerk may permit any person to ask, through him, any question relevant to the vouching of the accounts.

(4) Where the vouching of the accounts is not concluded on the day appointed, the accounts clerk, subject to any direction by the Registrar, may decline to proceed with the vouching at any time of which reasonable notice has not been given to any person interested.

### **81. Certificate. (78/81)**

(1) On the conclusion of the vouching, the accounts clerk shall inform the plaintiff of matters necessary for preparation by the plaintiff of a draft minute of a certificate by the accounts clerk of the vouching of the accounts.

(2) The certificate vouching the accounts shall certify as to—

- (i) the correctness of the accounts; and
- (ii) the amount of capital realised during the period of the accounts; and
- (iii) the amount of income collected during the period of the accounts; and
- (iv) the value of any assets transferred to beneficiaries during the period of the accounts; and
- (v) where a business was carried on, the gross receipts and net profit earned or loss incurred during the period of the accounts; and
- (vi) any other information which the Registrar has directed the accounts clerk to obtain.

(3) The plaintiff shall lodge the draft minute with the accounts clerk.

(4) The accounts clerk shall sign a correct minute of his certificate.

### **82. Filing of minute of certificate. (78/82)**

Within 14 days of the signing by the accounts clerk of a minute of his certificate, the plaintiff shall file the minute.

### **83. Uncontested proceedings for passing of accounts. (78/83)**

(1) This Rule applies where—

- (a) there is no defendant in the proceedings; and
- (b) the plaintiff does not seek commission.

(2) The proceedings may be heard—

- (a) in the absence of the public; and
- (b) without the appearance before the Court of any person.

(3) The proceedings shall be heard without an appointment being obtained for the hearing.

(4) Order 4 Division 4 (originating summons) does not apply.

**84. Appointment for hearing. (78/84)**

Except where Rule 83 applies, the plaintiff shall, on filing the minute of the certificate of the accounts clerk, obtain from the Registry an appointment for hearing of the proceedings.

**85. Affidavits in support of commission. (78/85)**

Where the plaintiff seeks commission he shall file—

- (a) an affidavit in support of the application; and
- (b) where the accounts were not filed within the time fixed by the Rules or any order of the Court—an affidavit explaining the delay.

**86. Notice. (78/87)**

The Court may order the plaintiff to give notice of the proceedings to any person.

**87. Review. (78/88)**

(1) Where the proceedings are heard by the Registrar, any party may apply to the Court for review of any order made by the Registrar on the hearing.

(2) The Court may make such order by way of confirmation, variation, discharge or otherwise as the Court thinks fit.

(3) An application for review shall be made within 20 days of the date of the order in respect of which the review is sought.

***Division 13.—Administration of Small Estates.***

**88. Application to Distributor for assistance.**

(1) An application to a Distributor under Section 101 of the Act may be made in person or by letter.

(2) The signature of the applicant to a letter referred to in Sub-rule (1) must be witnessed by a Commissioner for Oaths.

**89. Applicant to give information to Distributor.**

An applicant under Rule 88 shall give the Distributor such information in his knowledge as the Distributor may request.

## **Order 19, Rule 90**

### **90. Person dissatisfied with act of Distributor.**

(1) Any person who is dissatisfied with any act of the Distributor which affects that person adversely may apply to the Court for an order requiring the Distributor to take such action as will protect the person's interests.

(2) On an application being made under this Rule, the Court may make such order as it thinks fit.

(3) An application under this Rule shall be made by originating summons.

### **91. Fees payable to Distributor.**

The fees to be charged to an applicant under this Division, exclusive of any sums payable as duty shall be-

- (a) where the whole estate does not exceed K100.00—the sum of K0.50; and
- (b) where the whole estate exceeds K100.00—the sum of K0.50 for every K100.00 or part of K100.00 by which the whole estate exceeds K100.00.

### **92. Appeals from courts of summary jurisdiction.**

An appeal to the Court from a court of summary jurisdiction under Section 111 of the Act shall be governed, with any necessary modifications, by Order 18 Division 1 (appeals from local courts).

**PART 5.—FAMILY MATTERS JURISDICTION.  
ORDER 20.—INFANTS AND FAMILIES.**

***Division 1.—Preliminary.***

**1. Application.**

This Order is subject to the *Matrimonial Causes Act* 1963 and the *Matrimonial Causes Rules*.

**2. Interpretation of Divisions 1 and 2.**

In this Division and in Division 2 unless the contrary intention appears—

"the Act" means the *Infants Act* 1956;

"parent", in relation to an infant, includes a person at law liable to maintain the infant or entitled to his custody;

"person" includes a scholastic or charitable institution.

***Division 2.—Custody and Guardianship of Infants.***

**3. Custody, etc. (69/1)**

(1) This Rule applies to an application for an order under Section 4 of the Act in respect of any infant.

(2) Where proceedings under that section in respect of the infant are pending in the Court—

(a) the application shall be made by motion in the proceedings; and

(b) notice of the motion shall, unless the Court otherwise orders, be served on his parents or on the guardian of his person.

(3) Where no proceedings under that section in respect of the infant are pending in the Court—

(a) proceedings for the order shall be commenced by originating summons; and

(b) his parents or the guardian of his person shall, unless the Court otherwise orders, be made defendants.

***Division 3.—Adoption of Children.***

**4. Interpretation of Division 3.**

In this Division—

"the Act" means the *Adoption of Children Act* 1968;

"child", "applicant" and "Director" have the same meaning as they have in the Act.

## **Order 20, Rule 5**

### **5. Commencement of proceedings. (73/3)**

Proceedings in the Court under the Act shall be commenced by an originating summons under Order 4 Rule 25.

### **6. Application for adoption order. (73/4)**

An application for an adoption order shall be made by filing an originating summons in Form 102 not joining any person as defendant.

### **7. Notice of application for adoption order. (73/5)**

- (1) A notice of application for an adoption order shall be in Form 103.
- (2) Notwithstanding Order 2 Rule 27(1)(b)(ii) the backsheets of a notice of application for an adoption order shall not bear the title of the proceedings.

### **8. Application to dispense with notice. (73/6)**

The plaintiff may include in his summons an application for an order that the Court dispense with the giving of a notice of application for an adoption order.

### **9. Evidence for an adoption order. (73/7)**

- (1) Evidence in support of an application for an adoption order shall include evidence of the matters specified in Sections 3 and 9 of the Act.
- (2) This Rule shall not be taken as limiting any of the provisions of the Act.

### **10. Application to dispense with consent. (73/9)**

- (1) An application to dispense with the consent of a person under Section 21 of the Act may be made
  - (i) in a case where no application for an adoption order has been made in respect of the child—by originating summons; or
  - (ii) in the summons by which an application for an adoption order is made; or
  - (iii) in a case where application for an adoption order has been made by motion in the proceedings.
- (2) An application under Section 21(3) of the Act may be made by motion in the proceedings.

### **11. Discharge of order. (73/10)**

- (1) An application for an order under Section 13 or 35 of the Act (discharge of an order) shall be made by motion in the proceedings.
- (2) The plaintiff shall, unless the Court otherwise orders, serve notice of the motion on—
  - (a) the adopting parents; and
  - (b) the guardian (if any) of the child; and

- (c) any person with whom the child resides; and
- (d) any person who has the care or custody of the child.

(3) Sub-rule (2) does not require service on a person who consents to the application.

(4) The Court may give directions for service of notice of the motion on any other person.

**12. Applications under Section 39 of the Act. (73/13)**

An application for an order under Section 39 of the Act (declarations of validity of foreign adoptions) may be made by filing an originating summons not joining any person as defendant.

**13. Adoption order.**

An adoption order shall be in Form 104.

***Division 4.—Testator's Family Maintenance.***

**14. Interpretation of Division 4.**

- (1) In this Division, unless the contrary intention appears—  
"the Act" means the *Wills, Probate and Administration Act* 1966.

(2) Unless the contrary intention appears and without prejudice to Order 1 Rule 6, expressions used in this Division have the same meaning as in the Act.

**15. Parties.**

(1) On an application under Section 124 of the Act the person applying shall be the plaintiff and the administrator of the estate of the deceased person shall be the defendant.

(2) In the event of the plaintiff being the sole administrator the defendant shall be some person having a substantial interest in opposing the application.

(3) Where the plaintiff is one of the administrators of the estate of the deceased person, it shall be sufficient to name the other administrator or administrators as defendants.

(4) No other person shall be made a party to the application in the first instance.

(5) No steps shall be taken on the application after notice of intention to defend has been given until directions have been obtained under Rule 17.

## **Order 20, Rule 16**

### **16. Copies of summons.**

(1) Two copies of every summons issued in respect of an application under Section 124 of the Act shall be lodged by the plaintiff with the Registrar when the summons is issued.

(2) Such summons shall be an originating summons under Order 4 Rule 25.

### **17. Summons for directions.**

(1) The plaintiff shall within seven days after the time limited for giving notice of intention to defend take out a summons for directions and if the plaintiff fails to take out a summons within that time the defendant shall take out a summons for directions within a further seven days.

(2) On hearing the summons for directions the Court may—

(a) ascertain—

(i) the nature of the relief which the plaintiff seeks; and

(ii) the persons or classes of persons who will be affected by such relief if granted,

and for this purpose may require the plaintiff and defendant to supply such information as may be deemed necessary; and

(b) direct that a copy of the summons referred to in Rule 16 be served on any person; and

(c) direct what persons shall be added as defendants as being interested in the relief claimed or to represent classes of persons so interested; and

(d) order that any defendant be authorized to defend on behalf of or for the benefit of all persons having the same or a similar interest and that all persons so interested shall be bound by any order made in the proceedings; and

(e) give such other directions as it sees fit relating to the evidence to be filed, the persons to be served and the hearing of the application.

### **18. Dismissal for want of compliance with directions.**

If the plaintiff does not duly comply with any directions given under Rule 17 the Court may dismiss the application.

### **19. Power to authorize defendant; Similar interests.**

Where a defendant has been ordered to be added and there are other persons having the same or a similar interest the Court may order that the defendant be authorized to defend on behalf of or for the benefit of all persons so interested and that all persons so interested shall be bound by any order made in the proceedings.

**20. Production of probate.**

The administrator who is a party to proceedings under the Act shall produce the grant of administration to the Court on the hearing of the summons.

**21. Order in favour of plaintiff to be in triplicate.**

Where an order is made in favour of a plaintiff the plaintiff shall prepare a formal order in triplicate and lodge it with the Registrar.

**22. Endorsement on probate.**

The Registrar shall on receipt of the copies of the order cause a certified copy of the order to be endorsed on the grant of administration and as soon as that endorsement has been made he shall deliver—

- (a) the grant of administration to the administrator or his solicitor; and
- (b) a copy of the order to the plaintiff or his solicitor,

and shall retain on the probate file the other copy of the order.

## **Order 21, Rule 1**

### **PART 6.**

#### **ORDER 21.—ADMIRALTY PROCEEDINGS.**

##### **1. Application and interpretation. (UK 75/1)**

(1) This Order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order—

"action in rem" means an Admiralty action in rem;

"caveat against arrest" means a caveat entered in the caveat book under Rule 6;

"caveat against release and payment" means a caveat entered in the caveat book under Rule 14;

"caveat book" means the book kept in the Registry in which caveats issued under this Order are entered;

"limitation action" means an action by shipowners or other persons under the *Merchant Shipping Act 1975* for the limitation of the amount of their liability in connection with a ship or other property;

"marshal" means the Registrar of the National Court acting as Admiralty marshal;

"Notice of Intention to Defend" when filed shall have the like effect to an entry of appearance in the Admiralty Practice of the United Kingdom;

"registry" (except where the context otherwise requires) means the Admiralty Registry in the office of the Registrar of the National Court of Justice;

"ship" includes any description of vessel used in navigation.

##### **2. Certain actions to be assigned to Admiralty. (UK 75/2)**

(1) Every—

(a) action to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships; or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

(iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations; and

(b) limitation action,

shall be heard by the Court sitting in its Admiralty Jurisdiction.

## **Order 21, Rule 5**

(2) In this rule "collision regulations" means regulations adopted under the Convention on the International Regulations for Preventing Collisions at Sea 1972.

### **3. Issue of writ and entry of Notice of Intention to Defend. (UK 75/3)**

(1) An action in rem must be begun by writ of summons and the writ must be in Form 105.

(2) Order 6 Division 2 shall apply in relation to a writ by which an Admiralty action is begun.

### **4. Service of writ out of jurisdiction. (UK 75/4)**

(1) Subject to this Rule, service out of the jurisdiction of a writ, or notice of a writ, containing any claim referred to in Rule 21(1) is permissible with the leave of the Court if—

- (a) the defendant has his habitual residence or a place of business within Papua New Guinea; or
- (b) the cause of action arose within inland waters of Papua New Guinea or within the limits of a port of Papua New Guinea; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(1A) In this sub-rule "inland waters" and "port" have the same meaning as in.

(2) Order 6 Rules 12 and 13 shall apply in relation to an application for the grant of leave under this Rule as they apply in relation to an application for the grant of leave under Rule 19 or 20 of that Order.

(3) Sub-rule 1 shall not apply to an action in rem.

(4) The proviso to Order 4 Rule 15, and Order 6 Rule 20(5) shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

### **5. Warrant of arrest. (UK 75/5)**

(1) After a writ has been issued in an action in rem a warrant in Form 106 for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to this Rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(2) A party applying for the issue out of the registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property and, if the warrant is to issue out of a district registry, the registrar of that registry shall procure a search to be made in the caveat book for that purpose.

## Order 21, Rule 5(3)

(3) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form 107 requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by Sub-rules (6), (7), (8) and (10) so that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court or where notice has been given under Sub-rule (10) a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Port Moresby, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation of it is produced to the Registrar or district registrar, as the case may be.

(6) Every affidavit must state—

- (a) the name, address and occupation of the applicant for the warrant; and
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action in rem brought against a ship by virtue of Section of the must state—

- (a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose; and
- (b) that in the belief of the deponent the person who would, apart from Section of that Act, be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and

(c) the grounds of the deponent's belief.

(8) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by Sub-rule (4) has been sent and a copy of such notice must be exhibited to the affidavit.

(9) An affidavit in an action referred to in Sub-rule (5) must have annexed to it a certified copy of the bottomry bond, or of the translation of the bond.

(10) Where, by any convention or treaty, Papua New Guinea has undertaken to minimise the possibility of arrest of ships of another State, an application shall not be made for the issue of a warrant of arrest in an action in rem against a ship owned by that State until notice in Form 118 has been served on a consular officer at the consular office of that State in Port Moresby or the port at which it is intended to cause the ship to be arrested.

(11) In a case to which Sub-rule (10) applies the affidavit required by Sub-rule (3) shall state that the notice required by Sub-rule (10) has been served and a copy of the notice shall be exhibited to the affidavit.

**6. Caveat against arrest. (UK 75/6)**

(1) A person who desires to prevent the arrest of any property must file in the registry a praecipe, in Form 108 signed by him or his solicitor undertaking—

- (a) to enter a Notice of Intention to Defend in any action that may be begun against the property described in the praecipe; and
- (b) within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into Court,

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

**7. Remedy where property protected by caveat is arrested without good and sufficient reason. (UK 75/7)**

Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this Rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for doing so, may by order discharge the warrant and may also order the last mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

**8. Service of writ in action in rem. (UK 75/8)**

(1) Subject to Sub-rule (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except—

- (a) where the property is freight—it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried;  
or

## **Order 21, Rule 9**

- (b) where that property has been sold and the proceeds of sale paid into Court—it must be served on the Registrar or, if the writ was issued out of a district registry, on the registrar of that registry.

(2) A writ need not be served on the property or registrar mentioned in Sub-rule (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 6 Rule 2 or 8.

(3) Where by virtue of this Rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the Plaintiff must file in the registry a praecipe in Form 109 and lodge—

- (a) the writ and a copy of it; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ,

and the marshal or his substitute shall serve the writ on the property described in the praecipe.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ immediately on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 8 Rule 51, after service of the writ, Order 8 Rule 58, shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered a notice of intention to defend or, if no defendant has entered such notice, on the property or registrar referred to in Sub-rule (1).

### **9. Committal of solicitor failing to comply with undertaking. (UK 75/9)**

Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to enter a notice of intention to defend the action, give bail or pay money into Court in lieu of bail, he shall be liable to committal.

### **10. Execution, etc., of warrant of arrest. (UK 75/10)**

- (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.
- (2) A warrant of arrest may be executed only by the marshal or his substitute.

## **Order 21, Rule 12**

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the marshal and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to Sub-rule (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within seven days after the service of a warrant of arrest, the warrant must be filed in the registry by the marshal.

### **11. Service on ships, etc.; How effected. (UK 75/11)**

(1) Subject to Sub-rule (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
- (b) on removing the warrant or writ—leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo; or
- (b) if the cargo is in the custody of a person who will not permit access to it—by leaving a copy of the warrant or writ with that person.

### **12. Applications with respect to property under arrest. (UK 75/12)**

(1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or if the Court so directs shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under Sub-rule (1) to all parties to every action against the property to which the order relates.

## **Order 21, Rule 13**

### **13. Release of property under arrest. (UK 75/13)**

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this Rule referred to as a "release"), in Form 110 or 117 issued out of the registry.

(2) A party at whose instance any property was arrested may, before a notice of intention to defend is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to Sub-rules (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to Sub-rule (3), if all the other parties to the action in which the warrant of arrest was issued, consent.

(5) Before a release is issued the party entitled to its issue must—

(a) if there is a caveat against release in force as to the property in question—  
give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn; and

(b) file a praecipe in Form 111 requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this Rule, the party at whose instance it was issued must, in accordance with the directions of the marshal—

(a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or

(b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under Sub-rule (6), may vary or revoke the directions.

### **14. Caveat against release and payment. (UK 75/14)**

(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in Court representing the proceeds of sale of that property, must file in the registry a praecipe in Form 112 and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of Court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this Rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for doing so, may make an order accordingly.

**15. Duration of caveats. (UK 75/15)**

(1) Every caveat entered in the caveat book is valid for six months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form 113.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

**16. Bail. (UK 75/16)**

(1) Bail on behalf of a party to an action in rem must be given by bond in Form 114, and the sureties to the bond must enter into the bond before a Commissioner for Oaths not being a Commissioner who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to Sub-rule (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, an affidavit shall not be made under Sub-rule (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the Commissioner or Registrar before whom the bail bond was entered into, and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under Sub-rule (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

**17. Interveners. (UK 75/17)**

(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

## **Order 21, Rule 18**

(2) An application for the grant of leave under this Rule must be made *ex parte* by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in Court.

(3) A person to whom leave is granted to intervene in an action must enter a Notice of Intention to Defend in the registry within the period specified in the order granting leave, and Order 7 shall, with the necessary modifications, apply in relation to the entry of notice by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

### **18. Preliminary acts. (UK 75/18)**

(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within two months after issue of the writ and the defendant must, within two months after entering a notice of intention to defend in the action, and before any pleading is served, lodge in the registry a document (in these Rules referred to as a "preliminary act") containing a statement of—

- (a) the names of the ships which came into collision and their ports of registry; and
- (b) the date and time of the collision; and
- (c) the place of the collision; and
- (d) the direction and force of the wind; and
- (e) the state of the weather; and
- (f) the state, direction and force of the tidal or other current; and
- (g) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier; and
- (h) the lights (if any) carried by the ship; and
  - (i) the distance and bearing of the other ship if and when her echo was first observed by radar; and
  - (ii) the distance, bearing and approximate heading of the other ship when first seen; and
- (j) what light or combination of lights (if any) of the other ship was first seen; and

## **Order 21, Rule 19**

- (k) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when; and
- (l) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in Paragraph (g) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when; and
- (m) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact; and
- (n) what sound signals (if any) were given, and when; and
- (o) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within seven days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy on that other party.

(5) Order 8 Rule 3 shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

### **19. Failure to lodge preliminary act: Proceedings against party in default. (UK 75/19)**

(1) Where in an action referred to in Rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by motion for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

## **Order 21, Rule 20**

(2) Where in an action referred to in Sub-rule (1), being an action *in personam*, a defendant fails to lodge a preliminary act within the prescribed period, Order 12 Rule 26 shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a notice of intention to defend on the plaintiff within the period fixed by or under these Rules for service and the plaintiff, if he has lodged a preliminary act may accordingly enter judgement against that defendant in accordance with Order 12 Rule 26.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgement against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under Sub-rule (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgement should be given for the plaintiff provided he proves his case, it shall order the plaintiffs preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded and the plaintiffs evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction.

(5) Where the plaintiff in accordance with a requirement under Sub-rule (4) satisfies the Court that his claim is well founded, the Court may give judgement for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into Court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgement entered under this Rule.

(7) In this Rule references to the prescribed period shall be construed as references to the period within which by virtue of Rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

### **20. Special provisions as to pleadings in collision, etc., actions. (UK 75/20)**

(1) Notwithstanding anything in Order 8 Rules 4 and 5, the plaintiff in any action referred to in Rule 2(1)(a) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 8 Rule 21, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

**21. Judgement by default. (UK 75/21)**

(1) Where a writ is served under Rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat; and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgement by default.

(2) Judgement given under Sub-rule (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter a Notice of Intention to Defend within the time limited then, on the expiration of 14 days after service of the writ and on filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not endorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgement by default.

(3A) Where the writ is deemed to have been duly served on the defendant by virtue of Order 6 Rule 8 or was served on a registrar under Rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this Sub-rule, but the writ endorsed under Order 6 Rule 8 or endorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these Rules for service of the defence and on filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not endorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgement by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to Sub-rule (6), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and on filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgement by default.

## **Order 21, Rule 22**

(6) An application may not be made under Sub-rule (5) against the plaintiff in any action referred to in Rule 2(1)(a).

(7) An application to the Court under this Rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgement for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into Court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgement entered under this Rule.

(10) Order 12 Division 3 shall not apply to actions in rem.

### **22. Order for sale of ship: Determination of priority claims. (UK 75/22)**

(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgement against the ship or proceeds of sale of the ship may—

(a) in a case where the order for sale contains the further order referred to in Sub-rule (2), after the expiration of the period specified in the order under Sub-rule (2)(a); or

(b) in any other case, after obtaining judgement,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

(a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court; and

(b) that any party to the action or to any other action in rem against the ship or the proceeds of its sale may apply to the Court in the action to which he is a party to extend the period specified in the order; and

(c) that within seven days after the date of payment into Court of the proceeds of sale the marshal shall send for publication in the Post Courier and the Niugini Nius and such other newspaper (if any) as the Court may direct, a notice complying with Sub-rule (3).

(3) The notice referred to in Sub-rule (2)(c) must state—

(a) that the ship (naming her) has been sold by order of the National Court in an action in rem, identifying the action; and

## **Order 21, Rule 24**

- (b) that the gross proceeds of the sale, specifying the amount, have been paid into Court; and
  - (c) that the order of priority of the claims against the proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
  - (d) that any person with a claim against the ship or the proceeds of its sale, on which he intends to proceed to judgement should do so before the expiration of that period.
- (4) The marshal must lodge in the registry a copy of each newspaper in which the notice referred to in Sub-rule (2)(c) appeared.
- (5) The expenses incurred by the marshal in complying with an order of the Court under this Rule shall be included in his expenses relating to the sale of the ship.
- (6) An application to the Court to extend the period referred to in Sub-rule (2)(a) must be made by motion, and a copy of the notice of motion, must, at least three days before the day fixed for the hearing, be served on each party who has begun an action in rem against the ship or the proceeds of its sale.

### **23. Appraisement and sale of property. (UK 75/23)**

- (1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form 115.
- (2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form 116.
- (3) A commission for appraisement and sale shall not be executed until all undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.
- (4) The marshal shall pay into Court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into Court the account relating to the sale (with vouchers in support) for taxation.
- (5) On the taxation of the marshal's account relating to a sale, any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of a registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of a registrar made in taxation proceedings under Order 22.

### **24. Undertakings as to expenses, etc. (UK 75/23A)**

- (1) Every undertaking under Rules 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the marshal.

## **Order 21, Rule 25**

(2) Where a party is required by Rules 8(3), 10(3), 13(7) or 23(3) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court or, where the action is proceeding outside Port Moresby, a Judge, may on the application of any party who is dissatisfied with a direction or determination of the marshal under Rule 13(7) vary or revoke the direction or determination.

### **25. Payment into and out of Court. (UK 75/24)**

(1) Order 8 (except Rules 75, 76, 78 and 79) shall apply in relation to an Admiralty action as it applies to an action for debt or damages.

(2) Subject to Sub-rule (3), money paid into Court shall not be paid out except in pursuance of an order of a Judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into Court, order the money to be paid out to the person entitled to it where—

- (a) a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in Court in accordance with that decision; and
- (b) property has been sold and the proceeds of the sale paid into Court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons; and
- (c) there is no dispute between the parties.

### **26. Motion for directions. (UK 75/25)**

(1) Any party to a proceeding in Admiralty (other than limitation actions and actions ordered to be tried as Admiralty short causes) may apply by motion for directions under Order 4 Division 5 except that—

- (a) the motion for directions shall be returnable in not less than seven weeks; and
- (b) unless a Judge in person otherwise directs, the motion for directions shall be heard by a Judge in person.

(2) An order made on the motion for directions shall determine whether the trial is to be without assessors or with one or more assessors.

(3) An order may be made on the motion for directions, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

## **Order 21, Rule 27**

(4) Any order or direction referred to in Sub-rule (2) or (3) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by a Judge in person or, with the Judge's consent, by the Registrar.

### **27. Fixing date for trial, etc. (UK 75/26)**

(1) The Court may at any stage of an action, either on an application made by motion by any party or by order made by virtue of Rule 34, fix a date for the trial and vacate or alter any such date.

(2) Not later than seven days after a date for the trial of the action has been fixed, the action must be set down for trial—

(a) where the date was fixed on an application made under Sub-rule (1)—by the applicant; and

(b) where the date was fixed by order made by virtue of Rule 34—by the plaintiff,

and where the applicant or plaintiff does not, within the period fixed by this Sub-rule, set the action down for trial, any other party may set it down or an application may be made by motion to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than seven days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the registry—

(a) if trial with one or more assessors has been ordered—a praecipe for his or their attendance; and

(b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under Rule 18(3) and statements filed under Rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 8 Rules 61 and 62, shall not apply to Admiralty actions.

## **Order 21, Rule 28**

### **28. Stay of proceedings in collision, etc. actions until security given. (UK 75/27)**

Where an action in rem, being an action to enforce any such claim as is referred to in Rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgement given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgement Given in favour of that party.

### **29. Inspection of ship, etc. (UK 75/28)**

Without prejudice to its powers under Order 9 Rules 44 to 46, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

### **30. Examination of witnesses and other persons. (UK 75/30)**

(1) The power conferred by Order 11 Rule 8, shall extend to the making of an order authorizing the examination of a witness or person on oath before a Judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by Order 11 Rule 8 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under Sub-rule (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect:—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness; and

## **Order 21, Rule 31**

- (b) any representative, being counsel or a solicitor, of either of the parties shall have authority to administer the oath to the witness; and
  - (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor shall file it in the registry; and
  - (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy of it shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made, and that certificate must be filed with the transcript.
- (4) In actions in which preliminary acts fail to be filed under Rule 18, an order shall not be made under Order 11 Rule 8, authorizing any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.
- (5) The Chief Justice may appoint such number of lawyers as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

### **31. Trial as an Admiralty short cause. (UK 75/31)**

- (1) Where any defendant has entered a notice of intention to defend in an Admiralty action, the plaintiff or that defendant may, within seven days after the entry of the notice, apply by motion, returnable before a Judge, for an order that the action be tried as an Admiralty short cause.
- (2) The notice of motion shall be served on every other party to the action not less than seven days before the hearing.
- (3) On the hearing of the application the Judge may, if he decides to make an order under Sub-rule (1)—
- (a) exercise any power which could be exercised under Order 8 Rules 2 and 3, or Rule 18(4) on an application for the trial of the action without pleadings or further pleadings; and
  - (b) abridge the period within which a person is required or authorized by these Rules to do any act in the proceedings; and

## **Order 21, Rule 32**

- (c) in the case of an action referred to in Rule 18(1), fix the time within which, notwithstanding that Rule, preliminary acts are to be lodged; and
- (d) require the parties to the action to make mutual discovery of documents notwithstanding that the action is ordered to be tried without pleadings; and
- (e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books; and
- (f) give such directions as could be given on a motion for directions in the action; and
- (g) fix a date for the trial of the action.

(4) The party taking out a notice of motion under this Rule shall include in it an application for such orders or directions as he desires the Judge to make or give in the exercise of the powers set out in Sub-rule (3), and any party on whom the notice is served shall, within three days after service of the notice on him, give notice to every other party of any other order or direction he desires the Judge to make or give and lodge a copy of such notice in the registry.

(5) An application for an order under Order 8 Rules 2 and 3, that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under Sub-rule (1) and not otherwise.

(6) Where an order is made under Sub-rule (1), the writ or originating summons by which the action was begun shall be marked in the top left-hand corner "Admiralty Short Cause".

(7) Any application subsequent to a motion under Sub-rule (1) and before judgement as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the motion by two clear days notice to the other party stating the grounds of the application.

### **32. Proceedings for apportionment of salvage. (UK 75/33)**

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by motion.

(2) The notice of such motion, together with the affidavits in its support, must be filed in the registry seven days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the Judge may exercise any of the jurisdiction conferred by Section 263Y of the *Merchant Shipping Act 1975*.

**33. Filing and service of notice of motion. (UK 75/34)**

(1) Notice of a motion in any action, together with the affidavits (if any) in support, must be filed in the registry two days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support must be served on all the other parties to the proceedings before the originals are filed.

**34. Agreement between lawyers may be made order of Court. (UK 75/35)**

Any agreement in writing between the lawyers of the parties to a cause or matter, dated and signed by those lawyers, may, if the Registrar thinks it reasonable and such as a Judge would under the circumstances allow, be filed in the registry, and the agreement shall then become an order of Court and have the same effect as if such order had been made by a Judge in person.

**35. Originating summons procedure. (UK 75/36)**

(1) An originating summons in Admiralty may be issued out of the registry.

(2) Order 4 Division 4, shall apply in relation to Admiralty proceedings begun by originating summons.

(3) Rule 27 (except Sub-rule (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons.

**36. Limitation action: Parties. (UK 75/37)**

(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names in the writ and need not be served on any other defendant.

## **Order 21, Rule 37**

(5) In this Rule and Rules 37, 38 and 39 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of those Rules to have been named in the writ by his name.

### **37. Limitation action: Motion for decree or directions. (UK 75/38)**

(1) Within seven days after the entry of a notice of intention to defend by one of the defendants named by their names in the writ, or, if none of them enters a notice, within seven days after the time limited for entry the plaintiff without serving a statement of claim must take out a notice of motion returnable in chambers before a Judge, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The motion must be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action; and

(b) if none of the defendants named in the writ by their names has entered a notice of intention to defend, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the motion must state—

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names; and

(b) the address of each of those persons, if known to the plaintiff.

(4) The notice of motion and every affidavit in support must, at least seven clear days before the hearing of the motion, be served on any defendant who has entered a notice of intention to defend.

(5) On the hearing of the motion the Judge, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the motion the Judge, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

## **Order 21, Rule 38**

(7) If on the hearing or resumed hearing of the motion the Judge does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a notice of motion for directions under Order 4 Division 5.

(8) Any defendant who, after the judge has given directions under Sub-rule (7), ceases to dispute the plaintiff's right to limit his liability must immediately file a notice to that effect in the registry and serve a copy on the plaintiff and on any other defendant who has entered a notice of intention to defend.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under Sub-rule (8), the plaintiff may take out a notice of motion returnable before a Judge asking for a decree limiting his liability, and Sub-rules (4) and

(5) shall apply to a motion under this Sub-rule as they apply to a motion under Sub-rule (1).

### **38. Limitation action: Proceedings under decree. (UK 75/39)**

(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered a notice of intention to defend, any decree in the action limiting the plaintiff's liability (whether made by a Judge or on the trial of the action)—

(a) need not be advertised; but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within Sub-rule (1), any decree in the action limiting the plaintiff's liability (whether made by a Judge or on the trial of the action)—

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree; and

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter a notice of intention to defend the action (if they have not already done so) and file their claims, and, in cases to which Rule 39 applies, take out a notice of motion if they think fit, to set the order aside.

## Order 21, Rule 39

(3) The advertisement to be required under Sub-rule (2)(a) shall, unless for special reasons the Judge thinks fit otherwise to provide, be a single advertisement in each of two newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed as the limits of the plaintiff's liability and the time allowed for the entry of notice of intention to defend, the filing of claims and the taking out of motions to set the decree aside and the plaintiff must within the time fixed under Sub-rule (2)(b) file in the registry a copy of each newspaper in which the advertisement required under Sub-rule (2)(a) appears.

(4) The time to be allowed under Sub-rule (2)(b) shall, unless for special reasons the Judge thinks fit otherwise to provide, be not less than two months from the latest date allowed for the appearance of the advertisements, and after the expiration of the time so allowed, no notice of intention to defend may be entered, claim filed or motion taken out to set aside the decree except with the leave of a Judge.

(5) Subject to this Rule, any decree limiting the plaintiff's liability (whether made by a Judge or on trial of the action) may make any such provision as is authorized by Section 248 of the *Merchant Shipping Act 1975*.

### **39. Limitation action: Proceedings to set aside decree. (UK 75/40)**

(1) Where a decree limiting the plaintiff's liability (whether made by a Judge or on the trial of the action) fixes a time in accordance with Rule 38(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

(a) was not named by his name in the writ as a defendant to the action; or

(b) if so named neither was served with the writ nor entered a notice of intention to defend,

may, within that time, after entering a notice of intention to defend, take out a notice of motion returnable before a Judge, asking that the decree be set aside.

(2) The motion must be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the plaintiff in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The motion and every affidavit in support of the motion must, at least seven clear days before the hearing of the motion be served on the plaintiff and any defendant who has entered a notice of intention to defend.

(4) On the hearing of the motion a Judge, if he is satisfied that the defendant in question has a *bona fide* claim against the plaintiff and sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate, including, in particular, a direction requiring the taking out of a notice of motion for directions under Order 4 Division 5.

**40. References. (U.K. 75/41)**

(1) Any party (in this Rule referred to as the "claimant") making a claim which is referred to a Judge for decision must, within two months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to a Judge by motion for directions as to the proceedings on the reference, and the Judge shall give such directions (if any) as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Judge may specify, a defence to the claimant's claim.

(3) The reference shall be heard on a day appointed by the Judge and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order or an application by motion made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than seven days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for hearing of the reference the claimant must file—

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item; and

## **Order 21, Rule 41**

- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed,

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this Sub-rule.

(7) If the claimant fails to comply with Sub-rule (1) or (6)(b), the Court may, on the application of any other party to the cause of the matter, dismiss the claim.

### **41. Hearing of reference. (U.K. 75/42)**

(1) A Judge may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Judge may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to Sub-rule (2), evidence may be given orally or by affidavit or in such other manner as may be agreed on.

(4) When the hearing of the reference has been concluded, the Judge shall—

- (a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed; and
- (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
- (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Judge's decision is filed with his decision and no intimation has been given by the Judge that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Judge to file such a statement.

### **42. Drawing up and entry of judgements and orders (U.K. 75/45)**

Every judgement given or order made in an Admiralty cause or matter shall be drawn up in the registry and shall be entered by an officer of the registry in the book kept for the purpose.

**PART 7.**  
**ORDER 22.—COSTS.**

***Division 1.—Preliminary.***

**1. Interpretation of Order 22. (52/1, 2)**

- (1) In this Order, unless the contrary intention appears—
  - "bill" means bill of costs;
  - "certificate" includes allocatur;
  - "contentious business" includes all actions, suits and proceedings;
  - "copy" includes manuscript copy, copy by a carbon impression, machine-made engrossment, and other facsimile;
  - "taxed costs" means costs taxed in accordance with this Order;
  - "trustee" includes an executor of a will and an administrator of the estate of a deceased person.
- (2) In this Order—
  - (a) a reference to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, extends to any property held for the benefit of any person or class of persons, or held on trust for any purpose; and
  - (b) a reference to a fund held by a trustee extends to any property to which he is entitled as trustee, whether alone or together with any other person and whether the property is for the time being in the possession of the trustee or not.

**2. Transitional.**

This Order shall not affect the rights of a solicitor or client in respect of matters pending on the commencement date.

**3. Application. (52/3)**

This Order applies, subject to its terms, to and in respect of costs payable or to be taxed under any order of the Court or under these Rules and costs to be taxed in the Court under any Act.

**4. Powers of the Court generally. (52/4)**

- (1) The powers and discretions of the Court in relation to costs shall be exercised subject to and in accordance with this Order.
- (2) Subject to Sub-rule (1), this Order has effect subject to these Rules and subject to any Act.

## **Order 22, Rule 5**

### **5. Time for dealing with costs. (52/5)**

(1) The Court may, in any proceedings, exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

(2) Where the Court makes an order in any proceedings for the payment of costs, the Court may require that the costs be paid immediately, notwithstanding that proceedings are not concluded.

### ***Division 2.—General.***

#### **Subdivision A.—General.**

### **6. Taxed costs and other provisions. (52/6)**

(1) Subject to this Order, where, by or under these Rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Where the Court orders that costs be paid to any person, the Court may further order that, as to the whole or any part (specified in the order) of the costs, instead of taxed costs, that person shall be entitled to—

- (a) a proportion specified in the order of the taxed costs; or
- (b) the taxed costs from or up to a stage of the proceedings specified in the order; or
- (c) a gross sum specified in the order instead of the taxed costs; or
- (d) a sum in respect of costs to be ascertained in such manner as the Court may direct.

### **7. Costs in other courts. (52/7)**

Where, in proceedings transferred to or removed into the Court, or in proceedings on an appeal to the Court, the Court makes an order as to the costs of proceedings before another court, the Court may—

- (a) specify the amount of the costs to be allowed; or
- (b) order that the costs be taxed in accordance with this Order; or
- (c) make orders for the ascertainment of the costs by taxation or otherwise in that other court.

### **8. Order for payment. (52/8)**

Subject to this Order, a party to proceedings in the Court shall not be entitled to recover any costs of or incidental to the proceedings from any other party to the proceedings except under an order of the Court.

**9. Order for taxation: When not required. (52/9)**

- (1) Where—
  - (a) an order of the Court directs the payment of costs; or
  - (b) proceedings are dismissed with costs; or
  - (c) a motion is refused with costs; or
  - (d) a party may tax costs under Rule 17 on the discontinuance of proceedings;  
or
  - (e) a party may tax costs under Rule 18(1) or (2) on the acceptance of money paid into Court,

the costs may be taxed without any order directing taxation.

- (2) Where—
  - (a) proceedings are dismissed with costs; or
  - (b) a motion is refused with costs,

and the costs are not paid within four days after the signing of a certificate of taxation of the costs, a party to whom the costs are payable may enter judgement for the taxed costs.

**10. Default judgement. (52/10)**

(1) Where judgement is entered for costs under Division 3 Order 12 (default judgement) the costs shall not be taxed but shall be in accordance with Table 2 of Schedule 2.

(2) Sub-rule (1) does not apply to a judgement directed to be entered under Order 12 Rule 32.

**Subdivision B.—Entitlement. 11.**

**Following the event. (52/11)**

If the Court makes any order as to costs, the Court shall, subject to this Order, order that the costs follow the event, except where it appears to the court that some other order should be made to the whole or any part of the costs.

**12. Amendment of pleading without leave. (52/12)**

Where a party amends a pleading without leave, he shall, unless the Court otherwise orders, pay the costs of and occasioned by the amendment.

## **Order 22, Rule 13**

### **13. Interlocutory application. (52/12A)**

Subject to this Order, the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be paid and otherwise dealt with in accordance with the provisions of this Order or the provisions of any order relating to the general costs of the proceedings.

### **14. Extension of time. (52/13)**

Where a party applies for an extension of time, he shall, unless the Court otherwise orders, pay the costs of and occasioned by the application, or an order made on or in consequence of the application.

### **15. Non-admission of fact. (52/14)**

Where a party to any proceedings serves a notice disputing a fact under Order 9 Rule 29(2) (notices to admit facts), and afterwards that fact is proved in the proceedings, he shall, unless the Court otherwise orders, pay the costs of proof.

### **16. Non-admission of document. (52/15)**

Where a party to any proceedings serves a notice disputing the authenticity of a document under Order 9 Rule 31(2) (admission of documents discovered), and afterwards the authenticity of the document is proved in the proceedings, he shall, unless the Court otherwise orders, pay the costs of proof.

### **17. Discontinuance. (52/16)**

(1) Where, under Order 8 Rule 61, a party to any proceedings discontinues the proceedings without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless the Court otherwise orders, pay the costs of the party against whom the discontinued claim is made, occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

(2) A party whose costs are payable under Sub-rule (1) may tax the costs and, if the taxed costs are not paid within four days after the signing of a certificate of the taxation, may enter judgement for the taxed costs.

### **18. Payment into Court. (52/17)**

- (1) Where, under Order 8 Division 6, a plaintiff before the trial or hearing begins—
- (a) accepts money brought into Court by a defendant in answer to a cause of action; and
  - (b) abandons that cause of action as against all other defendants (if any) sued on that cause of action jointly with the defendant bringing the money into Court; and

(c) abandons all his other causes of action (if any),

then, after payment out, he may, unless the Court otherwise orders, tax his costs of the proceedings in respect of his claims for relief against the defendant bringing the money into Court, incurred before service of notice of the deposit of the money accepted and, if the costs are not paid within four days after the signing of a certificate of the taxation enter judgement against that defendant for the taxed costs.

(2) Where a cross-claimant brings money into Court and, in his notice of deposit, states pursuant to Order 8 Rule 73 that he takes into account his cause of action on the cross-claim with a view to its abandonment in case the money is accepted, and the money is accepted before the trial or hearing begins, the cross-claimant may, unless the Court otherwise orders, tax his costs of the cross-claim, incurred before service of notice of the acceptance, and, if the costs are not paid within four days after the signing of a certificate of the taxation, enter judgement against the party accepting the money for the taxed costs.

(3) Where money is paid into Court with or without a denial of liability, and the plaintiff recovers less than the amount so paid in, the plaintiff shall, unless for special cause the Court or a Judge shall otherwise order, be entitled to an order for his costs to the date of the payment in, but be ordered to pay all the costs of the defendant so paying into Court from and after the date of such payment into Court.

**19. Offer of contribution. (52/19)**

Where a party makes an offer of contribution within the application of Order 8 Rule 49 (order of contribution), the Court may, in exercising its discretion as to costs, take the offer into account.

**20. Disobedience to rule, judgement or order. (52/20)**

Where any person fails to comply with any provision of these Rules or any judgement or order of the Court, the Court may order him to pay the costs of any-other person occasioned by the failure.

**21. Discovery before suit. (52/21)**

The Court may, in proceedings in respect of any claim for relief, include in any order for costs the costs of a party to the proceedings of proceedings under Order 3 in respect of that claim for relief including payments of conduct money and payments on account of expenses and loss under that Order.

**22. Injunction. (52/21A)**

Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification an order as to the costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

## **Order 22, Rule 23**

### **Subdivision C.—Party and Party Basis.**

#### **23. Application of Subdivision C. (52/22)**

This Subdivision applies to costs which are to be paid to a party to any proceedings either by another party to the proceedings or out of a fund.

#### **24. Party and party basis. (52/23)**

(1) Costs shall be taxed on a party and party basis unless the costs are to be taxed on the common fund basis under Rule 32 or on the trustee basis under Rule 33.

(2) On a taxation on a party and party basis, there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

#### **25. Costs where judgement for a small amount. (Vic. 65/121)**

(1) Where in an action for tort or contract the plaintiff recovers by judgement or otherwise a sum of less than K10,000.00 (or an order for the possession of goods the value of which is less than K10,000.00 or a sum of money plus an order for the possession of goods the aggregate value of which is less than K10,000.00) he shall, unless the Court or Judge otherwise orders, be entitled only to the costs he would have been entitled to if he had brought his action in the District Court.

(2) For the purposes of Sub-rule (1) a plaintiff shall be treated as recovering the full amount recoverable in respect of his claim without regard to any deduction made in respect of contributory negligence on his part.

#### **26. Second lawyer or overseas counsel.**

(1) The fees, costs and expenses of—

- (a) a second lawyer; or
- (b) overseas counsel,

may be allowed on taxation only if, and to the extent that, they are certified for by the trial Judge.

(2) In this Rule "overseas counsel" means a barrister or solicitor who is not resident in the country and normally carries on practice as a lawyer outside the country.

#### **27. Refreshers. (52/25)**

(1) Where counsel is briefed to appear on a trial or hearing, and the trial or hearing occupies more than six hours, and costs are taxed on a party and party basis, the taxing officer may allow refresher fees in such amount as he thinks fit for every six hours or part of six hours occupied by the trial or hearing after the first six hours and for the remaining duration of the trial or hearing.

## **Order 22, Rule 30**

(2) The taxing officer may allow refreshers under Sub-rule (1) whether or not witnesses are examined at the trial or hearing.

### **28. Absence of counsel. (52/26)(A.C.T. 65/83)**

(1) Where counsel is briefed to appear on a trial or hearing, and costs are taxed on a party and party basis, counsel's fee on the brief shall not be allowed unless—

- (a) he is present at the trial or hearing for a substantial part of the relevant period; or
- (b) he gives substantial assistance during the relevant period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

(2) In Sub-rule (1), "relevant period" means the period of the trial or hearing or, if the trial or hearing lasts more than six hours, the first six hours.

(3) Where counsel is briefed to appear on a trial or hearing, a refresher fee shall not be allowed to him for any period unless—

- (a) he is present at the trial or hearing for a substantial part of that period; or
- (b) he gives substantial assistance during that period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

(4) In actions where a barrister and solicitor acts in both capacities, or appears as a barrister instructed by his partner acting as solicitor, neither he nor his partner shall be entitled to make any charge for "Preparing any brief or case to counsel to advise" or "Preparing any instructions to counsel to settle any document", but in lieu of such charges the barrister and solicitor, or partner, as the case may be, shall be entitled to such fees as are allowed by the taxing officer for "Preparation for trial."

### **29. Six-hour period. (52/27)**

In reckoning the six hour periods referred to in Rules 27 and 28 the mid-day adjournment and any other adjournment shall not be included unless the Court or the taxing officer otherwise orders.

### **30. Counsel before Registrar, etc. (52/28)**

On a taxation on a party and party basis, or in respect of proceedings before the Registrar in the probate jurisdiction or the matrimonial causes jurisdiction, costs in respect of counsel attending before the Registrar shall not be allowed unless the Registrar certifies the attendance to be proper or the Court otherwise orders.

## **Order 22, Rule 31**

### **Subdivision D.—Common Fund and Trustee Bases.**

#### **31. Application of Subdivision D. (52/29)**

This Subdivision applies to costs which by or under these Rules or any order of the Court are to be paid to a party to any proceedings either by another party to the proceedings or out of a fund.

#### **32. Common fund basis. (52/30)**

- (1) The Court may order that costs be taxed on the common fund basis.
- (2) The common fund basis is a more generous basis than the party and party basis.
- (3) On a taxation on the common fund basis—
  - (a) there shall be allowed a reasonable amount in respect of all costs reasonably incurred; and
  - (b) the ordinary rules applied on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

#### **33. Trustee basis. (52/31)**

- (1) Where a person who is or has been a party to proceedings in the capacity of trustee is entitled to be paid costs out of any fund which he holds in that capacity, the costs shall be taxed on the trustee basis.
- (2) Where the Court makes an order for the payment to a person of costs out of a fund, the Court may order that the costs be taxed on the trustee basis and as if he were a trustee of the fund.
- (3) Where the Court makes an order for the payment to a person of costs and he is or was a party to the proceedings in the capacity of trustee, the Court may order that the costs be taxed on the trustee basis and as if the costs were to be paid out of a fund held by him.
- (4) On a taxation on the trustee basis, no costs shall be disallowed, except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee as trustee, have been incurred or paid, and should for that reason be borne by him personally.

### **Subdivision E.—Solicitor and Client Basis.**

#### **34. Application of Subdivision E. (52/32)**

Rule 35 applies to any taxation on a solicitor and client basis except where taxation has been excluded under Section 23 of the *Lawyers Act*.

**35. Solicitor and client basis. (52/33)**

- (1) All costs shall be allowed except as specified in this Rule.
- (2) Costs shall not be allowed in so far as they are of an unreasonable amount, unless the amount has been approved by the client.
- (3) Costs shall not be allowed in so far as they are unreasonably incurred, unless incurred with the approval of the client.
- (4) An approval for the purpose of this Rule may be express or implied.
- (5) Notwithstanding Sub-rules (2) and (3) where costs are incurred which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs on a party and party basis under Rule 24 the costs shall not be allowed, unless it is shown—
  - (a) that the costs were reasonably incurred; or
  - (b) that before the costs were incurred the solicitor expressly warned the client that the costs might not be allowed on a taxation of costs on a party and party basis.
- (6) Where the client is a disabled person, references to the client in Sub-rules (2), (3), and (4) shall be read as references to his next friend or guardian at law.

**Subdivision F.—Scale of Costs.**

**36. Scale of costs. (52/67)**

- (1) Subject to this Rule, the provisions of Table 1 of Schedule 2 shall apply to the taxation of costs incurred in relation to proceedings commenced in the Court after the commencement date.
- (2) On a taxation—
  - (a) to which Subdivision D. (common fund and trustee bases) and Subdivision E. (solicitor and client basis) apply; and
  - (b) in any other special case,costs may, at the discretion of the taxing officer, be allowed—
  - (c) in relation to items not mentioned in Table 1 of Schedule 2; or
  - (d) of an amount higher than that prescribed by Table 1 of Schedule 2.
- (3) A taxing officer, when exercising his discretion under Sub-rule (2) or in respect of any item marked "discretionary" in Table 1 of Schedule 2 shall have regard to—
  - (a) the complexity of the item or of the proceedings in which it arose and the difficulty or novelty of the question involved; and
  - (b) the skill, specialized knowledge and responsibility required of and the time spent and work done by the solicitor or counsel; and

## **Order 22, Rule 37**

- (c) the number and importance of the documents (however brief) prepared or perused; and
- (d) the place and circumstances in which the business involved was transacted; and
- (e) the importance of the proceedings to the client; and
- (f) where money or property was involved, its amount or value; and
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same proceedings, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(4) Costs shall, unless the Court otherwise orders, be allowed in the cases to which Table 2 of Schedule 2 applies in accordance with the provisions of that Table and not in accordance with Table 1 of that Schedule.

### **37. Probate. (52/68)**

(1) Table 5 of Schedule 2 shall apply to proceedings for probate or administration or for resealing of probate or letters of administration where no contention has arisen.

(2) Unless under Table 5 of Schedule 2 the value of the estate or unadministered assets exceeds K4,000.00 a solicitor may not, without the leave of the Court, file his bill for taxation.

(3) If the amount allowed on a taxation to which Sub-rule (2) applies, does not exceed the amount allowable applying Table 5, the solicitor whose bill it is shall not, unless the taxing officer otherwise orders, be allowed the costs to which, apart from this Sub-rule, he would be entitled for drawing and copying the bill and for attending the taxation.

(4) Sub-rule (3) does not affect the operation of Rule 63(b).

(5) Where in contentious proceedings the Court directs the taxation of costs in connection with the obtaining of probate or administration or resealing of probate or letters of administration, the costs prescribed in Table 5 of Schedule 2 may, unless the Court otherwise orders, be allowed separately and in addition to the costs incurred in the contentious proceedings.

(6) A bill for taxation under this Rule shall bear a note of the value of the estate or of the unadministered assets, whichever is appropriate.

(7) A bill, either for taxation or moderation, shall be served on each executor, administrator or trustee before it is filed.

(8) A request for either taxation or moderation shall be endorsed on the bill in the prescribed form and signed by each executor, administrator and trustee.

***Division 3.—Taxing Officer.***

**38. Registrar to be taxing officer. (52/34)**

The Registrar shall be the taxing officer of the Court.

**39. General powers. (52/37)**

The taxing officer may, in the discharge of his functions with respect to the taxation of costs or any other functions under this Order—

- (a) dispense with the filing or service of notice of a motion to proceed with taxation; and
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented and
- (c) take evidence by the examination of witnesses or otherwise; and
- (d) direct the production of any document; and
- (e) adjourn any proceedings before him; and
- (f) do such other things as the Court may by order direct.

**40. Time. (52/38)**

The taxing officer may exercise the powers of the Court to extend times under Order 1 Rule 15 and to fix times under Order 1 Rule 16, in relation to the commencement of a taxation and in relation to the doing of anything in or in connection with the proceedings before him.

**41. Absence of party. (52/34)**

Where a party entitled to attend any matter before the taxing officer has had due notice of the time appointed for the matter, or where notice to a party has been dispensed with under Rule 39, the taxing officer may proceed in his absence.

**42. Costs of proceedings before taxing officer. (52/40)**

(1) Costs to be taxed under an order shall, unless the order otherwise provides, include the costs of the taxation.

(2) Costs to be taxed under these Rules shall include the costs of the taxation.

(3) Subject to Sub-rules (1), (2) and (4) and to any order of the Court, a taxing officer may make orders as to the costs of or incidental to any proceedings before him and shall include in his certificate the amount of those costs and a statement of the persons to whom and by whom those costs are to be paid or the fund out of which those costs are to be paid.

(4) Sub-rules (1), (2) and (3) apply subject to any Act and subject to Sub-rule 56(2).

## **Order 22, Rule 43**

### ***Division 4.—Taxation.***

#### **43. Order subject to appeals etc. (52/42)**

Where an order is made for the payment of costs, and the costs are to be taxed, the costs may, unless the Court otherwise orders, be taxed, notwithstanding that the order for payment of costs is liable to be set aside, varied or discharged on appeal or otherwise.

#### **44. Costs in account. (52/44)**

Where the Court orders that an account be taken and the account consists in part of costs, the Court may, by the same or a later order, direct that those costs be taxed by the taxing officer.

#### **45. Party costs. (52/43)**

(1) This Rule applies to costs of or incidental to proceedings in the Court, including—

- (a) in the case of an appeal to the Court—the costs of or incidental to the proceedings giving rise to the appeal; and
- (b) in the case of proceedings transferred to or removed into the Court—the costs of or incidental to the whole proceedings, both before and after removal,

but does not apply to the taxation of costs for any business done by a solicitor, being a taxation under Section 63 of the *Lawyers Act* 1986.

(2) Where—

- (a) by or under these Rules costs are to be taxed and are to be paid to any party either by another party to the proceedings or out of a fund; or
- (b) by or under an order of the Court made in any proceedings costs are to be taxed and are to be paid to any party either by another party to the proceedings or out of a fund; or
- (c) in any proceedings the Court makes an order under Rule 44; or
- (d) costs are payable under any Act under which costs may be taxed in the Court without an order of or reference to the Court for taxation, except the taxation of costs to which Paragraphs (a), (b) and (c) apply,

an application may be made to the Registrar to have the costs taxed.

(3) This Rule shall not prevent the parties to an action agreeing as to the amount of the costs to be paid by the party or fund liable to pay costs to another party.

**46. Application for taxation.**

- (1) An application under Rule 45(2) shall be in writing and shall be filed.
- (2) The bill to be taxed and a copy of it shall be annexed to the application.
- (3) Where the Court has made an order directing the taxation of the costs, that order or a copy of it shall also be annexed to the application.
- (4) A copy of the application shall be served by the party seeking the taxation on every other interested party.

**47. Application for taxation under Section 63 of the *Lawyers Act*.**

- (1) This rule applies to proceedings for the taxation of costs under Section 63 of the *Lawyers Act* 1986.
- (2) An application to the Court under Section 63 of the *Lawyers Act* 1986 shall be made in writing and shall be filed.
- (3) The bill to be taxed and a copy of it shall be annexed to the application.
- (4) A copy of the application shall be served by the person seeking the taxation on the lawyer who rendered the bill.
- (5) The succeeding rules of this Division shall apply to an order that the bill be taxed in the same manner as they apply to an application under Rule 46, with such modifications as are necessary.

**48. Notification of time appointed for taxation.**

- (1) Where an application is made to the Registrar under Rule 45 or an order for a bill to be taxed is made under Section 63 of the *Lawyers Act* 1986 the Registrar shall fix a time and place for the taxation and shall give notice of the time and place so fixed to the person applying for the taxation or in whose favour the order is made, as the case may be, to the solicitor concerned, and to every other interested party.
- (2) The bill shall be taxed and settled by the Registrar at the time and place fixed by the Registrar under Sub-rule (1) subject to such adjournments as the Registrar may consider necessary from time to time.
- (3) Where either party to the proceedings does not appear at the time and place fixed by the Registrar under Sub-rule (1), the Court may order the Registrar to proceed with the taxation.

**49. Bill. (52/49)**

- (1) A bill shall contain particulars of—
  - (a) the work done by the lawyer, his servants and agents; and
  - (b) the disbursements made; and
  - (c) the costs claimed for the work done.

## **Order 22, Rule 50**

(2) In every bill the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation.

(3) Where it is a clerk who does any work included in a bill and that fact is relevant to the amount of costs allowable for the work, the name and position of the clerk shall be stated in the bill.

(4) Where a liability to make a disbursement has been incurred or a fee to counsel has been incurred and the disbursement or fee would be properly included in a bill if paid—

- (a) the disbursement or fee may be included in the bill notwithstanding that it has not been paid; and
- (b) the bill shall state that the disbursement or fee has not been paid; and
- (c) subject to Sub-rule (5), on taxation, the disbursement or fee shall not be allowed unless Paid before the taxation is completed.

(5) Sub-rule (4)(c) shall not apply where, in proceedings under the *Matrimonial Causes Act* 1963, on taxation of a bill of a female petitioner or respondent, her lawyer gives a written understanding to the Registrar that all or any fees or disbursements in that bill will be paid by the lawyer out of the first money received by or on behalf of his client in payment of the costs allowed.

(6) The Court or the taxing officer may give leave, on terms, for the amendment of a bill.

(7) A bill must be endorsed with—

- (a) the name or firm and business address of the lawyer whose bill it is; and
- (b) if the lawyer is the agent of another, with the name or firm and business address of that other lawyer.

### **50. Service of bill.**

A bill need not be served on a lawyer whose bill it is.

### **51. Attendance of parties. (52/51)**

(1) The taxing officer may—

- (a) arrange and direct what parties should attend before him on any taxation; and
- (b) disallow the costs of attendance of any party whose attendance he considers unnecessary

(2) Notwithstanding Sub-rule (1), any party interested may attend any taxation.

**52. Notice of adjournment. (52/52)**

Where the taxing officer adjourns a taxation, he may order any party attending before him to serve notice of the adjournment on any absent party.

**53. Costs out of fund: Notice to persons interested. (52/53)**

(1) Where costs are payable out of a fund, the taxing officer taxing a bill of the costs may—

- (a) adjourn the taxation to a specified date; and
- (b) order the lawyer whose bill it is or the party to whom the costs are payable to send to any person interested in the fund, free of charge to that person, a copy of the whole or any part of the bill and a letter in accordance with Sub-rule (2).

(2) A letter ordered to be sent under Sub-rule (1) shall state—

- (a) that the costs are payable out of the fund (identifying it) and that the bill is being taxed; and
- (b) the name and address of the taxing officer; and
- (c) the adjourned date for further proceedings with the taxation; and
- (d) such other information as the taxing officer may direct.

**54. Reference to Court. (52/54)**

The taxing officer may, on his own motion, refer to the Court for direction, any question arising in a taxation.

**55. Default of party entitled. (52/55)**

(1) Where a party is entitled to apply under this Division to have costs taxed but does not, within a reasonable time after service on him of a written request to do so by a party liable for the costs, file and serve an application, the taxing officer may fix a time within which the party entitled must file and serve an application to have costs taxed.

(2) Where a party entitled to costs fails to make application in accordance with Rule 45 the taxing officer may fix a time within which the party entitled must file or serve his bill.

(3) Where a party entitled to costs fails to file and serve an application to have the costs taxed or fails to file or serve his bill within a time fixed under this Rule, the taxing officer may certify the failure and may disallow the costs of the party entitled or allow them at such amount as he thinks fit.

(4) Where a party entitled to costs defaults by failing to proceed with taxation, the taxing officer may, for the purpose of preventing any other party being adversely affected by the default, certify the default and may—

## **Order 22, Rule 56**

- (a) disallow the costs of the defaulting party or allow them at such amount as he thinks fit; and
- (b) certify the costs of the other parties.

### **56. Disallowance of fees for taxation. (52/56)**

(1) Where a solicitor—

- (a) fails to file his bill for taxation within the time fixed by or under this Order; or
- (b) otherwise delays or impedes the taxation,

the solicitor shall not, unless the taxing officer otherwise orders, be allowed the fees to which, apart from this Sub-rule, he would be entitled for preparing his bill of costs and for attending the taxation.

(2) If, on the taxation of any costs, one-sixth or more of the amount of the bill for those costs is taxed off, the solicitor whose bill it is shall not be allowed the fees to which, apart from this Sub-rule, he would be entitled for preparing the bill and for attending the taxation.

### **57. Liability of solicitor. (52/57)**

Where, in any proceedings before the taxing officer, a solicitor for any party—

- (a) is guilty of neglect or delay; or
- (b) puts any other party to unnecessary expense,

the taxing officer may order the solicitor to pay costs to any party.

### **58. Cross costs. (52/58)**

(1) Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may—

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and certify the amount of the balance and the parties by and to whom the balance is payable; or
- (b) withhold his certificate for the costs which that party is entitled to be paid until that party has paid or tendered the amount he is liable to pay.

(2) Costs in any proceedings may be set off under Sub-rule (1)(a) notwithstanding that a solicitor for a party to the proceedings has a lien for costs in the proceedings.

**59. Certificate. (52/59)**

- (1) The taxing officer may make separate and interim certificates.
- (2) Where, in the course of the taxation of a solicitor's bill to his own client, it appears to the taxing officer that in any event the solicitor will be liable in connection with the bill to pay money to the client, he may make an interim certificate specifying an amount which in his opinion is payable by the solicitor to the client.
- (3) The taxing officer shall, after the conclusion of the taxation of any bill, make a final certificate of his disallowance of the costs in the bill or of the amount at which he allows the costs.
- (4) Where the taxing officer decides to allow or disallow, wholly or in part, any item in a bill or to allow some amount in respect of any item, he shall not, except with the consent of the parties interested, make a certificate dealing finally with that item, until the expiry of 14 days after the date of the decision.
- (5) A certificate made by the taxing officer in any proceedings shall, unless made on a filed bill, be filed in the proceedings.
- (6) On the making of a certificate under Sub-rule (2), the Court may order the amount specified in the certificate to be paid to the client or into Court.
- (7) The taxing officer may make a separate or interim certificate in respect of any item in a bill notwithstanding an application for review under Rule 60 to his decision on any other item in the bill.

**60. Application for review of taxation. (U.K. 62/33)**

- (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the taxing officer, or with the amount allowed by the taxing officer in respect of any item, may apply on motion to a Judge to review the decision in respect of that item.
- (2) An application for review of the taxing officer's decision shall be made within 14 days after the date of the decision objected to or within such further time as the Court may allow.
- (3) Every applicant for review under this Rule must at the time of making his application deliver to the taxing officer objections in writing specifying the list of items to which the applicant objects and must state concisely the nature and grounds of each objection.
- (4) An applicant for review under this Rule shall serve a copy of the objections on each other party (if any) who attended the taxation of those items and any other person whom the taxing officer directs shall be served.

## **Order 22, Rule 61**

### **61. Review. (U.K. 62/35)**

- (1) On the review, unless the Court for good reason otherwise directs
  - (a) no further evidence shall be received; and
  - (b) a party shall not raise any ground of objection not stated in the statement of objections delivered to the taxing officer.
- (2) Subject to Sub-rule (1), on the review the Court may exercise all such powers and discretions as are vested in the taxing officer in relation to the subject matter of the application.

### **62. Judgement. (52/63)**

Where the amount of any costs has been certified under this Division the Court may, on motion by a party, direct the entry of such judgement for the costs as the nature of the case requires.

## ***Division 5.—Miscellaneous.***

### **63. Costs of solicitor appointed as guardian at law. (52/64)**

Where the Court appoints a solicitor to be guardian at law or next friend of a disabled person who is a party to any proceedings, the Court may—

- (a) order that the costs to be incurred in performance of the duties of guardian at law or next friend be paid—
  - (i) by the parties to the proceedings or any of them; or
  - (ii) out of any fund in Court in which the disabled person is interested; and
- (b) make orders for the repayment or allowance of the costs as the nature of the case may require.

### **64. Trustee or mortgagee. (52/65)**

- (1) Where a person is or has been a party to any proceedings in the capacity of trustee or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of the proceedings out of the fund held by the trustee or out of the mortgaged property, as the case may be, in so far as the costs are not paid by any other person.
- (2) The Court may otherwise order under Sub-rule (1) only where—
  - (a) the trustee or mortgagee has acted unreasonably; or
  - (b) in the case of a trustee, he has in substance acted for his own benefit rather than for the benefit of the fund.

**65. Personal liability of solicitor for costs. (52/66)**

(1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a solicitor is responsible (whether personally or through a servant or agent), the Court may, after giving the solicitor a reasonable opportunity to be heard—

- (a) disallow the costs as between him and his client; and
- (b) direct the solicitor to repay to his client costs which the client has been ordered to pay to any other party; and
- (c) direct the solicitor to indemnify any party other than his client against costs payable by the party indemnified.

(2) Without limiting the generality of Sub-rule (1) a solicitor is responsible for default for the purposes of that Sub-rule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the solicitor—

- (a) to attend in person or by a proper representative; or
- (b) to file any document which ought to have been filed; or
- (c) to deliver any document which ought to have been delivered for the use of the Court; or
- (d) to be prepared with any proper evidence or account; or
- (e) otherwise to proceed.

(3) The Court may, before making an order under Sub-rule (1), refer the matter to the taxing officer for enquiry and report.

(4) The Court may order that notice of any proceedings or order against a solicitor under this Rule shall be given to his client in such manner as may be specified in the order under this sub-rule.

## Order 23, Rule 1

### PART 8. HUMAN RIGHTS JURISDICTION ORDER 23.— HUMAN RIGHTS.

#### 1. Interpretation.

In this Part, unless the contrary intention appears:

*Basic Rights* means the rights and freedoms described in Rule 5;

*Bougainville Constitution* means the *Constitution of the Autonomous Region of Bougainville*;

*Constitutional Laws* has the same meaning it has in the *Constitution*;

*Human Rights* refers to the rights and freedoms described in Rule 5;

*Listing Judge* means the Judge conducting listing of cases pursuant to the *Listings Rules*.

*Listings Rules* means Order 10 Rule 9A of the *National Court Rules*;

#### 2. Purpose.

The purpose of these Rules is to facilitate a quick and just resolution of Court proceedings instituted under Sections 57 and 58 of the *Constitution* for enforcement of the Basic Rights (also known as “Human Rights”) and for enforcement under Section 23 of the *Constitution* of prohibitions, restrictions or duties imposed by the Constitutional Laws and of related matters.

#### 3. Administration.

(1) There shall be a Human Rights List maintained by the Registrar which shall contain the reference numbers, names and status of the proceedings described in Rule 5.

(2) The Chief Justice may appoint a Judge to be Judge Administrator of the Human Rights Track at the Waigani Registry and may from time to time appoint any Judge to deal with proceedings on the Human Rights List.

(3) The Registrar shall appoint an officer to be the senior officer in charge of registry matters concerning the Human Rights List and shall appoint such other staff as are necessary to ensure the efficient and orderly running of the Human Rights List.

#### 4. Application.

These Rules are designed to facilitate the running of the Human Rights List.

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<sup>10</sup> In operation 1<sup>st</sup> July 2011

**5. Human rights proceedings.**

The following proceedings shall be placed on the Human Rights List, and shall be dealt with in accordance with these Rules:

a) proceedings that are, in substance, irrespective of whether expressly so described, for enforcement under Sections 57 (*enforcement of guaranteed rights and freedoms*) or 58 (*compensation*) of the *Constitution* of any of the Basic Rights, viz:

- i) right to freedom (s 32);
- ii) right to life (s 35);
- iii) freedom from inhuman treatment (s 36);
- iv) protection of the law (s 37);
- v) proscribed acts (s 41);
- vi) liberty of the person (s 42);
- vii) freedom from forced labour (s 43);
- viii) freedom from arbitrary search and entry (s 44);
- ix) freedom of conscience, thought and religion (s 45);
- x) freedom of expression (s 46);
- xi) freedom of assembly and association (s 47);
- xii) freedom of employment (s 48);
- xiii) right to privacy (s 49);
- xiv) right to vote and stand for public office (s 50);
- xv) right to freedom of information (s 51);
- xvi) right to freedom of movement (s 52);
- xvii) protection from unjust deprivation of property (s 53);
- xviii) equality of citizens (s 55); and

- b) proceedings under Section 183 of the Bougainville *Constitution* for enforcement of Basic Rights under that *Constitution*; and
- c) proceedings under Section 23 (*sanctions*) of the *Constitution* for imposition of sanctions for breach of prohibitions, restrictions or duties imposed by the Constitutional Laws in regard to human rights issues; and
- d) complaints under Section 42(5) (*liberty of the person*) of the *Constitution* that a person is unlawfully or unreasonably detained; and

## Order 23, Rule 6

- e) proceedings where a claim is made by the plaintiff for any relief or remedy for any tort allegedly committed by a member of a disciplined force, where the cause of action might reasonably be regarded as a breach of one or more of the Basic Rights; and
- f) proceedings where the issues of fact or law that are likely to arise overlap with the type of issues of fact or law that commonly arise in enforcement proceedings under Sections 57, 58 or 23 of the *Constitution*;
- g) any proceedings within the jurisdiction of the National Court concerning the discharge of powers, functions, duties or responsibilities under Part X (*emergency powers*) of the *Constitution*; and
- h) applications for a writ of *habeas corpus* under Order 17 of the *National Court Rules*; and
- i) proceedings for enforcement of the provisions of the *Correctional Service Act* and the *Correctional Service Regulation* concerning treatment of detainees, calculation of periods of detention and related proceedings; and
- j) applications under Section 5(2)(c)(iii) (*notice of claims against the State*) of the *Claims By and Against the State Act* to allow a further period in which to give notice to the State of an intention to make a claim against the State, where the claim relates to enforcement of a right or freedom referred to in Division III.3 of the *Constitution*.

### 6. Standing to Bring or Appear in Proceedings.

Without derogating from Sections 57(1) and (2) of the *Constitution*, persons who may bring or commence or appear in a human rights proceeding include:

- (a) a person whose human rights or freedoms are adversely affected by any act or omission of —
  - (i) the government or a governmental body or a person exercising public power or performing public functions; or
  - (ii) a private person or a body corporate, including a company, and any of its officers or employees exercising private powers or performing private functions;
- (b) a person acting on behalf of a person who is under a disability or is unable to fully and freely exercise their right to bring an application for enforcement of their human rights or freedoms;
- (c) a person or body, whether public or private, who has an interest in the protection and enforcement of human rights and freedoms;

- (d) a person representing an international body with responsibility for, or a principle function of which is, to protecting human rights and freedoms under international laws and conventions such as the *Universal Declaration of Human Rights* and any other declarations, recommendations or decisions of the *General Assembly of the United Nations* concerning human rights and freedoms;
- (e) any other person or body who has a sufficient interest in the protection and enforcement of human rights and freedoms, approved by the Court.

**7. Commencement of Proceedings by a Party.**

- (1) A human rights proceeding may be commenced by:
  - (a) a Writ of Summons, in which case the file reference shall be “WS(HR)”;
  - (b) an Originating Summons, in which case the file reference shall be “OS(HR)”;
  - (c) filing a Human Rights Enforcement Application in Form 124, in which case the file reference shall be “HRA”.
- (2) The person commencing proceedings under Sub-rule (1) shall be called the “plaintiff” and the person against whom proceedings are commenced shall be called “the defendant”.
- (3) The originating process for enforcement of a right or freedom referred to in Division III.3 of the *Constitution* shall as far as is practicable identify with precision, by reference to relevant provisions of the *Constitution*:
  - (a) the right or freedom that has been allegedly infringed or of which there is a reasonable probability of infringement; and
  - (b) the orders, declarations or other relief that is sought.
- (4) A complaint under Section 42(5) of the *Constitution* that a person is unlawfully or unreasonably detained may be made by filing a Complaint of Unlawful or Unreasonable Detention in Form 125, in which case—
  - (a) the file reference shall be “HRC”,
  - (b) the person making the complaint shall be called “the complainant” and the person(s) against whom the complaint is made shall be called “the respondent(s)”.
- (5) As to Filing Fees
  - (a) The filing of a Human Rights Enforcement Application or a Complaint of Unlawful or Unreasonable Detention shall be free of fees; and

## **Order 23, Rule 8**

- (b) The Registrar shall for the purposes of other human rights proceedings exercise the discretion whether a filing fee should be paid by a plaintiff taking into account the nature of the proceedings and whether payment of a filing fee might be a hardship to the plaintiff.

(6) All human rights applications filed and pending determination by the National Court prior to commencement of the Human Rights Rules shall be retained under file reference MP No ... of ... (HR) and shall constitute the inaugural Human Rights List.

### **8. Commencement of Proceedings by the Court.**

(1) Where a judge observes, or is informed by the Registrar or the Sheriff or one of their officers, of facts which may constitute a breach of Basic Rights the Court may commence proceedings on its own initiative.

(2) Where the National Court commences proceedings on its own initiative in accordance with Section 57 of the *Constitution* –

- (a) the file reference shall be “HROI” and the responding party, if any, shall be called “the respondent”; and
- (b) subject to this Rule, the originating process shall be in Form 126 or in such other terms as the Court considers appropriate.

(3) Nothing in these Rules derogates from the power and duty of the National Court under Section 57(1) of the *Constitution* to, on its own initiative, enforce the rights and freedoms referred to in Division III.3 (*basic rights*) of the *Constitution* in an informal or such other manner as the Court thinks fit, especially in urgent cases where it is not practical to comply with formal requirements for commencement of proceedings.

(4) Where the Court exercises a power under Sub-rule (2) a Court shall ensure, that as soon as the circumstances permit, not being later than seven days after the exercise of such power, a reference in Form 126 is filed and thereafter served on the respondents.

### **9. Statement of Alleged or Suspected Breach of Human Rights.**

(1) Any Judge or Officer of the Court or any member of the Court staff or any person, body or authority, including any member of the public, may bring any instance of alleged or suspected breach or imminent breach or threatened breach of human rights or freedoms to the attention of the Court by delivering to the Registrar a completed Statement of Alleged or Suspected Breach of Human Rights, in Form 127.

(2) After receiving a Statement of Alleged or Suspected Breach of Human Rights, the Registrar shall, within one day, forward the Statement, together with all other relevant information in the possession of the Registrar, to a Judge.

(3) After receiving a Statement and other relevant information under Sub-rule (2), the Judge shall decide what further action, if any, is necessary, including whether to open a HROI file in relation to the matter and whether to direct the Public Solicitor under Section 177(2)(b) of the *Constitution* to provide legal aid, advice and assistance to a person.

**10. Request to place a proceeding on Human Rights List or to Remove a Proceeding.**

(1) When any proceedings are filed in Court, the plaintiff may request, by filing a notice in Form 128, that the proceedings be placed on the Human Rights List and, irrespective of whether such a request is made, the Registrar or his delegate will decide, having regard to Rule 5 and other relevant considerations, whether the proceedings are appropriate to be placed on the Human Rights List or on some other List.

(2) A person aggrieved by a decision under Sub-rule (1) may apply a Judge, by notice of motion, for review of the decision, supported by a listing statement in Form 129; and in such a case all parties to the proceedings shall be given notice of the motion and the listing statement, and shall have a right to be heard on the motion.

(3) The decision of the Court on a motion under Sub-rule (2) is final and not subject to appeal.

**11. Applications, motions and directions after listing.**

(1) Once a proceeding is placed on the Human Rights List, any application or motion regarding that proceeding shall be set for hearing before the Judge dealing with matters on the Human Rights List.

(2) Proceedings on the Human Rights List shall be set down for trial in accordance with the directions of the Human Rights List Judge, who may make such orders or give such directions under the *Listings Rules* as are appropriate to ensure the just, efficient and expeditious disposal of cases.

**12. Dispensation.**

The provisions of Division 1.2 (*general*) of the *National Court Rules* apply to these Rules.

**Sch 1, Form 1, O.2, rr.22, 23**

**SCHEDULE 1**

**Form 1.**

O.2, rr.22, 23

**HEADING.**

In the National Court of Justice . . . No. . . of 20..., at . . . Papua New Guinea

JOHN PUKARE Plaintiff

HAREA-AVO Defendant

HAREA-AVO

Cross-claimant

JOHN PUKARE and

HENRY TOMANA Cross-

defendants HENRY

TOMANA Second cross-  
claimant NILANG-SAKO

Second cross-defendant

**Sch 1, Form 2, O.2, rr.22, 23**

**Form 2.**

O.2, rr.22, 23

**HEADING.**

In the National Court of Justice . . . No. . . . of 20..., at . . . Papua New Guinea

JOHN PUKARE and others

Plaintiffs

HAREA-AVO

Defendant

and Cross-claimant

**Form 3.**

O.2, r.24

**HEADING WHERE NO DEFENDANT.**

In the National Court of Justice . . . No. . . . of 20..., at . . . Papua New Guinea . . . The  
application of HENRY TOMANA

**Form 4.**

O.2, r.30

**CONCLUSION OF DOCUMENTS.**

*(Conclusion of documents for signature by a party unless otherwise indicated or  
required.)*

*(Signature)*

Plaintiff's Solicitor. Filed

*(dated if not filed):*

*(The address is not necessary because it must appear on the backsheet. The appropriate  
alteration must be made where Order 2 Rule 27(2) (relating to signature for a solicitor)  
applies.*

*See also Order 2 Division 3, generally.)*

**Sch 1, Form 5, O.4, r.16**

Form 5—Writ of Summons

**Form 5.**

O.4, r.16

**WRIT OF SUMMONS**

In the National Court of Justice . . . W.S. No. . . . of 20...

BETWEEN: HAREA AVO

Plaintiff

AND: JOHN PUKARE

Defendant

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To JOHN PUKARE of *(place)*

The plaintiff makes a claim against you the nature of which is endorsed on the back of this writ.

You are liable to suffer judgement or an order against you unless the prescribed form of notice of your intention to defend this claim is received in the Registry or a sub-registry within (30)\* days after service\*\* of this writ of summons on you and you comply with the rules of court relating to your defence.

*(Where Order 8 Rule 24 applies, add: You are required to verify your defence.)*

WITNESS the Honourable E.F. Chief Justice of our National Court of Justice at Waigani in the Independent State of Papua New Guinea the . . . day of . . . 20...

Registrar.

Note: This writ is to be served within 2 years from the date of its issue.

The defendant(s) may give notice of his (their) intention to defend in person or by a solicitor either—

- (1) by filing it in the appropriate form, duly completed, at the Registry; or
- (2) by sending it to that office by post. *(Endorsements to be made on back of writ before issue)*

**STATEMENT OF CLAIM**

1. *(plead as required by the Rules)*
2. *(plead as required by the Rules)*

The

plaintiff

claims:

## Sch 1, Form 5, O.4, r.16 cont...

1. (specify the relief claimed)

2. (specify the relief claimed)

(Particulars under Order 8, rr. 29-35 may be given by a heading, for example:

### PARTICULARS OF INJURIES

1. (state the particulars of injuries)

2. (state the particulars of injuries)

*These particulars may appear in the relevant place in the statement of facts or separately after the relief claimed, whichever is convenient.)*

*(Where appropriate insert the particulars required by Order 4, rr. 21 and 22.)*

*(If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the endorsement of claim. Where appropriate, add words to satisfy Order 4 Rule 20.)*

*(Where Order 4 Rule 10 applies, add: You may, within (30)\*\*\* days after service of this writ of summons on you, pay to the plaintiff or his solicitor the amount claimed (together with interest thereon at the rate claimed (if no rate is specified insert "of 8% yearly") from the due of filing of this writ until payment) and also K . . .\*\*\*\* for costs. Further proceedings against you will be stayed when you also file a prescribed form of notice of payment.)*

*(Where Order 4 Rule 14(1)(a) applies, add:*

The plaintiff does not seek to disturb the occupation of (name of occupier).)

*(Where Order 10 Rule 2 applies, add:*

Nominated place for trial: (state a place appointed for sittings of the Court).)

Plaintiff: (name, address and occupation) (a minor)

(Next friend: (name, address and occupation))

Solicitor: (name, address and telephone number)

Solicitor's agent: (name, address and telephonenumber)

Plaintiff's address for service: (Order 6 Rule 7)

Address of Registry:

\*In a Writ for service out of the jurisdiction insert appropriate time.

\*\*If notice of the writ is to be served insert here "of notice

\*\*\*If writ is to be served outside Papua New Guinea, insert the appropriate time.

\*\*\*\*See Order 4 Rule 10.

O.4, r.26

**ORIGINATING SUMMONS**

(Stating appointment for hearing)

*(heading as in Form 1 or Form 3)*

The plaintiff claims—

1. An order making provision for his maintenance, education and advancement in life pursuant to (*Act*) out of the estate of (*name*) late of (*place*)(*occupation*) deceased.

2. An order that (*or as required*)(*or*)

1. A declaration that

2. An order that (*or as required*)(*or*)

The plaintiff claims an order that (*where there is defendant, add the following—*

To the defendant:

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the proceedings may be heard and you will be liable to suffer judgement or an order against you in your absence.

Before any attendance at that time you must give notice of your intention to defend this claim.)

Time: . . . , 20..., at . . . a.m./p.m.

Place: (*address of Court*)

*(Where the time for service under Order 4 Rule 26(3) has been abridged, add—*

The time before which this summons is to be served has been abridged by the Court to . . . a.m./p.m. on . . . , 20..., or as the case may require).

*(Where there is no defendant, add—*

Time and place for hearing

Time: . . . , 209..., at . . . a.m./p.m.

Place: (*address of Court*)) *continue—*

Plaintiff: (*name, address and occupation*) (a minor)

(Next friend: (*name, address and occupation*))

Solicitor: (*name, address and telephone number*)

**Sch 1, Form 6, O.4, r.26 cont...**

Solicitor's agent: (*name, address and telephone number*)

Plaintiff's address for service: (*Order 6 Rule 7*)

Address of Registry:

(*Where there is a defendant, add—*

Note: The defendant(s) may give notice of his (their) intention to defend in person or by a solicitor either—

- (1) by filing it in the appropriate form, duly completed, at the Registry; or
- (2) by sending it to that office by post.)

**Sch 1, Form 7, O.4, r.27**

Form 7—Originating Summons (Hearing to be Appointed)

**Form 7.**

O.4, r.27

**ORIGINATING SUMMONS**

(Hearing to be appointed)

*(heading as in Form 1 or Form 3)*

The plaintiff claims—

*(state the relief claimed in the manner indicated in the form of originating summons Form 6).*

*(Where there is a defendant, add the following—*

To the defendant:

You are liable to suffer judgement or an order against you unless the prescribed form of intention to defend this claim is received in the Registry within (30) days after service of this summons on you.)

Plaintiff: *(name, address and occupation)* (a minor) (Next friend: *(name, address and occupation)*)

Solicitor: *(name, address and telephone number)* Solicitor's agent: *(name, address and telephone number)* Plaintiff's

address for service: (Order 6 Rule 7)

Address of Registry:

*(Where there is a defendant, add the following—*

Note: The defendant(s) may give notice of his (their) intention to defend in person or by a solicitor either—

- (1) by filing it in the appropriate form, duly completed, at the Registry; or
- (2) by sending it to that office by post.)

**Sch 1, Form 8, O.4, r.10**

**Form 8.**

O.4, r.10

**NOTICE OF PAYMENT**

On . . . , 20..., the defendant paid to the plaintiff K . . . , made up as follows:

amount claimed	K
Costs	K
(interest at the rate of . . . % from . . . , 20..., until the K above date of payment)	
Total	K

Form 9—Notice of Claim for Possession

**Form 9.**

O.4, r.14

**NOTICE OF CLAIM FOR POSSESSION**

To (*name of occupier*) of (*describe land*).

In the document served with this notice the plaintiff claims possession of the above land.  
You are served as a person in occupation of it or of part of it.

You may apply to the Court for an order that you be added as a defendant.

If you do not so apply within (21) days after this notice is served on you (*or, where Order 4 Rule 14(1)(b)(i) applies*, at or before the appointment for hearing stated in the summons served with this notice) you may be evicted from the above land pursuant to a judgement entered in your absence.

**Form 10.**

O.4, r.29

**APPOINTMENT FOR HEARING**

The Court appoints . . . , 20..., at . . . a.m./p.m. at (*address of Court*) for the hearing.

(*Signature and description*

*of Officer of the Court*)

Filed: . . . , 20...

**Sch 1, Form 11, O.4, r.40**

**Form 11.**

O.4, r.40

**NOTICE OF MOTION**

*(heading as in Form 1 or Form 3)*

The plaintiff will at . . . a.m./p.m. on . . . , 20. . . , at *(address of Court)* move the Court for orders—

1. *(state concisely the nature of each order which is sought but not the grounds of the application).*

*(Where the time for service under Order 4 Rule 42, has been abridged, add—*

The time before which this notice of motion is to be served has been abridged by the Court to . . . a.m./p.m. on . . . , 20. . . , *or as the case may require.*)

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)*

To: *(name each Party affected by the above order sought).*

**Form 12.**

O.6, r.20(5)

**NOTICE TO BE SERVED OUTSIDE PAPUA NEW GUINEA IN LIEU OF WRIT**

*(heading as in Form 1 or Form 3)*

To C.D. of

. . . A.B., of . . . , has commenced an action against you, C.D., in the National Court of Justice by writ of summons of that Court dated the . . . day of . . . 20. . . , which writ is endorsed as follows *(copy in full the endorsements)* and you are required within . . . days after the receipt of this notice, inclusive of the day of such receipt, to give notice of your intention to defend the action; and, in default of your so doing, the said A.B. may, by leave of the Court, proceed therein, and judgement may be given in your absence.

You may give notice of your intention to defend the action either personally or by your solicitor at the Registry of the Court at Waigani.

*(Signed)* A.B. of . . . &c.

S.Y. of . . . &c.

Solicitor of A.B.

n.b.—This notice is to be used where the person to be served is not within the Independent State of Papua New Guinea

O.6, r.28

**REQUEST FOR SPECIAL SERVICE**

It is requested that the sealed copy of (*description of document*) be served on (*name*) (whose address is . . . ) in . . . (*country*) by (*describe special manner*).

(*Follow the prescribed form of conclusion of documents for use by a party, Form 4 and, after the translation, add the certificate.*)

I (*name*), of (*address*), certify—

1. that what appears above is a translation of the document annexed and marked "A";
2. that my qualifications to translate from the English language to the (*name*) language are (*state qualifications*).

Dated . . . , 20...

(*Signed*)

(*The annexure must bear a note in the same language—*"This is the annexure marked "A" referred to in my certificate dated . . . , 20..."*)*

O.6, r.28

**REQUEST FOR SERVICE**

To the Registrar:

I (*name*) request that a sealed copy of (*description of document*) be transmitted to (*country*) for service on (*name*), of (*address*) (pursuant to the . . . convention made between . . . and . . . ) and I undertake to pay to you an amount equal to the sum of all expenses incurred in consequence of this request.

O.7, r.4

**NOTICE OF INTENTION TO DEFEND**

*(heading as in Form 1 or Form 3)*

HAREA AVO of *(address)* *(occupation)* intends to defend this action (originating summons).

(He is a partner in the defendant firm.)

(He is a minor (mentally disordered person); his guardian at law is KORA AVO.)

*(Where a defendant wishes to make a request under Order 7 Rule 5(3) add:*

The Registrar is requested to deal with the copy (two copies) of this notice under

Order 7

Rule 5(3).)

*(Add other notices, for example, under Order 8 Rule 43, relating to notice for pleadings.)*

Solicitor: *(name)*

*(address)*

telephone: *(number)*

Solicitor's agent: *(name)*

*(address)*

telephone: *(number)*

Address for service: *(the office of his solicitor, or as the case may be: see Order 6 Rule 7.*

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)*

*(This notice may be added to a notice of motion of a person applying to be added as a defendant, for example, under Order 5 Rule 8(3).)*

O.8, r.4

**DEFENCE**

*(Plead as required by the Rules, for example—*

1. The defendant denies *etc.*)

*(or)*

*(where one of two or more defendants,*

**DEFENCE OF HAREA-AVO**

1. This defendant denies *etc.*)

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4, and, where Order 8 Rule 24 applies, add:*

**AFFIDAVIT**

On . . . , 20. . . , I (*name*) of (*address*)(*occupation*) say on oath:

1. I am the defendant.
2. The defence set out above is true in substance and in fact.

Sworn *etc.*)

*(For a defence to a cross-claim see the prescribed form of defence and cross-claim, Form 20.)*

**Sch 1, Form 17, O.8, r.5**

**Form 17.**

O.8, r.5

**REPLY**

*(Plead as required by the Rules, and see Order 8 Rule 22, relating to joinder of issue.)*

**Form 18.**

O.8, r.5(2)

**REPLY AND DEFENCE TO CROSS-CLAIM**

**REPLY**

*(Plead as required by the Rules.)*

**DEFENCE TO CROSS-CLAIM**

*(Plead as required by the Rules.)*

**Form 19.**

O.8, r.13(3)

**NOTICE TO PLEAD FACTS**

To the plaintiff (cross-defendant): The defendant (cross-claimant), pursuant to Order 8 Rule 13(3) requires you (in respect of your cross-claim) to plead the facts on which you rely.

**Sch 1, Form 20, O.8, r.39**

**Form 20.**

O.8, r.39

No. . . . of 20...

In the National Court of Justice at .

. . Papua New Guinea JOHN

PUKARE

Plaintiff

HAREA-AVO

Defendant

HAREA-AVO

Cross-claimant

JOHN PUKARE

Cross-defendant

**DEFENCE AND CROSS-CLAIM**

**DEFENCE**

1. *(plead as required by the Rules and see the prescribed form of defence under Order 8 Rule 4.)*

2. *(plead as required by the Rules and see the prescribed form of defence under Order 8 Rule 4.)*

**CROSS-CLAIM**

The cross-claimant HAREA-AVO claims—

1. *(specify the relief claimed)*

2. *(specify the relief claimed)*

*(Particulars under Order 8 Division 2 may be given in the manner indicated in the prescribed form of statement of claim, Form 5.)*

O.8, r.39

*(Read this form with Form 20)*

**SECOND CROSS-CLAIM**

1. *(plead as required by the Rules including the facts required by Order 8, rule 39(6).)*

2. *(plead as required by the Rules including the facts required by Order 8, rule 39(6).)*

The second cross-claimant HENRY TOMANA claims—

1. *(specify the relief claimed)*

2. *(specify the relief claimed)*

*(Particulars under Order 8 Division 2 may be given in the manner indicated in the form of statement of claim, Order 8 Rule 39.)*

To NILANG-SAKO:

1. You are liable to suffer judgement or an order against you unless the prescribed form of notice of your notice of intention to defend is received in the Registry within (30) days after service of this statement of cross-claim on you and you comply with the rules of court relating to your defence.

2. *(Where Order 8 Rule 24 applies, add: You are required to verify your defence.)*

3. *(Where Order 4 Rule 10 applies, add: You may, within (30) days after service of this second cross-claim on you, pay to HENRY TOMANA or his solicitor the amount claimed (together with interest thereon at the rate claimed (if no rate is specified, insert "of 8% yearly") from the date of filing of this second cross-claim until payment and also K\* for costs. Further proceedings against you will be stayed when you also file a prescribed form of notice of payment.)*

Second cross-claimant; *(name, address and occupation)* (a minor)

(Next friend: *(name, address and occupation)*)

Solicitor: *(name, address and telephone number)*

Solicitor's agent: *(name, address and telephone number)*

Second cross-claimant's address for service; *(Order 6 Rule 7)*

Address of Registry:

*(\* See Order 4 Rule 10)*

## Sch 1, Form 22, O.8, r.43

Form 22.

O.8, r.43

### NOTICE FOR PLEADINGS

To *(name)* . . . *(name)* . . . requires you to serve on him, within (3) days after service of this notice upon you, copies of all pleadings (*or as the case may require*) filed before the filing of your cross-claim.

Form 23.

O.8, r.56

### NOTICE OF AMENDMENTS

The *(describe document)* was amended on . . . , 20..., pursuant to an order made on . . . , 20..., (pursuant to Order . . . Rule . . . ) by—

omitting "....."  
(omitting "....." and inserting  
".....")  
(inserting ".....")

Form 24.

O.8, r.71

### NOTICE OF DEPOSIT

The defendant has paid (filed a security to pay) into Court K . . .

That sum is in answer to the cause of action (all the causes of action) on which the plaintiff claims (and after taking into account this defendant's cause of action (for *(specify)*) on his cross-claim).

*or*

Of that sum, K . . . is in answer to the cause of action for *(specify)* on which the plaintiff claims (and after taking into account *as above*) and K . . . is in answer to the cause of action for *(specify)* on which the plaintiff claims (and after taking into account *as above*).

## **Sch 1, Form 25, O.8, r.74**

**Form 25.**

O.8, r.74

### **NOTICE OF WITHDRAWAL OF DEPOSIT**

Pursuant to leave granted by the Court on . . . , 20..., the defendant withdraws the deposit of K . . . *brought into Court* by him on . . . , 20...

**Form 26.**

O.8, r.75(2)

### **NOTICE OF ACCEPTANCE**

The plaintiff accepts K . . . brought into Court by the defendant, C.D., in satisfaction of the causes of action in answer to which it was so brought in, as against C.D. (and abandons all his other causes of action as against C.D.)(and abandons those causes of action as against the defendants E.F. and G.H.).

**Form 27.**

O.8, r.75(5)

### **NOTICE CONFIRMING DEPOSIT**

The defendant confirms the notice dated . . . , 20..., of deposit of K . . . brought into Court before the beginning of the trial.

**Form 28.**

O.8, r.77

### **NOTICE WITHDRAWING ACCEPTANCE**

(Pursuant to leave granted by the Court on . . . 20..., ) the plaintiff withdraws his acceptance of money brought into Court by the defendant (*name*) . . . , being the acceptance mentioned in the plaintiff's notice of acceptance dated . . . , 20...

**Sch 1, Form 29, O.8, r.81**

**Form 29.**

O.8, r.81

**SECURITY TO PAY INTO COURT**

*(Name of authorized person under Order 8 Rule 81)* whose address for service is . . .  
promises to the Registrar to pay K . . . into Court according to the requirements of Order  
8 Division 6 of the Rules.

Signed

*or*

The Common Seal  
*(and so on)*

**Form 30.**

O.9, r.1

**NOTICE FOR DISCOVERY**

To the Defendant:

The plaintiff requires you to give discovery of documents with (without) verification  
within (15) days after service of this notice on you.

O.9, r.6

**LIST OF DOCUMENTS**

Pursuant to notice filed (*or* order made) on . . . , 20..., the defendant says:

1. The defendant has in his possession, custody or power, the documents enumerated in Schedule 1.
2. The documents enumerated in Part 2 of Schedule 1 are privileged from production on the ground—
  - (a) as to documents numbered 4 to 7 inclusive, that (*state the ground*);
  - (b) as to documents 8 and 9, that (*state the ground*).
3. The defendant has had, but does not now have, in his possession, custody or power, the document enumerated in Schedule 2.
  4. (a) document 10, referred to in Schedule 2 was last in the defendant's possession, custody or power on (*state when*);
  - (b) (*state what has become of it*); or
  - (c) to the best of the defendant's knowledge, information and belief, (*state in whose possession, custody or power it is and where it is*).
5. To the best of the defendant's knowledge, information and belief neither the defendant nor his solicitor nor any other person on his behalf has now, or ever had, in his possession, custody or power, any document relating to any matter in question between the plaintiff and the defendant (*to be altered according to the terms of any order made under Order 9 Rule 5*), other than the documents enumerated in the said Schedule 1 and 2.

(*Describe each document in the schedules as original or copy, see Order 9 Rule 31.*)

**Sch 1 to Form 31 per O.9, r.6**

**SCHEDULE 1.**

**Part 1.**

1.

2.

3.

**Part 2.**

4.

5.

6.

7.

8.

9.

(continued next page)

## **Sch 2 to Form 31 per O.9, r.6**

### **SCHEDULE 2.**

10.

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)*

### **AFFIDAVIT**

On . . . , 20..., I, . . . (*name*) . . . , say on oath—

1. I and the defendant.
2. The statements of fact made in Paragraphs 1, 2, 3, 4 and 5 of the above list are true.

Sworn *etc.*

I certify that, according to my instructions, this list and the statements in it are correct.

The documents enumerated in Part 1 of Schedule 1 may be inspected at (*address*) . . . on . . . , 20..., between (*specify time under Order 9 Rule 6*).

Defendant's Solicitor

**Sch 1, Form 32, O.9, r.9**

**Form 32.**

O.9, r.9

**NOTICE TO PRODUCE DOCUMENTS**

*(heading as in Form 1 or Form 3)*

The plaintiff (*or* defendant) requires you to produce for his inspection the following documents referred to in your statement of claim (*or* defence, *or* affidavit), dated the . . . day of . . . 20...

*(describe documents required)*

Dated the . . . day of . . . 20...

To . . . Solicitor for . . .

*(Signature)*

**Form 33.**

O.9, r.9

**NOTICE OF APPOINTMENT TO INSPECT DOCUMENTS**

*(heading as in Form 1 or Form 3)*

You can inspect the documents mentioned in your notice of the . . . day of . . . 20..., (except the deed numbered in that notice)

*(here set out particulars required by Order 9 Rule 9(3)(c) where appropriate)*

at my office on . . . next the . . . instant between the hours of . . . and . . . o'clock.

Dated the . . . day of . . . 20...

To . . . Solicitor for . . .

*(Signature)*

within (15) days after service of this notice on each of them respectively, the defendant C.D. is required to answer interrogatories numbered 1 to 8 (and verify his answers) and the defendant E.F. is required to answer interrogatories numbered 1 to 12 (and verify his answers).

**INTERROGATORIES**

1. *(state the question)*

2. *(state the question)*

O.9, r.17

**NOTICE TO ANSWER INTERROGATORIES**

Within (15) days after service of this notice on each of them respectively, the defendant C.D. is required to answer interrogatories numbered 1 to 8 (and verify his answers) and the defendant E.F. is required to answer interrogatories numbered 1 to 12 (and verify his answers).

**INTERROGATORIES**

1.      *(state the question)*
2.      *(state the question)*

**Form 35.**

O.9, r.22

**STATEMENT IN ANSWER TO INTERROGATORIES**

The defendant C.D. answers the plaintiff's interrogatories specified in notice filed on . . . , 20..., as follows:

- 1A.    *(State in full the interrogatory.)*
- 1B.    *(State the answer.)*
- 2A.    *(State in full the interrogatory.)*
- 2B.    (a)     The defendant objects to answer on the grounds of privilege;  
         (b)     *(State the facts on which this objection is based.)*

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)*

O.9, r.22

**VERIFIED STATEMENT IN ANSWER TO INTERROGATORIES**

The defendant E.F. Pty Ltd answers the plaintiff's interrogatories specified in notice filed on . . . , 20. . . , as follows:

1A. *(State in full the interrogatory.)*

1B. *(State the answer.)*

2A. *(State in full the interrogatory.)*

2B. (a) The defendant objects to answer on the grounds of privilege;

(b) *(State the facts on which this objection is based.)*

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)*

**AFFIDAVIT**

On . . . , 20. . . , I (name) . . . , of (address) . . . (occupation) . . . say on oath—

1. I am the secretary of the defendant and am authorized to make this affidavit on its behalf.

2. *(The deponent should state which of the answers are true to his own knowledge and which are true to the best of his knowledge, information and belief based on his inquiries of officers of the company and others and on his other investigations.)*

Sworn etc.

O.9, r.35

**NOTICE TO ADMIT FACTS (AND AUTHENTICITY OF DOCUMENTS)**

To the Defendant:

The plaintiff requires you to admit for the purpose of these proceedings only—

1.     *(state each fact)*
2.     *(state each fact)*

The plaintiff requires you to admit for the purpose of these proceedings only the authenticity of the following documents—

1.     *(describe each document)*
2.     *(describe each document)*

If you do not, within 14 days after service of this notice on you, serve a notice on the plaintiff disputing any fact (and the authenticity of any document) above specified, that fact (and the authenticity of that document) shall, for the purpose of these proceedings, be admitted by you in favour of the plaintiff.

O.9, r.35

**NOTICE DISPUTING FACTS (AND AUTHENTICITY OF DOCUMENTS)**

The defendant disputes the following facts specified in the plaintiffs notice dated . . . , 20...—

1.       (*state each fact*)
2.       (*state each fact*)

(The defendant disputes the authenticity of the following documents which were specified in the plaintiff's notice (or list of documents) dated . . . , 20...—

1.       (*describe each document*)
2.       (*describe each document*)

(The defendant admits—

1.       (*state each fact or describe each document*))
2.       (*state each fact or describe each document*))

O.9, r.37

**NOTICE FOR MEDICAL EXAMINATION**

(*heading as in Form 1 or Form 3*)

You are requested to arrange for (*the person concerned*) to submit to a medical examination by Dr. . . . (*name*) at . . . (*set out place and time*).

(*Person concerned*) may have a doctor chosen by him (her) to attend the examination. Please inform me if that is his (her) intention.

Dated the . . . day of . . . 20...

To . . . Solicitor for . . .

(*Signature*)

**Sch1, Form 40, O.10, r.4**

**Form 40.**

O.10, r.4

**NOTICE TO SET DOWN FOR TRIAL**

*(heading as in Form 1 or Form 3)*

The plaintiff requests that the proceedings be set down for trial at *(state the place for trial as fixed by or under Order 10 Rule 2)* generally *(or for trial of the following issues: (state the issues))*.

**Form 41.**

O.10, r.9

**NOTICE OF TRIAL**

*(heading as in Form 1 or Form 3)*

This cause *(or the issues in this . . . ordered to be tried or inquiry for the assessment of damages in this . . . )* will be tried at Waigani *(or as the case may be)* on *(date)*

Dated the . . . day of . . . 20...

Registrar.

To . . . , Defendant's Solicitor *(or as the case may be)*.

**Form 42.**

O.11, r.2

**ORDER**

THE COURT ORDERS that—

1. The Superintendent of . . . , shall have . . . *(name)*, a prisoner, before this Court to be examined as a witness and duly returned to confinement.
2. The first day on which he is required to have the prisoner before the Court is . . . , 20. . . , at . . . a.m./p.m. at . . . *(address of Court)*.

*(Complete as in general form of minute of order under Order 12 Rule 18.)*

**Sch1, Form 43, O.11, r.2**

**Form 43.**

O.11, r.2

**NOTICE TO PRODUCE**

To the Plaintiff:

The defendant requires you to produce at the trial (*or otherwise specify the occasion or place*) the following documents for the purpose of evidence—

*(enumerate the documents or things).*

**Form 44.**

O.11, r.2

**SUMMONS FOR PRODUCTION**

To (name)

(address)

THE COURT ORDERS that you shall attend and produce this summons and the documents and things described in the schedule—

- (a) before (the Court *or as the case may be*);
- (b) at (*address of Court or other place*);
- (c) on . . . , 20..., at . . . a.m./p.m. and until you are excused from further attending; but—
  - (i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you; and
  - (ii) if you are not a party to these proceedings, instead of so attending you may produce this summons and the documents and things described in the schedule to a clerk of the Court at the above place not later than the day before the first day on which you are required to attend.

**SCHEDULE**

(description)

Dated . . . , 20...

By the Court

(Signature and description of Officer of the Court)

Note: If you do not comply with this summons you may be arrested. Issued at the request of . . . (name), the plaintiff's solicitor (*or as the case may be*).

O.11, r.2

**SUMMONS TO GIVE EVIDENCE**

To      *(name)*  
          *(address)*

THE COURT ORDERS that you shall attend for the purpose of giving evidence—

- (a) before (the Court *or as the case may be*);
- (b) at *(address of Court or place)*;
- (c) on . . . , 20..., at . . . a.m./p.m. and until you are excused from further attending;

but you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Dated . . . , 20...

By the Court

*(Signature and description of Officer of the Court)*

Note: If you do not comply with this summons you may be arrested. Issued at the request of . . . *(name)*, the plaintiff's solicitor (*or as the case may be*).

O.11, r.2

**SUMMONS FOR PRODUCTION AND TO GIVE EVIDENCE**

To (name)

(address)

THE COURT ORDERS that you shall attend and produce this summons and the documents and things described in the schedule and attend for the purpose of giving evidence—

- (a) before (the Court *or as the case may be*);
- (b) at (address of Court or place);
- (c) on . . . , 20..., at . . . a.m./p.m. and until you are excused from further attending; but you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you.

**SCHEDULE**

(description)

Dated . . . , 20...

By the Court

(Signature and description of Officer of the Court)

Note: If you do not comply with this summons you may be arrested. Issued at the request of . . . (name), the plaintiff's solicitor (*or as the case may be*).

O.11, r.8

**ORDER FOR EXAMINATION**

THE COURT ORDERS that . . . (name) of . . . (address within the State) be examined on oath before . . . (name and address or describe examiner).

(Complete as in general form of minute of order Order 12 Rule 18.)

O.11, r.8

**ORDER APPOINTING EXAMINER**

THE COURT ORDERS—

1. That . . . (*name and address (or description)*) be appointed examiner for the purpose of taking the examination on oath of a witness . . . (*name*) of . . . (*address out of Papua New Guinea*) in accordance with the Rules of this Court (but without the power to compel a witness to attend, *if this is required by a convention*).

2. That the party obtaining this order give to each other interested party (7) days' notice in writing of the date on which he proposes to send the minute of this order to the examiner.

3. That not less than (4) days after that notice has been given each party shall give to the other the name of his agent at . . . (*place*) to whom notices may be sent.

(*Complete as in general form of minute of order under Order 12 Rule 18*).

**Form 49.**

O.11, r.8

**ORDER**

THE COURT ORDERS that a letter of request be sent to the judicial authorities of . . . (*country*) to take or cause to be taken the evidence of . . . (*name*).

(*Complete as in general form of minute of order under Order 12 Rule 18*).

O.11, r.22

**AFFIDAVIT**

On . . . , 20..., I . . . (*name, address and occupation*) say on oath—

1 . 2.

Sworn at (*place*)

before me:

(*or*)

**AFFIDAVIT**

On . . . , 20..., I . . . (*name, address and occupation*) and on . . . , 20..., I . . . (*name, address and occupation*) say on oath—

1. We are the directors of etc.

2. I, . . . (*name*) am a director of etc.

Sworn by (*name*)

at (*place*) before me:

Sworn by (*name*)

at (*place*) before me:

*(where Order 11 Rule 22(4) applies, It appearing to me that the deponent is blind, I certify that this affidavit was read to him in my presence and that he seemed to understand it.*

(*Signature*))

**FORM OF JUDGEMENT**

O.12, r.17

1. *General form of judgement—*

JUDGEMENT—

that—(*terms of the judgement, in numbered paragraphs, if necessary*).

This judgement takes effect on (*insert the date fixed by reference to Order 12 Rule 3*).

By the Court

Registrar

2. *Terms of particular judgments—*

(a) *Damages to be assessed*

JUDGEMENT—

that the defendant is liable to the plaintiff for damages and for costs.

THE COURT ORDERS that the damages be assessed.

(b) *Debt or damages*

JUDGEMENT—

that the defendant pay to the plaintiff K . . . (*amount of debt of damages*) and K . . . costs (*or as the case may be*).

(c) *Possession of land*

JUDGEMENT—

1. that the defendant give the plaintiff possession of the land described in the schedule (but so as not to disturb the occupation of (*name of occupier*)).

2. that the defendant pay to the plaintiff K . . . costs (*or as the case may be*).

**SCHEDULE**

(*Describe land*)

(d) *Detention of goods*

JUDGEMENT—

that the defendant is liable to the plaintiff—

1. for the value of (or delivery to the plaintiff of) the goods described in the schedule;

2. (for damages); and

### **Sch 1 to Form 51, O.12, r.17**

3. (for costs).

THE COURT ORDERS that the value of the goods (and the damages) be assessed

#### **SCHEDULE**

*(Describe goods)*

*(In the above form, where judgement is entered by default under Order 12 Rule 29, omit the appropriate words in brackets according to whether Rule 29(a) or (b) applies.)*

*(e) Detention of goods*

JUDGEMENT—

1. that the defendant deliver to the plaintiff the goods described in the schedule (or pay to the plaintiff K . . . the value of the goods described in the schedule);
2. that the defendant pay to the plaintiff K . . . damages; and
3. that the defendant pay to the plaintiff K . . . costs *(or as the case may be)*.

#### **SCHEDULE**

*(Describe goods)*

O.12, r.18

**Form 52.**

### **GENERAL FORM OF MINUTE OF ORDER**

#### **ORDER**

THE COURT ORDERS that—

- 1.
- 2.
- 3.

Ordered . . . , 20..., and entered . . . , 20...

(Judge)

*(or by the Court Registrar)*

O.13, r.3

**WRIT OF POSSESSION**

TO THE SHERIFF:

In respect of the judgement entered on . . . , 20..., enter the land described in the schedule and cause the plaintiff . . . (*name*) to have vacant possession of it (but, so as not to disturb the occupation of . . . (*name, description and extent of restriction as directed in the judgement*)) (and levy on the property of . . . (*name*), which is authorized to be taken in execution for—

*continue as in Writ for Levy of Property, Form 58).*

**SCHEDULE**

*(Describe the land as in the judgement.)*

Issued . . . , 20...

By the Court

Registrar

Issued at the request of (the plaintiff . . . (*name and address*) or . . . (*name*) of . . . (*address and telephone number*) solicitor for the plaintiff . . . (*name and address*)).

(The defendant resides at . . . (*address*).)

O.13, r.4

**WRIT OF SPECIFIC DELIVERY**

**TO THE SHERIFF:**

In respect of the judgement entered on . . . , 20..., cause the goods described in the schedule to be delivered to . . . (*name*) (and levy on the property of . . . (*name*), which is authorized by law to be taken in execution for—

*continue as in Writ for Levy of Property, Form 58).*

**SCHEDULE**

*(Describe the goods as in the judgement.)*

Issued . . . , 20...

By the Court

Registrar

Issued at the request of (the plaintiff . . . (*name and address*) or . . . (*name*) of . . . (*address and telephone number*) solicitor for the plaintiff . . . (*name and address*)).

(The defendant resides at . . . (*address*).)

O.13, r.4

**WRIT OF DELIVERY**

**TO THE SHERIFF:**

In respect of the judgement entered on . . . , 20..., cause the goods described in the schedule to be delivered to . . . (*name*) and levy on the property of . . . (*name*) which is authorized by law to be taken in execution—

(a) if you cannot cause the goods to be so delivered, for K . . . (*amount of value of goods assessed under the judgement*);

(b) for the amount payable under the judgement, being K . . . (*amount of damages*) on . . . , 20...,

*continue as in Writ for Levy of Property, Form 58*)

(c) for K . . . being costs of this writ; and

(d) for your fees,

and pay the amount so levied other than your fees, to . . . (*name*) or otherwise as the law may require.

**SCHEDULE**

*(Describe the goods as in the judgement.)*

Issued . . . , 20...

By the Court

Registrar

Issued at the request of (the plaintiff . . . (*name and address*) or . . . (*name*) of . . . (*address and telephone number*) solicitor for the plaintiff . . . (*name and address*)).

(The defendant resides at . . . (*address*).)

O.13, r.7(2)

**MINUTE OF ORDER**

*(No heading or title: for subscribing to the minute of order.)*

To . . . *(name of corporation)* and . . . *(name of officer)*:

If . . . *(name of corporation)* neglects to obey this order within the time specified in the order (disobeys this order, *as the case may be*) . . . *(name of officer)* and . . . *(name of corporation)* will be liable to sequestration of property and . . . *(name of officer)* to imprisonment.

O.13, r.13

**ORDER**

THE COURT ORDERS that—

1. HENRY TOMANA of . . . (*address*) shall attend—
  - (a) before (the Registrar *or as the case may be*);
  - (b) at . . . (*address of Court or place*);
  - (c) on . . . , 20..., at . . . a.m./p.m. and until he is excused from further attending;
  - (d) for the purpose of being examined as to the question—
    - (i) whether any and, if so, what debts are owing to him; and
    - (ii) whether he has any and, if so, what other property or means of satisfying the judgement or order by which he is bound;
    - (iii) as to the whereabouts of the goods which he is bound, pursuant to the judgement which has been entered against him, to deliver to the plaintiff, *or as the case may be*).
2. HENRY TOMANA shall attend and produce all documents or things in his possession, power or custody relating to those questions (and—*here specify particular documents or things, if any*).
3. He need not attend or produce any document on any day unless his reasonable expenses have

been paid or tendered to him.

(*Complete as in general form of minute or order under Order 12 Rule 18.*)

O.13, r.28

**WRIT FOR LEVY OF PROPERTY**

TO THE SHERIFF:

In respect of the judgement (order) entered on 1 March , 20..., levy on the property of . . . (*name*), which is authorized by law to be taken in execution, for—

(a) the amount payable under the judgement (order) being K . . . on . . . , 20..., (plus interest at the yearly rate of . . . % on the principal sum of K . . . from that date, that is K . . . daily), subject to any payment in reduction thereof;

(b) K . . . being costs of this writ; and

(c) your fees,

and pay the amount so levied other than your fees, to . . . (*name*) or otherwise as the law may require.

Issued . . . , 20...

By the Court

Registrar

Issued at the request of the plaintiff . . . (*name and address*) (or . . . (*name*) of . . . (*address and telephone number*) solicitor for the plaintiff . . . (*name and address*).)

(The defendant resides at . . . (*address*).)

O.13, r.36

*(Heading and title if possible.)*

**NOTICE OF CLAIM**

The claimant claims the property described in the schedule, being (part of) the property taken (intended to be taken) in execution by the Sheriff at . . . (*address*) under process against . . . (*name*).

**SCHEDULE**

*(description)*

Dated . . . , 20...

*(Signature)*

Claimant's Solicitor

Claimant: . . . (*name*) Place

of abode:

Address for service:

To the execution creditor:

If you do not, within (4) days after service of this notice on you, serve on the Sheriff a notice that you admit this claim, the Court may on application by the Sheriff grant relief by way of interpleader.

If you admit the claim, you will not be liable to the Sheriff for any fees or expenses incurred by him after you serve on him notice that you admit it.

*(Signature)*

Sheriff

O.13, r.56

**GARNISHEE NOTICE**

1. Particulars—

- (a) Judgement creditor: . . . (*name, address and occupation*).
- (b) Judgement debtor: . . . (*name, address and occupation*).
- (c) Garnishee: . . . (*name, address and occupation*).
- (d) Debt: . . . (*see Order 13 Rule 56(7)*).
- (e) Leave granted on . . . , 20. . .
- (f)
  - (i) amount due to judgement creditor at the date leave granted K \_\_\_\_\_
  - (ii) provision for subsequent interest and for costs K \_\_\_\_\_
  - sum required K \_\_\_\_\_

2. The debt is attached and bound in the hands of the garnishee to the extent of the sum required on and after service of this notice on the garnishee.

3. The judgement creditor will at . . . a.m./p.m. on . . . , 20..., at . . . (*address of Court*) move the Court for an order for payment under Order 13 of the Rules of Court.

4. The garnishee may pay the debt attached into Court to the extent of the sum required, retaining, if he pays into Court before . . . , 20. . . , K . . . for his costs. Otherwise the Court may order him to pay the debt attached to the judgement creditor to the extent of the sum required and interest thereon and costs.

5. Provision exists for the determination at the hearing of any dispute by the garnishee of his liability to the judgement debtor for the debt attached.

*(Follow the prescribed form of conclusion of documents for use by a party, Form 4, and add—*

The address for service of the judgement creditor is . . . (*address*).)

**Sch 1, Form 61, O.13, r.71**

**Form 61.**

O.13, r.71

**ORDER**

THE COURT ORDERS that—

1. the judgement dated . . . , . . . , of the . . . (*court*) by which it was adjudged that . . . (*name*) pay money to . . . (*name*) be registered;
2. . . . (*name*) may within . . . days after service on him of notice of registration apply to set aside the registration;
3. the amount for which judgement may be enforced is K . . . ;
4. the costs of and incidental to the application for this order and of registration of the judgement be added to the amount specified in Paragraph 3 of this order.

*(Complete as in general form of minute of order under Order 12 Rule 18.)*

**Form 62.**

O.13, r.73

**NOTICE OF REGISTRATION OF JUDGEMENT**

To: . . . (*name*)

1. the judgement of . . . (*here follow the terms of the order*) has been registered in this Court;
2. the amount for which judgement may be enforced against you is K . . . and K . . . for costs;
3. you may, within . . . days after the service of this notice on you, file notice of motion to set aside the registration;

*(if applicable and see Order 13 Rule 73(4),*

4. the address for service of the above plaintiff, the judgement creditor, is . . . (*state address*).)

Dated . . . , 20...

Solicitor

for

Plaintiff

O.14, r.18

**DEED**

**PARTICULARS**

1. Date: . . . , 20...
2. Receiver: . . . (*name*)  
(*address for service*)
3. Guarantor: . . . (*name*)  
(*address for service*)
4. Date of order for appointment of Receiver: . . . , 20. . . .

THIS DEED made between the Guarantor and the Registrar of the National Court of Justice witnesses that the Guarantor promises the Registrar that if the Receiver does not account to the Court for what he receives as Receiver or does not deal with what he receives as Receiver as the Court directs the Guarantor will pay to the Registrar whatever is required to make good the default to a limit of K . . .

Signed (*and so on*).

O.14, r.46

**WARRANT FOR ARREST**

TO THE SHERIFF—

Arrest . . . (*name*) and bring him before the Court to answer a charge of contempt detaining him in custody in the meantime unless, by paying the sum of K . . . into Court (*or as the case may be*) he gives security for his appearance in person before the Court to answer the charge and to submit to the (judgement *or*) order of the Court.

Dated . . . , 20...

Judge.

O.14, r.48

**WARRANT FOR COMMITTAL**

TO THE SHERIFF—

Take . . . (*name*) to . . . (*name of Correctional Institution*) and deliver him to the Superintendent of that Corrective Institution.

TO THE SUPERINTENDENT OF . . . (*name of Correctional Institution*)

Receive . . . (*name*) into your custody and keep him there until the further order of this Court (*or as the case may be*).

Dated . . . , 20...

Judge.

O.18, r.2

*(heading as in Form 1 or Form 3)*

**NOTICE OF APPEAL**

The above-named appellant being aggrieved by a decision of a Local Court hereby appeals from that decision to the National Court.

1. The decision appealed against is the (decision/order/sentence) of the Local Court held at . . . (*place*) given on . . . (*date*) whereby (*set out*).
2. The appellant appeals against the whole of the decision (that part of the decision whereby (*set out*)).
3. The grounds relied on in support of the appeal are (*set out*).
4. The order which the appellant seeks in lieu of the decision appealed from is (*set out*).
5. The full names and addresses of the appellant and respondent respectively are:  
    (a) . . . (*name and address*) Appellant  
    (b) . . . (*name and address*) Respondent
6. The appellant's solicitor is . . . (*name and address*) whose telephone number is . . . . (*set out*).

Dated the . . . day of . . . 20...

Appellant *or*

Appellant's Solicitor(s)

O.18, r.2

*(heading as in Form 1 or Form 3)*

**CONFIRMATION OF NOTICE OF APPEAL**

The above-named appellant hereby confirms the notice of appeal given by him against a decision of a Local Court.

1. The decision appealed against is the (decision/order/sentence) of the Local Court held at . . . (*place*) given on . . . (*date*) whereby (*set out*).
2. Notice of appeal was lodged with the Registrar by radiogram on the . . . day of . . .  
. . .
3. The appellant appeals against the whole of the decision (that part of the decision whereby (*set out*)).
4. The grounds relied on in support of the appeal are (*set out*).
5. The order which the appellant seeks in lieu of the decision appealed from is (*set out*).
6. The full names and addresses of the appellant and respondent respectively are:  
    (a) . . . (*name and address*) Appellant  
    (b) . . . (*name and address*) Respondent

Dated the . . . day of . . . 20..

Appellant *or*

Appellant's Solicitor(s)

**Sch 1, Form 68, O.18, r.4**

**Form 68.**

O.18, r.4

*(heading as in Form 1 or Form 3)*

**APPLICATION FOR BAIL**

The above-named appellant hereby applies to the National Court to be admitted to bail.

In the Local Court held at . . . (*place*) on . . . (*date*) the appellant was found guilty of (*set out*) . . . and was sentenced to . . . (*set out*) (and it was further ordered . . . (*set out*)).

The grounds of the application are as follows:

*(set out)*

Notice of appeal against that decision of the Local Court was lodged with the Registrar of the National Court on . . . (*date*).

Dated the . . . day of . . . 20...

Applicant *or*

Applicant's Solicitor(s)

This application will be heard at the National Court at . . . on . . . day the . . . day of . . . 20..., at . . . o'clock in the . . . noon or as soon thereafter as counsel may be heard.

Registrar

**Form 69.**

O.18, r.5

*(heading as in Form 1 or Form 3)*

**NOTICE OF HEARING OF APPEAL**

This appeal will be heard at the first sitting of the National Court at . . . (*place*) to be held after the expiration of . . . (*number*) days from . . . (*date*) or as soon thereafter as counsel may be heard.

Dated the . . . day of . . . 20...

Registrar.

O.19, r.8

**SUMMONS**

*(As to heading, see O.19, r.3)*

The plaintiff . . . *(name)* the executor named in the will dated . . . , 20..., *(where applicable and 2 codicils dated . . . (date) and . . . (date))* of . . . *(name)* late of . . . *(place)* labourer deceased claims that probate of the will . . . *(where applicable . . . and 2 codicils)* be granted to him.

*or*

The plaintiff . . . *(name)* a beneficiary named in the will dated . . . , 20..., *(where applicable and 2 codicils dated . . . (date) and . . . (date))* of . . . *(name)* late of . . . *(place)* labourer deceased claims that administration with the will *(where applicable and 2 codicils)* annexed of the estate of the deceased be granted to him *(where applicable . . . (name) the executor named in the will having renounced probate)(where applicable and that the administration bond be dispensed with)*.

*or*

The plaintiff . . . *(name)* the widow of . . . *(name)* late of . . . *(place)* labourer deceased claims that administration of the estate of the deceased be granted to her *(where applicable and that the administration bond be dispensed with)*.

*or*

The plaintiff . . . *(name)* *(where applicable as attorney of . . . (name))* claims that probate of the will dated . . . , 20..., *(or, where applicable letters of administration of the estate)* of . . . *(name)* late of . . . *(place)* labourer granted by . . . *(description of court)* to . . . *(name)* be sealed with the seal of this Court *(where applicable and that the administration bond be dispensed with)*.

Plaintiff: *(name, address and occupation)* Solicitor:

*(name, address and telephone number)* Solicitor's agent:

*(name, address and telephone number)* Plaintiff's address

for service: *(Order 6 Rule 7.)*

Filed: *(date)*

*(Signature)*

Plaintiff's

Solicitor

**Sch 1, Form 71, O.19, r.10**

Form 71.

O.19, r.10

# NOTICE OF INTENDED APPLICATION FOR PROBATE

In the National Court  
of Justice

After 14 days from publication of this notice an application for probate of the will dated . . . , 20..., (where applicable, and 2 codicils dated . . . (date) and . . . (date)) of . . . (name in capitals) late of . . . (place) . . . labourer, will be made by . . . (name). Creditors are required to send particulars of their claims on his estate to . . . (name) solicitors . . . (address) (and, where applicable, or their agents, . . . name, address).

(Form 4 does not apply.)

**Form 72.**

O.19, r.10

## NOTICE OF INTENDED APPLICATION FOR ADMINISTRATION

In the National Court  
of Justice

After 14 days from publication of this notice an application for administration (or where applicable administration with the will dated . . . , 20..., annexed) of the estate of . . . (*name in capitals*) . . . late of . . . (*place*) . . . *labourer*, will be made by . . . (*name*) the (*relationship to deceased or capacity of applicant*). Creditors are required to send particulars of their claims on his estate to . . . (*name*) solicitors . . . (*address*) (*and, where applicable, or their agents, . . . name, address*).

(Form 4 does not apply.)

O.19, r.10

**NOTICE OF INTENDED APPLICATION FOR RESEALING**

In \_\_\_\_\_ the \_\_\_\_\_ National \_\_\_\_\_ Court  
of Justice

After 14 days from publication of this notice an application will be made that the probate of the will and codicils (*or where applicable* letters of administration of the estate) of . . . (*name in capitals*) late of . . . (*place*) . . . granted by . . . (*court*) . . . to . . . (*name*) . . . be sealed with the seal of this Court. Creditors are required to send particulars of their claims on his estate to . . . (*name*) solicitors . . . (*address*)(*and, where applicable*, or their agents, . . . *name, address*).

(*Form 4 does not apply.*)

O.19, r.14

**RENUNCIATION OF PROBATE**

(*As to heading, see O.19, r.3.*)

I, . . . (*name*) . . . of . . . (*address of place of residence*) . . . labourer declare—

1. I am the executor (or one of the executors or *as the case may be*) appointed by the will dated . . . , 20..., (*where applicable*), and 2 codicils dated . . . (*date*) . . . and . . . (*date*) . . . of . . . (*name*) . . . late of . . . (*place*) . . . labourer who died on . . . (*date*).

2. I have not intermeddled in the estate of the deceased.

3. I renounce all right to probate of the will (*where applicable* and codicils) and to all trusts, powers and authorities expressed by the will (*where applicable* and codicils) to be made or given to me.

Dated: (*date*)

Signed in the presence of }

## Sch 1, Form 75, O.19, r.15

Form 75.

O.19, r.15

### AFFIDAVIT OF ATTESTING WITNESS

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I . . . *(name, address and occupation)* . . . say on oath—

1. On . . . *(date)* . . . the document annexed and marked "A" was signed as now appears on the document by . . . *(name)* . . . the deceased as his will in the presence of me and of . . . *(name of other witness)* . . . present at the same time and then at the request of the deceased attested and subscribed by us in his presence and in the presence of each other.

2. The signatures . . . *(set out)* . . . and . . . *(set out)* . . . subscribed as witnesses to the will are respectively those of me and . . . *(name of other witness)*.

Sworn at }

before me }

Form 76.

O.19, rr.24,25,26

### AFFIDAVIT OF DEATH

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I . . . *(name, address and occupation)* . . . say on oath—

1. I was well acquainted with . . . *(name of deceased)* late of . . . *(place)*. . . *(occupation)* for . . . *(number)* years.

2. I saw his dead body on the day he died, that is to say, on . . . *(date)*.

3. I am not interested in his estate.

*or in lieu of Paragraphs 2 and 3*

2. I believe that he is . . . *(name in certificate of registration of death)* referred to in the certificate of registration of death which is annexed and marked "A" .

Sworn at }

before me }

O.19, r.24

**AFFIDAVIT OF EXECUTOR**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I . . . *(name, address and occupation)* say on oath—

1. My full residential address is *(address)*.
2. The document dated . . . *(date)* and signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of . . . *(name)*, the deceased.
3. My means of identifying the will are *(state these)*.
4. I am the executor named in the will.
5. The attesting witnesses to the will are . . . *(name)* and . . . *(name)*.
6. The deceased did *(where applicable not)* marry after the will was made. *(If he did marry state particulars of the marriage.)*
7. The deceased left an estate within Papua New Guinea.
8. I am over 21 years of age.
9. *(where applicable)* . . . *(name)* one of the executors appointed by the will died on . . . *(date)*.
10. *(where applicable)* . . . *(name)* one of the executors named in the will renounced probate of the will on . . . *(date)*.
11. I believe that the estate is under the value of K . . . *(gross value)*.

Sworn at }

before me }

**Sch 1, Form 78, O.19, rr.24—27**

**Form 78.**

O.19, rr.24, 25, 26, 27.

**AFFIDAVIT OF PUBLICATION AND SEARCH**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I . . . (*name, address and occupation*) say on oath—

1. A notice, a copy of which is annexed and marked "A", was published on . . . (*date*) in the . . . (*name*) which is a daily newspaper, circulating in Port Moresby.
2. (*where applicable*) The notice was also published on . . . (*date*) in the . . . (*name*) which is a newspaper published and circulating in the district where . . . (*name*) the deceased, resided at the time of his death.
3. I have this day searched in the Registry of the Court and have found—
  - (a) no evidence of a caveat having been lodged relating to any grant or reseal being made in the estate of the deceased (*or state the evidence*);
  - (b) no evidence of a will of the deceased having been deposited in the Registry (*or state the evidence*); and
  - (c) (*where 2 years have elapsed since the date of death*) no evidence of any prior application for probate or administration or resealing in the estate having been made.

Sworn at }

before me }

**Form 79.**

O.19, rr.24,25

**OATH OF OFFICE**

*(As to heading, see O.19, r.3.)*

I . . . (*name*) of . . . (*place*) *labourer* swear that if the National Court of Justice grants to me . . . (*state the grant sought*) of . . . (*name*) late of . . . (*place*) *labourer* I will well and truly administer the estate of the deceased according to law and will render a just and true account of the administration of it to the Court within 12 months from the date of the grant.

Dated: . . . (*date*)

Sworn by: . . . (*name*) } at .

. . . (*place*) }

before me: }

O.19, r.25

**AFFIDAVIT OF APPLICANT FOR ADMINISTRATION**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I, . . . *(name, address and occupation)* say on oath—

1. My full residential address is . . . *(address)*.
2. I am . . . *(state relationship to deceased)* of . . . *(name)* late of . . . *(place)* labourer who died on . . . *(date)*.
3. I believe that the deceased did not leave a will.
4. *(State what searches have been made for a will.)*
5. *(Where the deceased died without issue.)* The deceased was born legitimate.
6. The names, ages and relationship to the deceased of his next of kin who survived him are *(state these)*.
7. *(State the facts showing that the persons named in Paragraph 6 are the persons entitled to share in the estate and that no other person is entitled. Annex appropriate marriage, birth, death and other certificates.)*
8. *(Where applicable state the matters referred to in Order 19 Rule 25(1)(b)(vii).)*
9. I am over 21 years of age.
10. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate.
11. The deceased left an estate within Papua New Guinea.
12. I am not aware of any claims against the estate *(where applicable other than those set out in the affidavit form "D" filed in these proceedings)*.
13. I believe that the estate is under the value of K . . . *(gross value)*.

Sworn at }

before me }

O.19, r.25,33

**CONSENT TO ADMINISTRATION**

*(As to heading, see O.19, r.3.)*

I, . . . *(name)* of . . . *(place)* labourer am . . . *(state relationship)* of . . . *(name)* late of . . . *(place)* labourer. I am over 21 years of age. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate of the deceased.

I consent to letters of administration being granted to . . . *(name)* who is . . . *(state relationship)* of the deceased (*where applicable* and to an administration bond being dispensed with).

Dated: . . . *(date)*

Signed in the presence of: }

**AFFIDAVIT OF WITNESS TO CONSENT**

On . . . , 20..., I, . . . *(name, address and occupation)* say on oath—

1. The above document was signed in my presence on . . . *(date)* by . . . *(name)*.
2. The signatures *(set these out)* are respectively my signature and that of *(name of person consenting)*.

Sworn at }

before me }

O.19, rr. 25, 26, 33

**ADMINISTRATION BOND**

*(As to heading, see O.19, r.3.)*

We *(state the name, address and occupation of the proposed administrator and of each surety to the bond)* jointly and severally covenant to pay to The State K . . . *(penalty of bond)* if administration of the estate of . . . *(name)* late of . . . *(place)* labourer deceased is granted by the National Court of Justice to the said *(name of proposed administrator)* and any one or more of the following occurs, namely:

1. he does not collect, get in and administer the estate according to law;
2. he does not pay out of the estate the just debts of the deceased;
3. he prefers any debt of the deceased to him;
4. he does not file or file and pass his accounts relating to the estate within 12 months after the grant and whenever ordered to do so by the Court.

Dated: . . . *(date)*

Signed sealed and delivered *etc.*

O.19, rr.25,26,33

**AFFIDAVIT OF SURETY**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I, . . . *(name, address and occupation)* say on oath—

1. My full residential address is . . . *(state this)*.
2. I am one of the sureties for . . . *(name)* the intended administrator of the estate of . . . *(name)* late of . . . *(place)* labourer.
3. I am possessed of property to the value of K . . . *(state value)* after deduction of all my just debts and every sum for which I am bail or surety in any civil or criminal matter, action or proceeding.
4. My property consists of *(set out in detail the location and nature of assets and whether held severally or jointly with any other person, and state particulars of encumbrances)*.

Sworn at }

before

me

}

O.19, r.26

**AFFIDAVIT OF APPLICANT FOR ADMINISTRATION WITH THE WILL  
ANNEXED**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I, . . . *(name, address and occupation)* say on oath—

1. My full residential address is *(state this)*.
2. The document, dated . . . *(date)* and signed in the margin by me and the person before whom this affidavit is sworn is, I believe, the last will of . . . *(name)*, the deceased.
3. My means of identifying the will are . . . *(state these)*.
4. The executor named in the will is . . . *(name)* and his full residential address is . . . *(state this)*.
5. The attesting witnesses to the will are . . . *(name)* and . . . *(name)*.
6. The deceased did *(where applicable not)* marry after the will was made. *(If he did marry state particulars of the marriage.)*
7. The deceased left an estate within the Independent State of Papua New Guinea.
8. *(Where applicable)* . . . *(name)*, the executor named in the will, died on . . . *(date)*.
9. *(Where applicable)* . . . *(name)*, the executor named in the will, renounced probate of the will on . . . *(date)*.
10. I am over 21 years of age.
11. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate.
12. The names and ages of the persons entitled to share in the estate are . . . *(state these)*. *(Where the names of all the persons entitled do not appear on the face of the will, state the facts showing that the person named in this paragraph are entitled and that no other person is entitled.)*
13. I am not aware of any claims against the estate *(or as the case may be)*.
14. I believe that the estate is under the value of K . . . *(gross value)*.

Sworn at }

before

me

}

O.19, r.26

**RENUNCIATION IN FAVOUR OF PUBLIC CURATOR**

*(As to heading, see O.19, r.3.)*

I, . . . *(name)* of . . . *(address of place of residence)* labourer declare—

1. I am the executor (or one of the executors or *as the case may be*) appointed by will dated . . . , 20..., *(where applicable* and 2 codicils dated . . . *(date)* and . . . *(date)* of . . . *(name)* late of . . . *(place)* labourer who died on *(date)*).
2. I have not intermeddled in the estate of the deceased.
3. I renounce all right to probate of the will *(where applicable* and codicils) and to all trusts, powers and authorities expressed by the will *(where applicable* and codicils) to be made or given to me.
4. I request the Public Curator to apply for administration with the will *(where applicable* and codicils) annexed of the estate.

Dated: . . . *(date)* Signed

in the presence of

O.19, r.27

**AFFIDAVIT OF APPLICANT FOR RESEALING**

*(As to heading, see O.19, r. 3.)*

On . . . , 20..., I . . . *(name, address and occupation)* say on oath—

1. My full residential address is . . . *(state this)*.
2. . . . *(name)*, the deceased, died at . . . *(place)* in the Province of . . . *(state this)* on . . . *(date)*.
3. The deceased died intestate.

*or*

*The deceased left a will dated . . . (date) by which he appointed me (or where applicable (name)) sole executor of it.*

4. Probate of the will was *(or where applicable letters of administration of the estate of the deceased were)* granted by . . . *(name of court)* to me *(or where applicable to . . . (name))* . . . on . . . *(date)*.
5. The grant has not been revoked.
6. *(Where applicable)* By power of attorney dated . . . *(date)* . . . *(name)* appointed me his attorney to apply to this Court to reseal the probate (or letters of administration).
7. *(Where applicable)* I have not received any notice of revocation of the power of attorney by death, unsoundness of mind, act of the donor or otherwise.
8. The deceased left an estate within the Independent State of Papua New Guinea.
9. I am over 21 years of age.
10. *(Where applicable)* I am not aware of any claims against the estate *(or as the case may be)*.

Sworn at }

before me }

O.19, r.39

**SUMMONS FOR REVOCATION**

*(As to heading, see O.19, r.3.)*

The plaintiff claims that probate of the will (*or where applicable* letters of administration) of . . . (*name*) late of . . . (*place*) *labourer* granted to him on . . . (*date*) and numbered . . . (*number of grant*) be revoked.

Plaintiff: (*name, address and occupation*)

Solicitor: (*name, address and telephone number*)

Solicitor's agent: (*name, address and telephone number*)

Plaintiff's address for service: (*Order 6 Rule 7*)

Filed: (*date*)

(*Signature*)

Plaintiff's Solicitor

O.19, rr.45.

**REQUEST FOR ISSUE OF CITATION**

In the National Court of Justice at

Estate of *(name)*

late of *(place)*.....*(occupation)*

I request that a citation do issue to each of *(name of each person to be cited)* to take probate of the will dated .....*(date)* *(or where applicable)* pray for administration of the estate) of . . . *(name)* late of .....*(place)* labourer.

*(Where applicable)* I request that the time limited for ..... *(name)* to answer the citation be .....*(number)* days after service on him of the citation.

Person applying: *(name, address and occupation)*

Solicitor: *(name, address and telephone number)*

Solicitor's agent: *(name, address and telephone number)*

Filed: *(date)*

*(Signature)*

Solicitor for person applying

*or*

*(Title etc. as in originating process)*

I request that a citation to see these proceedings do issue to each of *(name of each person to be cited)*.

Party applying: *(name)* Filed:

*(date)* *(Signature)* Solicitor

for party applying

O.19, r.49

**SUMMONS TO SHOW CAUSE**

*(Heading as in Form 71)*

To *(person summoned)*

You are required to appear before this Honourable Court at . . . on Monday, . . . , 20... , to show cause why you should not bring into Court (*or why you (the executor) should not prove or renounce probate of*) the will of . . . (*name, address and occupation*) deceased who died on . . . (*date*) at . . . (*place*) (*or why administration with the will annexed of the estate of . . . (name, address and occupation) deceased, who died on . . . (date) at . . . (place) should not be granted to . . . (name, address and occupation).*

Dated the . . . day of . . . 20...

Registrar.

# Sch1, Form 90, 0.19, r.50

**Form 90.**

O.19, r.50

## CITATION TO PRAY FOR ADMINISTRATION

In the National Court of Justice at . . . Papua New Guinea

Estate of *(name)* late *(place)*  
labourer

To (*name*)

This citation is issued at the request of . . . (*name*) of . . . (*address*) *labourer* who has filed in this Court an affidavit by him stating that?

1. (name) . . . late of . . . (place) labourer died at . . . (place) on . . . (date);
2. he believes that the deceased died without leaving a will (or where applicable he believes that the deceased left a will, a copy of which is annexed and marked "A");
3. (where applicable) no executor was appointed by the will (or where applicable . . . (name) the executor appointed by the will has renounced probate) (or where applicable . . . (name) the executor appointed by the will died on . . . (date));
4. he is (state relationship to the deceased) of the deceased (or where applicable he is a beneficiary under the will) (or where applicable he is a creditor of the deceased).

You are cited to pray for administration of the estate of the deceased. If you wish to comply with this citation you must—

1. within 14 days after service on you of this citation (or if this citation is served on you outside Papua New Guinea within 3 months after service of it on you) file in the Registry of this Court an answer stating that you intend to apply to the Court for a grant to you of administration of the estate of the deceased; and
2. with reasonable promptness commence proceedings in this Court for a grant to you of administration of the estate of the deceased and pursue those proceedings diligently.

If you do not comply with this citation the Court may grant administration of the estate of the deceased to . . . (name) without further notice to you in your absence.

Dated: *(date)*

By the Court

Registrar

O.19, r.50

**ANSWER TO CITATION TO PRAY FOR ADMINISTRATION**

*(title etc. as in citation)*

I . . . *(name)* of . . . *(address)* labourer having been served on . . . *(date)* at . . . *(place)* with a citation issued at the request of . . . *(name)* and dated . . . *(date)* to pray for administration of the estate of . . . *(name)* late of . . . *(place)* labourer answer that I intend to apply to this Court for a grant to me of administration of the estate of the deceased.

Solicitor for person cited: *(name, address and telephone number)*

Solicitor's agent: *(name, address and telephone number)*

Filed: *(date)*

*(Signature)*

Solicitor for the person cited

**Sch1, Form 92, 0.19, r.51**

**Form 92.**

O.19, r.51

## CITATION TO TAKE PROBATE

In the National Court of Justice at . . . Papua New Guinea

Estate of (*name*) late                      of                      (*place*)  
*labourer*

To (*name*)

This citation is issued at the request of . . . (name) of . . . (address) labourer who has filed in the Court an affidavit by him stating that—

1. (name) . . . late of . . . (place) labourer died at . . . (place) . . . on . . . (date);
2. He believes that the deceased left a will, a copy of which is annexed and marked "A", which appoints you the executor (or one of the executors) of it;
3. He is a beneficiary under the will (or where applicable) he is (state relationship to the deceased) of the deceased (or where applicable he is a creditor of the deceased).

You are cited to take probate of the will. If you wish to comply with this citation you must—

1. Within 14 days after service on you of this citation (or if this citation is served on you outside Papua New Guinea within 3 months after service of it on you) file in the Registry of this Court an answer stating that you intend to apply to this Court for a grant to you of probate of the will; and
2. With reasonable promptness commence proceedings in this Court for a grant to you of probate of the will and pursue those proceedings diligently.

If you do not comply with this citation your right in respect of the executorship shall wholly cease, and the representation to the deceased and the administration of his estate shall, without any further renunciation, go, devolve, and be committed in like manner as if you had not been appointed executor.

Dated: (*date*)

By \_\_\_\_\_ the \_\_\_\_\_ Court  
Registrar

O.19, r.51

**ANSWER TO CITATION TO TAKE PROBATE**

*(title etc. as in citation)*

I . . . *(name)* of . . . *(address)* *labourer* having been served on . . . *(date)* at . . . *(place)* with a citation issued at the request of . . . *(name)* and dated . . . *(date)* to take probate of the will, a copy of which is annexed to the citation, of . . . *(name)* late of . . . *(place)* *labourer* answer that I intend to apply to this Court for a grant to me of probate of the will.

Solicitor for person cited: *(name, address and telephone number)*

Solicitor's agent: *(name, address and telephone number)*

Filed: *(date)*

*(Signature)*

Solicitor for the person cited

O.19, r.52

**CITATION TO SEE PROCEEDINGS**

*(title etc. as in originating process)*

To *(name)*

This citation is issued at the request of . . . *(name)* of . . . *(address)* labourer who is the plaintiff *(or where applicable a defendant)* in proceedings commenced in this Court by writ of summons *(or where applicable originating summons)*. A copy of the writ of summons *(or where applicable originating summons)* is annexed and marked "A".

*(Where a will is referred to in the writ of summons or originating summons)* A copy of the will referred to in the writ of summons *(or where applicable originating summons)* is annexed and marked "B".

The plaintiff has filed an affidavit stating that you have an interest adverse to him in the proceedings in that *(state the adverse interest)*.

If you do not answer this citation by giving notice of your intention to defend the proceedings before the proceedings are heard and determined, the Court may hear and determine the proceedings in your absence with such consequence as may ensue according to law.

Dated: *(date)*

By the Court

Registrar

O.19, r.60

**CAVEAT**

In the National Court of Justice

Estate of *(name)* late of *(place)*  
*labourer*

I demand that no grant or reseal be made in the estate of . . . *(name)* late of . . . *(place)*  
*labourer* without prior notice to me.

late of . . . *(place)* *labourer* without prior notice to me

My interest is *(state this)*.

Caveator: *(name, address and occupation)*

Solicitor: *(name, address and telephone number)*

Solicitor's agent: *(name, address and telephonenumber)*

Caveator's address for service: *(Order 6 Rule 7)*

Lodged: *(date)*

*(Signature)*

Caveator's Solicitor

**Sch1, Form 96, 0.19, r.61**

**Form 96.**

O.19, r.61

## CAVEAT

In the National Court of Justice

Estate of *(name)* late *(place)*  
labourer

I require that any will (*or where applicable the will dated (date) or otherwise identify the will*) of . . . (*name*) late of . . . (*place*) labourer be proved in solemn form.

My interest is (*state this*).

Caveator: (*name, address and occupation*) Solicitor:

(name, address and telephone number) Solicitor's agent:

(name, address and telephone number) Caveator's

address for service: (*Order 6 Rule 7*) Lodged: (*date*)

(Signature)

### Caveator's Solicitor

O.19, r.72

INVENTORY

(As to heading, see O.19, r.3.)

Inventory of Estate of Deceased

Particulars of Property	Estimated Value K
<i>(set out under appropriate headings similar to the following)</i>	... :
Cash in hand	
Cash at Bank	
Machinery	
Stock in trade	
Growing crops and farm stock	
Household furniture	
Personal effects	
Motor vehicles	
less H.P. agreements	
Stocks, shares and bonds	
Securities	
Mortgages	
Matrimonial home	
Other freehold property	
Other leasehold property	
Total value	K . . . :
	(Signature of Executor
	Administrator)

(Signature of Executor Administrator)

O.19, r.72

**AFFIDAVIT VERIFYING INVENTORY**

*(As to heading, see O.19, r.3.)*

On . . . , 20..., I (*name, address and occupation*) say on oath—

1. The paper writing hereto annexed marked "A" is a true inventory of all and singular the real and personal estate and effects of A.B., late of . . . , deceased, who died on or about . . . , at . . . , which have at any time since his death come to the hands, possession, or knowledge of me, C.D. (*or us, C.D. and E.F. (and G.H.)*), the executor (*or executors*) of the will (*or administrator (or administrators)* with the will of the personal estate) of the said A.B. (*or administrator (or . . . administrators)* of the (real and) personal estate of the said A.B. (*or as the case may be*)), or to the hands or possession of any person for me (*or us or any (or either) of us*), and is made upon and by virtue of the undertaking contained in my (*or our*) petition filed on . . .

2. And I (*or we, each speaking positively for himself and to the best of his knowledge and belief as to other persons,*) further say that, except as appears in the said paper writing no (real or) personal estate of or belonging to the said deceased has at any time since his death come to my (*or our*) hands, possession, or knowledge, or the hands or possession of (any (*or either*) of us or) any person for me (*or us or any (or either) of us*).

*(In the case of two or more executors, use the words in brackets.)*

O.19, r.73

**ADMINISTRATION ACCOUNT**

*(As to heading, see O.19, r.3)*

ACCOUNT OF EXECUTOR(S), (ADMINISTRATOR(S)), (TRUSTEE(S))

Date	Particulars	Corpus K	Income K	Bank K	Date	Particulars	Corpus K	Income K	Bank K
	Totals	K	K	K		Totals	K	K	K

*(SIGNATURE)*

*(DATE)*

## Sch1, Form 100, O.19, r.73

Form 100.

O.19, r.73

### AFFIDAVIT VERIFYING ACCOUNT

(As to heading, see O.19, r.3.)

On . . . , 20..., I . . . (*name, address and occupation*) say on oath—

1. I am the executor of the will (*or* administrator of the estate) of A.B. late of . . . (*address*), deceased.
2. The said A.B. died on (*or* on or about) the . . . day of . . . 20...
3. On the . . . day of . . . 20..., probate of the said will (administration of the estate of the said A.B.) was granted to me as such executor (administrator) by this Honourable Court.
4. Annexed hereto and marked with the letter "A" is a true account of my administration of the estate of the said A.B. which has come into my hands or into the hands of any person on my behalf or for my use.

Form 101.

O.19, r.76

### NOTICE OF FILING OF ACCOUNTS

In the National Court of Justice

Accounts in the estate of . . . (*name in capitals*) late of . . . (*place*) *labourer* have been filed in the Registry of the Court and are there available for inspection. The executor (*or* administrator *or as the case may be*) seeks an order passing the accounts (*where applicable* and an order for commission) and has obtained for this purpose an appointment to vouch the accounts before an accounts clerk of the Court on . . . (*date*) at . . . (*time*). Any person interested may attend.

O.20, r.6

**SUMMONS**

The plaintiff claims an order for the adoption of . . . (*name*) in favour of . . . (*name*) and . . . (*name*).

**PARTICULARS**

CHILD

(*surname*)

(*other names*)

. . . , 19... (*address*)

at . . . (*place*)

Father: (*surname*)

(*other names*)

Mother: (*maiden surname*)

(*other names*)

APPLICANT(S)

(*surname*)

(*other names*) (*sex*)

(*occupation*) Born . . .

AND

(*surname*)

(*other names*)

(*occupation*)

(*address*)

Time and place for hearing

Time: . . . , 20..., at . . . a.m./p.m.

Place: (*address of Court*)

Plaintiff: (*name, address and occupation*)

Solicitor: (*name, address and telephone number*)

Solicitor's agent: (*name, address and telephone number*)

Plaintiff's address for service: (*Order 6 Rule 7*)

Address of Registry: (*set out*)

(*where applicable,*

The plaintiff requests that this application be dealt with by the Court in the absence of the public without any attendance by or on behalf of the plaintiff or applicant.)

O.20, r.7

*(Heading but no title)*

**NOTICE OF APPLICATION FOR ADOPTION ORDER**

To *(name and address)*

An application has been made for an order for the adoption of . . . *(name of child)*.

If there is no attendance by you or by your counsel or solicitor at the time and place specified below such order may be made in your absence as the Court may think fit.

Time: . . . , 20..., at . . . a.m./p.m.

Place: *(address of Court)* Address

of Registry:

O.20, r.13

**ADOPTION ORDER**

**CHILD**

Surname

Forenames

*(sex)*

Born . . . , 19....

at . . . *(place)*

Father's surname

Other names

**ADOPTING PARENTS**

Surname

Other names

*(occupation)*

*(address)*

AND

Surname

Other names

Mother's maiden surname

*(occupation)*

Other names

*(address)*

THE COURT MAKES AN ORDER for the adoption of the child in favour of the adopting parents and approves the name(s) . . . as the forename(s) of the child.

*(Where section 30(2) of the Adoption of Children Act applies add—*

THE COURT ORDERS that the child shall have the surname..... )

*(Complete as in the general form of minute of order under Order 12 Rule 18.)*

O.21, r.3

**WRIT OF SUMMONS IN ACTION IN REM ISSUED OUT OF ADMIRALTY  
REGISTRY**

In the National Court of Justice                      No. . . . of 20...  
Admiralty action in rem against:

(The ship "TAHUA" *or as may be describing the res*)

(The owners of the ship "MALILA" *or as may be*)

Plaintiffs

*and*

(The owners of the ship "Tahua" *or as may be describing the res*)

Defendants

**THE INDEPENDENT STATE OF PAPUA NEW GUINEA**

To the (owners of and other) persons interested in the ship . . . of the port of . . . (*or cargo, etc., as may be*).

We command you that within 14 days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of . . . and take notice that in default of your so doing the plaintiffs may proceed therein, and judgement may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the Court.

WITNESS the Honourable N.P. Chief Justice of our National Court of Justice at Waigani in the Independent State of Papua New Guinea the . . . day of . . . 20...

Registrar

Note: This writ may not be served later than two (2) years beginning with the above date unless renewed by order of the Court.

**DIRECTIONS FOR ENTERING NOTICE OF INTENTION TO DEFEND**

The defendant(s) may give notice of his/their intention to defend in person or by a solicitor either—

- (1) by filing it in the appropriate form, duly completed, at the Registry,
- (2) by sending it to that office by post.

*Endorsements to be made on writ before issue*

*Endorsement of claim*

The plaintiff's claim is for . . .

*(If the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the endorsement of claim.)*

## **Sch1, Form 105, O.21, r.3 cont...**

### *Endorsement as to solicitor and address*

This writ was issued by . . . of . . . Solicitor for the said plaintiffs whose address is . . .  
(*or* This writ was issued by . . . of . . . agent for . . . of . . . Solicitor for the said plaintiffs  
whose address is . . . ) (*or* This writ was issued by the said plaintiffs who reside at . . .  
and (*if the plaintiffs do not reside within the jurisdiction*) whose address for service is  
. . . ).

### *Endorsement as to service*

This writ was served by me at . . . on . . . on . . . the . . . day of . . . 20..., by (*stating  
manner of service*).

(Signed)

(address)

**Form 106.**

O.21, r.5(1)

## **WARRANT OF ARREST**

(*heading as in Form 105*)

### THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To the Admiralty Marshal of our National Court of Justice and to all and singular his  
substitutes, Greeting. We hereby command you to arrest the ship . . . of the port of . . .  
(and the cargo now or lately laden therein, together with the freight due for the  
transportation thereof,) *or* (and the freight due for the transportation of the cargo now  
or lately laden therein,) and to keep the same under safe arrest until you shall receive  
further orders from us.

WITNESS (*as in Form 105*)

The plaintiffs' claim is for (*copy from the writ*)

Taken out by . . . (Solicitors for) the . . .

*Marshal's endorsement as to service*

**Sch1, Form 107, O.21, r.5(3)**

**Form 107.**

O.21, r.5(3)

**PRAECIPE FOR WARRANT OF ARREST**

*(heading as in Form 105)*

We . . . of . . . (Solicitors for) the plaintiffs request a warrant to arrest (*description of property giving name, if a ship*).

Dated the . . . day of . . . 20...

(Signed)

**Form 108.**

O.21, r.6

**PRAECIPE FOR CAVEAT AGAINST ARREST**

*(Description of property giving name, if a ship)*

We . . . of . . . Solicitors for . . . of . . . request a caveat against the arrest of (*description of property giving name, if a ship*) and hereby undertake to enter a notice of intention to defend in any action that may be begun in the National Court of Justice against the said . . . and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding K . . . or to pay that sum into court. We consent that the writ of summons and any other document in the action may be left for us at . . . .

Dated the . . . day of . . . 20...

(Signed)

**Form 109.**

O.21, r.8(3)

**PRAECIPE FOR SERVICE OF WRIT IN REM BY MARSHAL**

*(heading as in Form 105)*

We . . . of . . . (Solicitors for) the plaintiffs request that the writ of summons left herewith be duly served on . . .

Dated the . . . day of . . . 20...

(Signed)

**Sch1, Form 110, O.21, r.13(1)**

**Form 110.**

O.21, r.13(1)

**RELEASE**

*(heading as in Form 105)*

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To the Admiralty Marshal of our National Court of Justice, and to all and singular his substitutes, Greeting.

Whereas in this action we did command you to arrest the . . . and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said . . . from the arrest effected by virtue of our warrant in this action.

WITNESS *(as in Form 105)*.

Taken out by . . . (Solicitors for) the . . .

*Marshal's endorsement*

On . . . the . . . day of . . . 20..., the . . . was released from arrest pursuant to this Instrument.

(Signed)

Admiralty Marshal (Substitute)

**Form 111.**

O.21, r.13(5)

**PRAECIPE FOR ISSUE OF RELEASE**

*(heading as in Form 105)*

We . . . of . . . (Solicitors for) the plaintiffs *(or defendants)* in this action against . . . *(description of property giving name, if a ship)* . . . , now under arrest by virtue of a warrant issued out of the Admiralty Registry, request the issue of a release with respect to the said . . .

Dated the . . . day of . . . 20...

(Signed)

**Sch1, Form 112, O.21, r.14**

**Form 112.**

O.21, r.14

**PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT**

*(Description of property giving name, if a ship)*

We . . . of . . . (Solicitors for) . . . of . . . request a caveat against the issue of a release with respect to *(description of property giving name, if a ship)* now under arrest and, should the said property be sold by order of the Court, a Caveat against payment out of Court of the proceeds of sale.

The intending caveator claims to have an interest (to the extent of approximately K . . . *if known*) in the above-mentioned property in respect of *(state nature of claim, e.g. salvage, collision damage etc.)*.

Dated the . . . day of . . . 20...

(Signed)

**Form 113.**

O.21, r.15

**PRAECIPE FOR WITHDRAWAL OF CAVEAT**

*(Description of property giving name, if a ship)*

We . . . of . . . (Solicitors for) . . . of . . . request that the caveat *(state nature of caveat)* entered on the . . . day of . . . 20..., on behalf of . . . be withdrawn.

Dated the . . . day of . . . 20...

(Signed)

O.21, r.16

**BAIL BOND**

*(heading as in Form 105)*

WHEREAS this Admiralty action in rem against the above-mentioned property is pending in the National Court of Justice and the parties to the said action are the above-mentioned plaintiffs and defendants:

NOW, THEREFORE, WE, A.B. of . . . and C.D. of . . . hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above-mentioned defendants (*or plaintiffs, in the case of a counterclaim*) do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgement and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of K . . . whichever is the less.

(Signed)

This bail bond was signed by the said A.B. and C.D., the sureties, the . . . day of . . .

20... Before me . . .

A Commissioner for Oaths

**Form 115.**

O.21, r.23

**PRAECIPE FOR COMMISSION FOR APPRAISEMENT AND SALE**

*(heading as in Form 105)*

We . . . of . . . (Solicitors for) the plaintiffs (*or defendants*) request a commission for the appraisement and sale of . . . (*description of property giving name, if a ship*) which was ordered by the Court on the . . . day of . . . 20...

Dated the . . . day of . . . 20...

(Signed)

O.21, r.23

**COMMISSION FOR APPRAISEMENT AND SALE**

*(heading as in Form 105)*

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To the Admiralty Marshal of our National Court of Justice, and to all singular his substitutes, Greeting:

WHEREAS in this action the Court has ordered (*description of property giving name, if a ship*) to be appraised and sold,

WE hereby authorize and command you to choose one or more experienced persons and to swear him or them to appraise the said . . . according to the true value thereof, and such value having been certified in writing by him or them to cause the said . . . to be sold by (*private treaty*) (*public auction*) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

AND WE further command you, immediately on the sale being completed, to pay the proceeds thereof into Court and to file the certificate of appraisal signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

WITNESS (*as in Form 105.*)

Taken out by . . . (Solicitors for) the . . .

O.21, r.13

**RELEASE AND WARRANT OF POSSESSION**

*(heading as in Form 105)*

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To the Admiralty Marshal of our National Court of Justice, and to all and singular his substitutes, Greeting:

WHEREAS in this action the Court has ordered possession of the ship (*name to be stated*), her tackle, apparel and furniture to be delivered up to . . . or to his solicitor for his use,

WE hereby command you to release the said ship, her tackle, apparel and furniture from the arrest made by virtue of our warrant in that behalf and to deliver possession thereof to the said . . . or to his solicitor for his use.

WITNESS (*as in Form 105*).

Taken out by . . . (Solicitor for) the . . .

*Marshal's endorsement*

On the . . . day of . . . 20..., the ship was released from arrest pursuant to this warrant.

(Signed)

Admiralty Marshal (Substitute)

*Receipt*

Received from the Admiralty Marshal (Substitute) on the . . . day of . . . 20..., the ship . . . and everything on board belonging to her.

(Signed)

**Sch1, Form 118, O.21, r.5(10)**

**Form 118.**

O.21, r.5(10)

**NOTICE TO CONSULAR OFFICER OF INTENTION TO APPLY FOR  
WARRANT OF ARREST**

*(heading as in Form 105)*

To the Consular Officer . . . *(name of State)*

The . . . *(state nationality)* ship . . . *(name)*

TAKE NOTICE that as solicitors for . . . *(name or description of plaintiff as in writ)* we did on the . . . day of . . . 20..., *(or we intend to)* institute proceedings in the Admiralty Court of the National Court of Justice against the above-named ship in respect of a claim by . . . *(name or description of plaintiff)* for . . . *(state nature of claim as indorsed on writ)* and that we intend to apply to the Admiralty Court to arrest the said ship.

Dated this . . . day of . . . 20...

(Signed)

Solicitors for the Plaintiff

**Form 119.**

O.17, r.2

**NOTICE DIRECTED BY COURT OF ADJOURNED APPLICATION FOR  
WRIT OF HABEAS CORPUS**

*(Heading as in Form 1 or 3)*

Take notice that an application for the above writ was made to the Honourable Mr. Justice . . . in the above matter on the . . . day of . . . 20..., when the said application was adjourned until . . . a.m./p.m. on the . . . day of . . . 20..., so that notice could be given to you.

Date the . . . day of . . . 20...

(Signed)

of

(Solicitor for) To .

..

Solicitor for . . .

O.17, r.9

**WRIT OF HABEAS CORPUS**

*(Heading as in Form 5)*

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

To the Superintendent of the Corrective Institution, Greeting:

I command you that you have brought within the National Court of Justice (*or* before a judge in chambers) at . . . , on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that the Court (*or* Judge) may then and there examine and determine whether such cause is legal.

*(Same as in Form 5)*

(Signed) *Endorsement*

By order of Court (*or of Mr. Justice . . .*).

This writ was issued by . . . of . . . Solicitor  
for . . .

**Sch1, Form 121, O.17, r.6**

**Form 121.**

O.17, r.6

**NOTICE TO BE SERVED WITH WRIT OF HABEAS CORPUS**

In the National Court of Justice

*(If in a cause already begun, here insert the title, not otherwise)*

Whereas this Court (*or* the Honourable Mr. Justice . . . ) has granted a writ of habeas corpus directed to . . . (*or* other person having the custody of . . . *if so*) commanding him to have the body of A.B. before the said Court (*or* before a judge in chambers) at . . . , on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said A.B. before this Court (*or* before the judge aforesaid) on . . . day of . . . 20..., at . . . o'clock and to make a return of the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard be moved to commit you to prison for your contempt in not obeying the said writ.

Dated the . . . day of . . . 20...

(Signed)

of

Solicitor for

To . . .

**Form 122.**

O.17, r.2

**ORDER FOR WRIT OF HABEAS CORPUS**

In the National Court of Justice

sitting at . . .

The Hon. Mr. Justice . . . (Judge in Chambers)

On hearing . . . and on reading the affidavit of . . . filed herein.

It is ordered that a writ of Habeas Corpus issue directed to . . . to have the body of . . . before a Judge (in Chambers) at . . . immediately after the receipt of such writ to undergo and receive all and singular such matters, and things as our Court (*or* Judge) shall then and there consider of concerning him in this behalf.

Dated the . . . day of . . . 20...

O.17, r.8

(3)

**ORDER OF COMMITTAL**

*(Heading as in action)*

On motion this day made unto this Court by counsel for the plaintiff and on reading (an affidavit of . . . filed the . . . day of . . . 20..., of service on the defendant C.D. of a copy of the order of the Court dated the . . . day of . . . 20..., and of notice of this motion):

And it appearing to the satisfaction of the Court that the defendant C.D. has been guilty of contempt of court in *(state the contempt)*:

It is ordered that for his said contempt the defendant do stand committed to . . . Corrective Institution to be there imprisoned (until further order).

It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, . . .

Dated the . . . day of . . . 20...

O23 r7(c)

**PAPUA NEW GUINEA**

**[IN THE NATIONAL COURT OF JUSTICE]**

**HUMAN RIGHTS ENFORCEMENT APPLICATION FORM**

1. Name of Applicant: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Phone numbers: \_\_\_\_\_
4. What happened? Tell your story why you say someone breached your human rights. Refer to dates and places:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Rights or Freedoms to be enforced. Tick the box next to your right or freedom that has been breached:

· right to freedom (s 32);	<input type="checkbox"/>
· right to life (s 35);	<input type="checkbox"/>
· protection from inhuman treatment (s 36);	<input type="checkbox"/>
· protection of the law (s 37);	<input type="checkbox"/>
· proscribed acts (s 41);	<input type="checkbox"/>
· liberty of the person (s 42);	<input type="checkbox"/>
· freedom from forced labour (s 43);	<input type="checkbox"/>
· freedom from arbitrary search and entry (s 44);	<input type="checkbox"/>
· freedom of conscience, thought and religion (s 45);	<input type="checkbox"/>
· freedom of expression (s 46);	<input type="checkbox"/>
· freedom of assembly and association (s 47);	<input type="checkbox"/>
· freedom of employment (s 48);	<input type="checkbox"/>

### Sch1, Form 124, O.23, r.7(c) cont...

- right to privacy (s 49);	
- right to vote and stand for public office (s 50);	
- right to freedom of information (s 51);	
- right to freedom of movement (s 52);	
- protection from unjust deprivation of property (s 53);	
- equality of citizens (s 55).	

6. Who breached your rights? Name or describe the person who will be a defendant if this proceeding goes to Court:

---

---

---

7. Do you want the defendant summoned to appear before the National Court?

---

---

---

---

#### 8. DECLARATION

I, \_\_\_\_\_,

declare this statement to be true and correct to the best of my knowledge and belief AND I hereby make application for the enforcement of my rights or freedom as guaranteed by the *Constitution* and seek orders under section 58 and any other orders the Court may see fit to make.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20.....

\_\_\_\_\_  
Applicant

Signature of

**The application may be made by filling in this form and giving it to:**

- F a Clerk of the District Court
- F the Assistant Registrar in your town; or
- F a Judge of the National Court in your Province; or
- F The Registrar of the National Court, PO Box 7018, Boroko, NCD.

#### Instructions to Court Clerks

When this form is handed to you, please forward it as quickly as possible to the Registrar of the National Court. Fax: 325 7732, PO Box 7018, Boroko, NCD.

O23 r7(5)(a)

## PAPUA NEW GUINEA

[IN THE NATIONAL COURT OF JUSTICE]

**COMPLAINT OF UNLAWFUL OR UNREASONABLE DETENTION  
UNDER SECTION 42(5) OF THE CONSTITUTION\***

1. Name of Complainant: \_\_\_\_\_  
\_\_\_\_\_
2. Address: \_\_\_\_\_
3. Phone numbers: \_\_\_\_\_
4. Where have you been detained? (Give name of Police Lock-up or Correctional Institution.) For how long have you been detained? What happened? Tell your story why you say you have been unlawfully or unreasonably detained.

[illegible]

## 5. DECLARATION

I, \_\_\_\_\_,  
 declare this statement to be true and correct to the best of my knowledge and belief AND  
 I hereby make a complaint to the National Court that I have been unlawfully or  
 unreasonably detained.

**Dated this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20.....**

## Sch1, Form 125, O.23, r.7(5)(a) cont...

\_\_\_\_\_  
Signature of Complainant

**The complaint may be made by filling in this form and giving it to:**

- F a Clerk of the District Court
- F the Assistant Registrar in your town; or
- F a Judge of the National Court in your Province; or
- F the Registrar of the National Court, PO Box 7018, Boroko, NCD.

### **Instructions to Court Clerks**

When this form is handed to you, please forward it as quickly as possible to the Registrar of the National Court. Fax: 325 7732, PO Box 7018, Boroko, NCD.

\* Section 42(5) (*liberty of the person*) of the *Constitution* states:

Where complaint is made to the National Court or a Judge that a person is unlawfully or unreasonably detained—

- (a) the National Court or a Judge shall inquire into the complaint and order the person concerned to be brought before it or him; and
- (b) unless the Court or Judge is satisfied that the detention is lawful, and in the case of a person being detained on remand pending his trial does not constitute an unreasonable detention having regard, in particular, to its length, the Court or a Judge shall order his release either unconditionally or subject to such conditions as the Court or Judge thinks fit.

O23 r8(1)(b)

PAPUA NEW GUINEA

**[IN THE NATIONAL COURT OF JUSTICE]**

***HROI NO ..... OF .....***

**IN THE PROCEEDING OF ENFORCEMENT OF BASIC RIGHTS  
UNDER THE CONSTITUTION  
OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,  
SECTION 57**

**RE [here insert brief description of the proceeding]  
COMMENCEMENT OF PROCEEDINGS  
AND SUMMONS**

**THE NATIONAL COURT**, [here insert brief reasons for the Court acting on its own initiative], under Section 57(1) of the *Constitution*, **COMMENCES THESE PROCEEDINGS** on its own initiative to enforce the rights and freedoms of [here insert the names or description of the persons whose rights or freedoms may have been infringed], those rights being:

- [here insert the right(s) or freedom(s) being enforced, eg freedom from inhuman treatment and punishment under Section 36(1) of the *Constitution*]

**AND FOR THE PURPOSES OF THESE PROCEEDINGS THE FOLLOWING PERSONS ARE UNDER SECTION 57(3) OF THE CONSTITUTION SUMMONED TO APPEAR BEFORE THE NATIONAL COURT AT ..... ON .....AT.....**, so that the National Court may inquire into this proceeding and determine whether it is necessary or appropriate to make further orders or declarations for the purposes of enforcement of Basic Rights under Section 57(3) of the *Constitution*:

- .....
- .....

**AND TAKE NOTICE** that failure to comply with this order may be deemed to be contempt of court and expose the person who fails to comply to the sanctions of the criminal law, including arrest, fine and/or imprisonment.

**DATED THIS ..... DAY OF ....., .....**

.....

**JUSTICE .....**

**A JUDGE OF THE NATIONAL COURT OF JUSTICE**

**Sch1, Form 127, 0.23, r.9(1)**

**FORM 127**

023 r9(1)

## PAPUA NEW GUINEA

**[IN THE NATIONAL COURT OF JUSTICE]**

## STATEMENT OF ALLEGED OR SUSPECTED BREACH OF HUMAN RIGHTS

1. Name of person making statement: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Phone numbers: \_\_\_\_\_
4. Your statement: Tell your story about what you saw or heard, and what happened. Give names of the people involved or describe them.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

## 5. DECLARATION

I, \_\_\_\_\_,  
declare this statement to be true and correct to the best of my knowledge and belief AND  
I hereby bring the information to the attention of the National Court.

**Sch1, Form 127, O.23, r.9(1)**

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20.....

## **Sch1, Form 127, O.23, r.9(1) cont...**

\_\_\_\_\_  
Signature

### **Please give this form to:**

- F a Clerk of the District Court
- F the Assistant Registrar in your town; or
- F a Judge of the National Court in your Province; or
- F the Registrar of the National Court, PO Box 7018, Boroko, NCD.

### **Instructions to Court Clerks**

When this form is handed to you, please forward it as quickly as possible to the Registrar of the National Court. Fax: 325 7732, PO Box 7018, Boroko, NCD.

\_\_\_\_\_

O23 r10

PAPUA NEW GUINEA

**[IN THE NATIONAL COURT OF JUSTICE]**

**REQUEST FOR PROCEEDING TO BE PLACED ON HUMAN RIGHTS  
LIST**

TO: THE REGISTRAR

I request that the attached proceeding, in which the following persons are described  
as plaintiffs:

.....; and the following  
persons are described as defendants..... be placed on the  
Human Rights List.

.....

Signed [Plaintiff/defendant or their lawyer to sign]

Date .....

O23 r10(1)

PAPUA NEW GUINEA

**[IN THE NATIONAL COURT OF JUSTICE]  
LISTING STATEMENT**

The [Plaintiff/Defendant] makes the following statement in support of an application to have these proceedings [placed on/removed from] the Human Rights List:

1. The nature of the dispute... [set out in a summary form];

.....  
.....  
.....

2. The issues which are likely to arise in the proceedings are... [set out in a summary manner];

.....  
.....  
.....

3. The proceedings ought to be [placed on/removed from] the Human Rights List for the following reasons:

.....  
.....  
.....

4. The attitude of other parties to this application is:

.....  
.....  
.....

.....

Signed [Plaintiff or plaintiff's lawyer shall sign]

Date .....

specified in the order under this Sub-rule.

## Sch 2, Table 1, Scale of Costs

### SCHEDULE 2.

#### TABLE 1. SCALE OF COSTS

(U.K. 0.62 Appendix)

#### PART I.—PREPARATION OF DOCUMENTS

The following items shall not apply to any cause or matter to which Part 2 applies.

##### ITEM

1. *Institution of proceedings:*

- (a) Preparing, issuing, filing and service of writ of K15—  
K45 summons, including statement of claim endorsed on  
it, originating summons or third party notice
- (b) Preparing, issuing, filing and service of any petition K20—K45  
for the dissolution of a marriage
- (c) Preparing, issuing, filing and service of any petition K10—K40  
for the winding up of a company
- (d) Preparing, issuing, filing and service of any K10—K40 petition,  
chamber summons, originating motion  
case or special case stated, required under any Act,  
Rules or Regulations thereunder
- (e) Preparing and issuing concurrent writ of summons K10  
or originating summons, renewing writ of summons  
or originating summons

No allowance for "instructions" is included in this item.

Instructions are allowed under Item 12.

- 2. *Interlocutory proceedings:* Preparing, issuing, filing and K10—K45  
service of any notice of motion, summons or application,  
notice of interlocutory appeal or any writ of execution  
(including renewing)
- 3. *Other Documents:* Preparing (including where necessary  
filing, serving or delivering) any document not otherwise  
provided for, including—
  - (a) any documents to renew a writ of summons or  
originating summons, to amend any document or to  
obtain an order for substituted service or giving  
leave to serve out of the jurisdiction;
  - (b) any pleading, answer to petition, particulars of  
pleadings, requests for such particulars,  
interrogatories, affidavits and lists of documents,  
notice to produce, admit or inspect documents and  
amendments to any documents;
  - (c) any affidavit or other document for use in

## **Sch 2, Table 1, Scale of Costs**

connection with Item 1;

## Sch 2, Table 1 Scale of Costs cont...

- (d) any brief to counsel or case to counsel to advise in writing or in conference;
  - (e) any instructions to counsel to settle any document except where an allowance for the preparation of that document is recoverable under Items 1, 2 or 3;
  - (f) any order;
- |                             |                                  |
|-----------------------------|----------------------------------|
| for first five A4 pages     | K6 per page                      |
| for each A4 page thereafter | K2 per page (or proportionately) |

### *Note to Items 1, 2 and 3*

Items 1, 2 and 3 include engrossing and three copies. Any additional copies required to be charged under Item 4. Items 3(d) and (e) each include the copy for counsel.  
 "Discretionary costs" are defined in Order 22 Rule 36(3).

- 4. *Copy documents:*
  - (a) Typed top copy—A4 K0.60 per page
  - (b) Photographic printed and carbon copies—A4 K0.50 per page

## **PART 2.—BLOCK ALLOWANCE FOR PREPARATION OF DOCUMENTS**

- 5. In any action for damages for personal injuries, and in any other cause or matter as the party entitled to receive the costs may elect, a block allowance shall be made in place of the Items prescribed in Part 1, unless, in any such case, the taxing officer otherwise directs; and the allowance shall be K60—K300

## **PART 3.—COUNSEL'S FEES**

- 6. (1) Appearing and arguing a case  
*First day*

	K10,001.00— K50,000.00	Excess of K50,000.00
(a) Contested hearing for final relief of order	275.00	350.00
(b) Uncontested proceedings for final relief or order	100.00	130.00
(c) Assessment where liability is admitted	225.00	300.00
(d) Appeal from District or Local Court	K100.00—K275.00	
(e) Interlocutory application—contested	K100.00—K275.00	
(f) Interlocutory application— <i>ex parte</i> or by consent	K50.00 K30.00—	
(g) Application for contested adjournment	K150.00	

## Sch 2, Table 1 Scale of Costs cont...

- (h) Taking a deferred judgement K30.00

### *Second and subsequent days*

Two-thirds of first day

(2) Opinions and conferences

- (a) Counsel settling statement of  
K50.00—K100.00  
claim on writ, defence or other  
documents
- (b) Counsel's written advice on K50.00—  
K100.00 evidence
- (c) Counsel's or solicitor's  
K50.00—K200.00 written advice on  
settlement  
for a disabled person
- (d) Conference by counsel with  
solicitor, party or  
witnesses—

*Note to Item 6(2)* first hour K40.00  
each subsequent hour K30.00

Counsel in these items refers to a lawyer practising solely  
as a barrister.

## **PART 4.—COUNSEL'S TRAVELLING EXPENSES**

7. (1) Where a lawyer is required to travel from the town where he practises to appear as counsel in Court he shall be allowed return air fares to attend the Court and reasonable hotel expenses.
- (2) Where the fees, costs and expenses of an overseas counsel are certified by the trial Judge under Order 22 Rule 26 there shall be allowed return economy class air fares to the nearest town where suitable counsel could be obtained, and reasonable hotel expenses.
- (3) Allowance should not be made in Paragraph (1) or (2) for transport within the town of trial.

## **PART 5.—ATTENDANCES**

8. *Interlocutory attendances*: attending on the K6.00—K50.00  
examinations of witnesses ordered under Order  
11 Rule 8
9. *Counsel*: Attending counsel in conference—for K15.00  
each half hour or part of a half hour  
(Note: Counsel here refers to a lawyer practising  
solely as a barrister. See s33 *Lawyers Act*.)
10. *Trial on hearing*: Attending the trial on hearing  
of a cause or matter where the trial Judge has  
certified the fees, costs and expenses of a second  
lawyer under Order 22 Rule 26—

## Sch 2, Table 1 Scale of Costs cont...

Appearing:

- |     |  |   |
|-----|--|---|
| (a) | as junior counsel  | two thirds of the fee<br>allowed to the counsel<br>under Part 3 |
| (b) | as instructing solicitor to a lawyer<br>practising solely as a barrister | K100.00 per day   |

### PART 6.—ALLOWANCES TO WITNESSES

#### 11. (1) (a) *Professional*

Not more than K30.00 per hour or part of an hour necessarily absent from their professional rooms or place of business and not to exceed K150.00 for any one day.

#### (b) *Others*

The amount of salary or wages actually lost but not to exceed K30.00 per hour.

- (2) Where a witness does not reside in the town where he is required to give evidence, he shall be allowed such additional sum as is reasonable for travel expenses to and from that town and for accommodation but not transport within that town.
- (3) A witness attending in more than one cause will be entitled to a proportionate part only in each cause.

### PART 7.—PREPARATION FOR TRIAL

12. *Work necessarily or properly done in preparing for a trial or hearing* of any cause or matter, whatever the mode of trial or hearing, or for the hearing of any appeal, and not otherwise provided for Discretionary

#### *Notes to Item 12*

1. This Item is intended to cover the doing of any work not otherwise provided for and which was necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matter in dispute, including—

- (1) *The Clients*: Taking instructions to sue, defend, counterclaim, appeal or oppose, etc., attending on and corresponding with client;
- (2) *Witnesses*: Interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;
- (3) *Expert Evidence*: Obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging attendance at Court, including issue of subpoena;
- (4) *Inspections*: Inspecting any property or place material to the proceedings;
- (5) *Searches and Inquiries*: Making searches in the Titles Office and elsewhere for relevant documents; searches in the Companies Registry and similar matters;

## Sch 2, Table 1 Scale of Costs cont...

- (6) *Special Damages*: Obtaining details of special damages and making or obtaining any relevant calculations;
  - (7) *Other parties*: Attending on and corresponding with other parties or their solicitors;
  - (8) *Discovery*: Perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 9;
  - (9) *Documents*: Consideration of pleadings, affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents, including collating;
  - (10) *Negotiations*: Work done in connection with negotiations with a view to settlement;
  - (11) *Agency*: Correspondence with and attendances on or other work done by an agent in another town;
  - (12) *Interest*: Where relevant the calculation of interest on damages;
  - (13) *Notices*: Preparation and service of miscellaneous notices, including notices to witnesses to attend Court.
2. The sums sought under each Sub-paragraph (1) to (13) should be shown separately against each Item followed by the total of all items under that paragraph.
  3. This item should begin with a short statement of—
    - (a) the main issues; and
    - (b) any particular difficulties of fact or law; and
    - (c) any special skill, knowledge or responsibility required.

This should be followed not by a chronological narrative, but by an analysis of the work done, separated under main headings appropriate to the subject matter. Under a heading of, for example, "Attendances on and correspondence with client", there should be included a statement of the number of attendances on the client, the total time occupied and the number of letters sent, but not the details of every attendance or of every letter.

### PART 8.—ADMIRALTY

- |     |     |  |        |
|-----|-----|--|--------|
| 13. | (a) | Obtaining arrest or release of property                    | K40.00 |
|     | (b) | Entry or withdrawal of any caveat                          | K10.00 |
|     | (c) | Obtaining bail or guarantee or undertaking in lieu of bail | K25.00 |
|     | (d) | Giving bail—   |        |
|     |     | (i) one surety   | K45.00 |
|     |     | (ii) two sureties  | K50.00 |

#### *Note to Item 13(d)*

This Item includes drawing the bail bond, affidavits and other documents required in connection with the giving of bail and any attendances required to procure the signing of the bond, the swearing of any such affidavit and the filing and service of any such document.

- (e) Giving guarantee or undertaking in lieu of bail K25.00

## Sch 2, Table 1 Scale of Costs cont...

### *Note to Item 13(e)*

This Item includes preparing the guarantee or undertaking and any attendances required to procure the signing and stamping of them.

(f) Issuing commission of appraisement or appraisement and sale K25.00

(g) Lodging a preliminary act Discretionary

### *Note to Items 13(a) to 13(g)*

These Items include where applicable the preparation, filing, lodging, service and perusal of documents; the swearing of any affidavit; the obtaining or giving of consent and the provision of any undertaking in writing to the Marshal.

(h) Attendance at the Registry or Marshal's Office K10.00  
not otherwise provided for

## **PART 9.—TAXATION OF COSTS**

14. (a) *Taxation*: Obtaining the reference, preparing bill Discretionary of costs and copies and attending to lodge; attending taxation; vouching and completing bill, paying taxing fee and lodging for certificate or order
- (b) *Review*: Preparing and filing notice of motion to Discretionary review decision of taxation officer; preparing and delivering objections or answers to objections, including copies for service and filing and considering opponent's answers on objections as the case may be; attending hearing of review

## Sch 2, Table 2 Fixed Costs

### TABLE 2. FIXED COSTS

(U.K. 0.62 Appendix 3)

#### COSTS ON RECOVERY OF LIQUIDATED SUM WITHOUT TRIAL

(1) *Basic costs:*

The following scale of costs shall apply in relation to the following cases if the writ of summons was issued on or after the commencement date and was endorsed in accordance with Order 4 Rule 10 with a claim for a debt or liquidated demand or specified damages only of K1,000.00 or upwards—

- (a) in cases in which the defendant pays the amount claimed or a sum of not less than K1,000.00 within the time and in the manner required by the endorsement of the writ:

Amount recovered less than K5,000.00	Amount recovered between K5,000.00 and K10,000.00	Amount recovered more than K10,000.00
---	---	--

K30.00	K50.00	K100.00
--------	--------	---------

- (b) in cases in which the plaintiff obtains judgement on failure to give notice of intention to defend, or in default of defence or of verification of defence:

Amount recovered less than K5,000.00	Amount recovered between K5,000.00 and K10,000.00	Amount recovered more than K10,000.00
---	---	--

K40.00	K70.00	K130.00
--------	--------	---------

- (c) in cases in which the plaintiff obtains judgement under Order 13 Rule 38 (Summary Judgement) for a sum of K1,000.00 or upwards, either unconditionally or unless that sum is paid into Court or to the plaintiff's solicitors:

Amount recovered less than K5,000.00	Amount recovered between K5,000.00 and K10,000.00	Amount recovered more than K10,000.00
---	---	--

K80.00	K100.00	K270.00
--------	---------	---------

2. *Additional costs:*

The following costs shall be in addition to those costs allowed in the preceding paragraphs of the table:

- |     |  |        |
|-----|--|--------|
| (1) | The fee paid on the issue of the writ  | *note  |
| (2) | Where there is more than one defendant, in respect of each additional defendant served | K10.00 |
| (3) | Where substituted service is ordered and effected, in respect of each defendant served | K30.00 |
| (4) | Where service out of the jurisdiction is ordered and effected                          | K60.00 |

## **Sch 2, Table 2 Fixed Costs**

- (5) In the case of judgement in default of defence or judgement under Order 13 Rule 38 where notice of intention to defend is given after the time limited and the plaintiff makes an affidavit of service for the purpose of a K20.00

## **Sch 2, Table 2 Fixed Costs (cont...)**

judgement on failure to give notice of intention  
to defend (the allowance to include the search)

- |     |  |        |
|-----|--|--------|
| (6) | In the case of judgement under Order 13 Rule 38 where an affidavit of service of the summons is required | K20.00 |
| (7) | In the case of judgement under Order 13 Rule 38 for each adjournment of the summons                      | K20.00 |

### 3. *Judgement for costs:*

- |     |   |        |
|-----|---|--------|
| (1) | Where a plaintiff or defendant signs judgement for costs under Order 22 Rule 17 there shall be allowed— |        |
|     | Cost of the judgement   | K10.00 |
| (2) | Where a writ of execution (or writ of possession) is issued against a party there shall be allowed—     |        |
|     | Cost of issuing execution   | K50.00 |

## Sch 2, Table 3 Court Fees

**TABLE 3.**  
**COURT FEES**

1. On filing an initiating process K50.00  
Note 1. In this clause "initiating process" means—
    - (a) an originating process under the Rules (other than a notice of appeal to the Supreme Court and a summons for leave to appeal to the Supreme Court); or
    - (b) a petition; or
    - (c) a summons commencing proceedings under the Companies Rules; or
    - (d) a writ of summons in Admiralty.Note 2. This clause does not apply to a summons by which an application for a grant or resealing under Order 19 is made in respect of an estate the sworn gross value of which is less than K12,000.00.
  2. On filing a summons for leave to appeal to the Supreme Court K50.00
  3. On filing a notice of appeal to the Supreme Court except where, in respect of proceedings to which the notice relates, a summons for leave to appeal has been filed K50.00
  4. To open the registry—
    - (a) on a Saturday, Sunday or other holiday K50.00
    - (b) on any other day before 7.45 a.m. or after 4.06 p.m. K50.00
  5. To furnish a copy of a document in any proceedings to a person who is not a party to the proceedings K10.00
  6. To furnish to a party to proceedings a second or subsequent copy of the written reasons for the decision of any Judge or of the Registrar in relation to the proceedings, for each copy K5.00
  7. To furnish a transcript of evidence in a civil case to any party to proceedings—per A4 page K0.50
  8. For an officer of the Court to produce a document at a place other than the National Court building at Waigani K10.00
- Fees to be paid to the Marshal in Admiralty to be the same fees as are from time to time taken by the Sheriff for the service and execution of process of the Court.

## Sch 2, Table 4 Sheriff's Fees

### **TABLE 4. SHERIFF'S FEES**

A deposit on account of the fees applicable to any proceeding may be required before such proceeding is commenced or at any time during its course and a memorandum of the amount deposited shall be delivered to the party making the deposit.

- |     |   |         |
|-----|---|---------|
| 1.  | Entering any writ of execution  | K15.00  |
| 2.  | Service or attempted service of process for each address at which service is attempted  | K5.00   |
| 3.  | Executing writ for levy of property   | K50.00  |
| 4.  | Giving notice to occupants to vacate premises pursuant to writ of possession  | K5.00   |
| 5.  | Executing writ of possession—   |         |
|     | (a) where premises are vacated on request only  | K15.00  |
|     | (b) where occupants are removed from premises   | K50.00  |
| 6.  | Executing fee for any warrant or commission not provided for elsewhere  | K20.00  |
| 7.  | Keeper's fees, each person for each day of 8 hours or part of 8 hours   | K20.00  |
| 8.  | On every search—each name   | K1.00   |
| 9.  | Advertisement—drawing & inserting   | K10.00  |
| 10. | Settling and executing every deed of transfer or like document, including copies  | K15.00. |
| 11. | Certifying office copy of any writ  | K2.00   |
| 12. | Opening office—   |         |
|     | (a) on a Saturday, Sunday or other holiday  | K50.00  |
|     | (b) on any other day before 7.45 a.m. or after 4.06 p.m.  | K50.00  |
| 13. | The amount reasonably incurred for—   |         |
|     | (a) advertising; and  |         |
|     | (b) keeping of livestock levied upon; and   |         |
|     | (c) disbursements necessary to the execution, or attempted execution of any writ, or warrant, and not otherwise provided for. |         |

## Sch 2, Table 5 Probate cont...

**TABLE 5.  
PROBATE**

1. In respect of proceedings commenced after the commencement date costs of and incidental to the obtaining for the first time of probate or administration or of resealing of probate or letters of administration (including satisfying any requisition made by the Commissioner of Probate Duties after the date of the grant, the perusal and checking of the assessment of duty and the payment of duty under the *Wills, Probate and Administration Act*, and all work and attendance incidental to these matters including the uplifting of the grant) shall be allowed in accordance with the scale below. Gross value of the estate is as accepted by the Commissioner of Probate Duties.

Disclosed value of assets	Costs K	allowed
not exceeding K7,500.00	250.00	
exceeding K7,500.00 but not exceeding K15,000.00	375.00	
exceeding K15,000.00 but not exceeding K25,000.00	435.00	
exceeding K25,000.00 but not exceeding K40,000.00	500.00	
exceeding K40,000.00 but not exceeding K55,000.00	565.00	
exceeding K55,000.00 but not exceeding K70,000.00	630.00	
exceeding K70,000.00 but not exceeding K85,000.00	695.00	
exceeding K85,000.00 but not exceeding K100,000.00	760.00	
exceeding K100,000.00 but not exceeding K125,000.00	855.00	
exceeding K125,000.00 but not exceeding K150,000.00	950.00	
exceeding K150,000.00 but not exceeding K175,000.00	1,045.00	
exceeding K175,000.00 but not exceeding K200,000.00	1,140.00	
exceeding K200,000.00 but not exceeding K250,000.00	1,300.00	
exceeding K250,000.00 but not exceeding K300,000.00	1,460.00	
exceeding K300,000.00 but not exceeding K400,000.00	1,680.00	
exceeding K400,000.00 but not exceeding K500,000.00	1,900.00	
exceeding K500,000.00	2,100.00	

2. In respect of proceedings commenced after the commencement date, costs of and incidental to the obtaining of any grant or resealing after the first up to and including the uplifting of the probate or letters of administration so granted or resealed shall be allowed in accordance with the scale below.

Value of the assets remaining to be administered at the time of application for the grant	Costs K	Allowed
not exceeding K1,000.00	80.00	
exceeding K1,000.00 but not exceeding K2,000.00	100.00	
exceeding K2,000.00 but not exceeding K4,000.00	120.00	
exceeding K4,000.00 but not exceeding K6,000.00	155.00	
exceeding K6,000.00 but not exceeding K8,000.00	170.00	
exceeding K8,000.00 but not exceeding K10,000.00	190.00	
exceeding K10,000.00 but not exceeding K12,000.00	215.00	
exceeding K12,000.00 but not exceeding K14,000.00	235.00	
exceeding K14,000.00 but not exceeding K16,000.00	250.00	
exceeding K16,000.00 but not exceeding K18,000.00	270.00	
exceeding K18,000.00 but not exceeding K20,000.00	295.00	
exceeding K20,000.00	K4.00 for each K2,000.00 in excess of K20,000.00 to a maximum of K1,255.00.	