

ARRANGEMENT OF ORDERS AND RULES

ORDERS AND RULES

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REVIEW OF THE RULES

Chief Justice to review Rules

ORDER 1

PRELIMINARY

- Citation 1. These Rules may be cited as the Courts (High Court) (Civil Procedure) Rules, 2017.
- Commencement 2. These Rules shall come into force on such a date as may be appointed by the Chief Justice by a notice published in the *Gazette*.
- Application 3. (1) Subject to sub rule (2), these Rules shall apply to all civil proceedings in the High Court.
- (2) Other rules of practice and procedure shall so apply as long as it is so provided by an Act or any other written law.
- Interpretation 4. Unless the context otherwise requires—
- “Court” means the High Court of Malawi;
- “election matter” means a proceeding that requires the application of the Constitution, the Parliamentary and Presidential Elections Act or the Local Government (Elections) Act due to an act or omission during an election;
- “judgment” includes any decision, decree, determination, finding or order of any court;
- “mandatory order” means an order of the Court compelling a person to do a specified act;
- “order” means an order of the Court;
- “person under a disability” means, in relation to Order 6 rule 18, a person who is a child, or who does not understand the nature and possible consequences of the proceeding, or who is not capable of conducting the proceeding, due to a physical disability or other form of disability, or who is not capable of giving instructions for the conduct of the proceeding;
- “prohibiting order” means an order of the Court compelling a person not to do a specified act;
- “quashing order” means an order of the Court invalidating a decision;
- “Sheriff” bears the same meaning as ascribed to that term under the Sheriffs Act;
- Cap 2:01
Cap 22: 01
Cap 3:05
Objective 5.—(1) The overriding objective of these Rules is to deal with proceedings justly and this includes—
- (a) ensuring that the parties are on an equal footing;
- (b) saving expenses;

(c) dealing with a proceeding in ways which are proportionate to the—

- (i) amount of money involved;
- (ii) importance of the proceeding; and
- (iii) complexity of the issues;

(d) ensuring that a proceeding is dealt with expeditiously and fairly; and

(e) allocating to a proceeding an appropriate share of the Court's resources, while taking into account the need to allocate resources to other proceedings.

(2) The Court shall seek to give effect to the overriding principal objective whenever it —

- (a) exercises any power conferred on it by these Rules; or
- (b) interprets any written law, rules and regulations.

(3) The parties shall assist the Court to further the overriding objective.

(4) The Court shall further the overriding objective by active case management.

(5) Active case management includes—

(a) encouraging the parties to co-operate with each other in the conduct of the proceeding;

(b) identifying the issues for resolution at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers it appropriate, and facilitating the use of such procedure;

(f) assisting the parties to settle the whole or part of the proceeding;

(g) fixing timetables or otherwise controlling the progress of the proceeding;

(h) considering whether the likely benefits of taking a particular step justify the cost of taking it;

(i) dealing with as many aspects of the proceeding as the Court can on the same occasion;

(j) making use of technology; and

(k) giving directions to ensure that the trial of a proceeding continues quickly and efficiently.

ORDER 2

EFFECT OF NON-COMPLIANCE

1. The failure to comply with these Rules or a direction of the Court shall be an irregularity.

Effect of
non-
compliance

Irregularity in a proceeding, document or step taken

2. Notwithstanding rule 1, an irregularity in a proceeding, or a document, or a step taken, or order made in a proceeding, shall not render a proceeding, document, step taken or order a nullity.

Court's power on non-compliance

3. Where there has been a failure to comply with these Rules or a direction of the Court, the Court may—

- (a) set aside all or part of the proceeding;
- (b) set aside a step taken in the proceeding;
- (c) declare a document or a step taken to be ineffectual;
- (d) declare a document or a step taken to be effectual;
- (e) make an order as to costs; or
- (f) make any order that the Court may deem fit.

Application to set out details of non-compliance

4. An application for an order under rule 3 shall—

(a) be made within a reasonable time and before the party making the application takes a fresh step in the proceeding after becoming aware of the irregularity; and

(b) set out details of the failure to comply with these Rules or a direction of the Court.

ORDER 3

TIME

Reckoning time referencing a given day

1. Where a time of a 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.

Exclusion of day when Registry is closed

2. Where a period, being a period of 5 days or less, would include a day on which the Registry is closed, that day shall not be counted.

Last day where Registry is closed

3. 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.

Excluded days

4. In calculating the time fixed by these Rules or by any order fixing, extending or abridging time, the period from the last Thursday before Christmas of one year to the second Tuesday of January of the next year shall not be counted, unless the Court orders otherwise.

Extension or abridgement of time

5. The Court may by order extend or abridge any time fixed by these Rules or by a final or an interlocutory order.

Court to fix time

6. Where time is not fixed by the Rules or by any order of the Court for the doing of anything in or, in connection with any proceeding, the Court may fix the time within which the thing is to be done.

ORDER 4

SITTING, VACATIONS AND BUSINESS HOURS

1. There shall be four sittings of the Court in every year, that is to say—

Sittings of the
High Court

 - (a) the “Lewis Chatsika sitting” which shall begin from the first Tuesday of October of one year and end on the last Thursday before the Christmas Day of the same year;
 - (b) the “Friday Makuta sitting” which shall begin from the second Tuesday of January of one year and end on the Wednesday before Easter Sunday of the same year;
 - (c) the “Richard Banda sitting” which shall begin on the second Tuesday after Easter Sunday of one year and end on the last Friday of May of the same year; and
 - (d) the “Leonard Unyolo sitting” which shall begin on the second Tuesday of June of one year and end on the last Thursday of July of the same year.
2. The Court shall be in vacation between sittings.

Vacation
3. Each Registry shall be open for Court business from 8:30 in the morning to 4:30 in the afternoon.

Registry
opening hours
4. Each Registry shall not be open for Court business on a Saturday, a Sunday or a public holiday.

Closed days
5. Notwithstanding rules 3 and 4, a Registry may be opened for urgent Court business on the direction of the Court.

Opening for
urgent
business

ORDER 5

COMMENCEMENT

1. Unless otherwise provided under these Rules or any other written law, a proceeding shall be commenced by filing a summons in Form 1.

Commencem
ent by filing
summons
2. A summons shall—

Content of
summons

 - (a) specifically state the relief claimed by the claimant;
 - (b) contain a statement of case;
 - (c) set out the address that is to be the claimant’s address for service of documents; and
 - (d) have with it a form of response that may be completed by the defendant.
3. A summons shall—

Particulars of
summons

 - (a) be signed by the claimant or the claimant’s legal practitioner;
 - (b) name as defendant anyone whose interest shall be affected by the order sought; and
 - (c) be signed and sealed by the Registrar.

Registrar to
sign and seal
summons

4. The Registrar shall sign and seal the summons and all filed copies of any summons and ensure that the summons has been stamped indicating the date of filing and the date of issue, and that relevant filing fees have been duly paid.

Identification of
summons or
application

5. When a summons is issued, or an application in a proceeding is issued before the filing of a summons, the Registrar shall give a distinguishing number or other unique identifier to the proceeding.

Endorsement
of summons

6. The Registrar shall ensure that the original and each copy sealed under rule 4 is endorsed with—

(a) the distinguishing number or other unique identifier given to the proceeding; and

(b) the date when the process was filed in the court or, if the proceeding had been started by an oral application, the date when the application was made.

Service of
summons

7.—(1) A summons shall be served on the defendant personally, at his last known address or by other alternative mode as the Court may order.

(2) A summons shall contain a notice advising the defendant that—

(a) he must file a response in Form 2 within 14 days of the date of service, unless the defendant files a defence within that time;

(b) he must file a defence within 28 days of the date of service;

(c) if he files a document in the proceeding, the Court shall notify the parties of the scheduling and pre-trial conferences under Order 14 where the defendant shall be required to attend or be represented in Court; and

(d) if he does not file a response or defence in the proceeding, the claimant may obtain judgment against the defendant.

(3) A summons commencing a proceeding shall have—

(a) a list of documents to be relied upon verified by a sworn statement; and

(b) copies of the documents on the list.

Content and
service of
defence

8. A defendant shall—

(a) serve the defence together with a list of documents verified by a sworn statement; and

(b) have copies of documents on the list.

Power of
Registrar to
reject
documents

9. The Registrar may reject a document that is filed in the Court where—

(a) the document does not comply substantially with the requirements of these Rules;

(b) there is an approved form for the document and the document is not properly completed;

(c) a fee is payable for filing the document and the fee has not been paid subject to other written law; or

(d) the address for service stated in the document is manifestly insufficient for a party or the Court to effect proper service of process.

- | | |
|---|---|
| 10. Rules 11, 12 and 13 shall apply if a document that is filed in the Court appears to the Court on its face to be an abuse of the process of the Court, or to be frivolous or vexatious. | Rules to apply where statement of case is frivolous |
| 11. The Registrar may reject a document or refer the document to a Judge for directions about how to deal with it. | Registrar to reject or refer documents to Judge |
| 12. A Judge may direct the Registrar to accept or reject the document. | Judge to direct Registrar on documents |
| 13. Where the Court rejects a document—
(a) the Registrar shall give notice of the rejection together with the grounds of the rejection to the person who filed the document with the Court;
(b) the Registrar shall return the document and copies of the document filed with the document; and
(c) the document shall be taken not to have been filed. | Notice and effect of rejection of documents |
| 14. Rules 15 to 18 shall apply to a document that was previously rejected in error by the Court and has subsequently been accepted by the Court. | Rules to apply where documents rejected in error |
| 15. The Registrar shall record the filing of the document in the Court and, where appropriate, seal or stamp the document. | Registrar to record filing of document |
| 16. Where the Registrar records the filing of the document, the Registrar shall return any copies of the document filed with the Court for sealing or stamping. | Retention of copies |
| 17. The document shall be taken to have been filed with the Court on the day it would have been first filed if the Registrar had not rejected the document. | Effect of acceptance of document |
| 18. Where a legal practitioner whose name is endorsed on a summons declares, in writing, that the summons was not issued by him or with his authority or privity, the Court may, on the application of a defendant who has been served with, or who has acknowledged service of, the summons, stay all matters in the proceeding. | Court to stay proceeding where legal practitioner denies responsibility for summons |
| 19. Once a summons has been issued, the Judge-in-Charge shall assign the proceeding to a specific Judge and shall issue an initial direction in Form 3. | Assignment of summons |

ORDER 6

PARTIES

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| Party to proceeding | 1. Subject to rule 15, a person is a party to a proceeding if he is named as a claimant or as a defendant. |
| Multiple parties to proceeding | 2. There may be more than one claimant, and more than one defendant in the same proceeding. |
| Parties named separately | 3. Each party to a proceeding shall be named separately. |
| Adding a party without permission | 4. A person may be added as a party without the permission of the Court before the summons has been served by endorsing that person's name on copies of the summons. |
| Adding a party with permission | 5. The Court may, on an application by a party, order that a person becomes a claimant in a proceeding where the person's addition as a party is necessary to enable the Court to make a decision fairly and effectively in the proceeding. |
| Consent required to be added as a claimant | 6. A person may be added as a claimant in a proceeding with his consent and where the person does not consent to be added as a claimant, he shall be added as a defendant. |
| Application to be added as a party | 7. A person affected by a proceeding may apply to the Court for an order that he should be added as a party in the proceeding. |
| Removal as a party | 8. The Court may, on an application by a party, order that a party in a proceeding is no longer a party where—
(a) the person's presence is not necessary to enable the Court to make a decision fairly and effectively in the proceeding; or
(b) there is no good and sufficient reason for the person to continue being a party. |

CONSOLIDATION

- | | |
|--|--|
| Consolidation of claims | 9. The Court may, on its own motion or on an application by a party, order that several claims against one party be included in one proceeding where—
(a) a common question of law or fact is involved in all the claims;
(b) the claims arise out of the same transaction or event; or
(c) there is no good and sufficient reason for the claims to continue separately. |
| Separation of claims and extension of time | 10. The Court may, on its own motion or on an application by a party, order that several claims against one party be treated and heard as separate proceedings where—
(a) the claims can be more effectively dealt with separately; or
(b) there is no good and sufficient reason for the claims to continue jointly. |

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| 11. The Court may, on its own motion or on an application by a party, order that several proceedings be heard together where— | Consolidation of hearings |
| (a) the same question is involved in each proceeding; | |
| (b) the decision in one proceeding will affect the other; or | |
| (c) there is no good and sufficient reason for the proceedings to be heard separately. | |
| 12. Where the Court makes an order changing parties to a proceeding, the party who applied for the order shall— | Amendment and service of summons upon change of parties |
| (a) file an amended summons highlighting, in red, the new party and the date of the order; and | |
| (b) serve the amended summons on all parties to the proceeding. | |
| 13. The amended summons shall be filed and served— | Time for serving amended summons |
| (a) within the time fixed by the order; or | |
| (b) where no time has been fixed, within 14 days from the date of the order. | |
| 14. Unless the Court orders otherwise, where an order added or substituted a claimant or defendant, everything done in the proceeding before the order was made shall have the same effect in relation to the new claimant or defendant. | Effect of change of parties |

THIRD PARTY NOTICE

- | | |
|---|------------------------------------|
| 15. Where a defendant claims a contribution, indemnity or other remedy against a person who is not a party to the proceeding, the defendant shall file and serve a notice (a 'third party notice') on that person stating that— | Third party notice |
| (a) he claims the contribution, indemnity or other remedy; and | |
| (b) the person shall be a party to the proceeding from the date of service. | |
| 16. The defendant shall obtain the permission of the Court where the third party notice is filed after the defence has been filed. | Third party notice with permission |
| 17. A person served with a third party notice under rule 15 or rule 16 shall become a party to the proceeding, as a third party, with the same rights and obligations in the proceeding as if the defendant had started a proceeding against such person. | Effect of third party notice |

PERSON UNDER A DISABILITY

- | | |
|--|------------|
| 18. A person is under a disability if he— | Disability |
| (a) is under the age of 18 years; | |
| (b) does not understand the nature and possible consequences of the proceeding; or | |

(c) is not capable of conducting the proceeding or giving instructions for the conduct of the proceeding.

Litigation guardian	19. The Court may appoint a person not under disability to be the litigation guardian of a person under a disability.
Person under disability to act through litigation guardian	20. A person under a disability may commence or defend a proceeding only by acting through his litigation guardian.
Litigation guardian for claimant liable for costs	21. A litigation guardian for a claimant shall be liable for costs for which the claimant would have been liable if the claimant were not a person under a disability.
Costs enforced against litigation guardian	22. An order for costs against the claimant or the litigation guardian shall be enforced against the litigation guardian.
Litigation guardian for a defendant liable for negligence	23. A litigation guardian for a defendant shall not be liable for costs in a proceeding, unless the costs are incurred because of the litigation guardian's negligence or misconduct.
Qualification as litigation guardian	24. Unless a person is appointed as a litigation guardian by the Court, a person shall become a litigation guardian of a person under a disability in a proceeding— (a) by filing a sworn statement by a legal practitioner for the person under a disability; or (b) by filing a sworn statement by a person with knowledge of the facts, deponing that the intended litigation guardian— (i) has agreed to be the litigation guardian; (ii) is a proper person to be the litigation guardian; (iii) has no interest in the proceeding that is adverse to the interest of the person under a disability; and (iv) where the person under a disability is a claimant in the proceeding, has made an undertaking that he shall be liable for costs that the person under a disability might otherwise be required to pay in the proceeding.
Continuation of claim upon death of claimant	25. Where the claimant dies during a proceeding involving a statement of case that continues after death then— (a) the proceeding may be continued by the claimant's personal representative; and (b) the Court may give directions to allow the personal representative to continue the proceeding.
Claimant's deceased estate or appointed	26. Where, at the commencement of a proceeding a defendant is dead and a personal representative has not been appointed, and the statement of case continues after the defendant's death, then—

(a) where the claimant knows the defendant is dead, the claim shall name the estate of deceased defendant as a defendant; and

(b) after a personal representative is appointed, all documents in the proceeding thereafter shall name the personal representative as defendant.

PARTNERSHIPS

27. A partner may start a proceeding in the name of the partnership.

Partnership

28. A proceeding against persons who are alleged to be partners may be brought and continued against the persons in the name of the partnership.

Claims
against
partners to a
partnership.

29.—(1) A party to a proceeding against a partnership may, by notice in writing, require the partnership, within 2 days of the date of service of the notice, to give the names and particulars of all partners.

Request on
particulars of
partners

(2) The notice shall be served—

(a) at the place of business of the partnership; or

(b) on one of the partners personally.

(3) Where the partnership does not give this information, the Court may—

(a) order the proceeding to be suspended until the information is given;

(b) order a summons or defence, as the case may be, that has been filed to be struck out; or

(c) make any other order it considers appropriate.

REPRESENTATIVE ACTIONS

30.—(1) A proceeding may be commenced and continued by, or against, one or more persons who have the same interest in the subject matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceeding.

Representativ
es with same
interest

(2) At any stage of the proceeding, the Court may appoint one or more persons named in the proceeding, or other persons, to represent in the proceeding, the persons having the same interest.

(3) When appointing a person who is not a party, the Court shall also order that the person shall become a party.

(4) An order made in a proceeding against a representative party may be enforced against a person not named as a party only with the permission of the Court.

(5) An application for permission to enforce the order shall be served on the person against whom enforcement is sought as if the application were a claim.

TRUSTEES

Trustees,
executors or
administrators

31.—(1) A claim may be brought against trustees, executors or administrators of an estate in their capacity without joining the beneficiaries.

(2) A judgment or order made in the proceeding shall be binding on all beneficiaries unless the Court orders otherwise.

BUSINESSES

Claim against a
person in
respect of a
business in
Malawi

32. Where a claim is made against a person in respect of anything done, omitted or suffered in the course of, or otherwise relating to, a business carried on within Malawi by that person under a business name—

(a) if the business name is registered, a proceeding may be commenced against that person in the business name or under the rules relating to partnerships; and

(b) if the business name is not registered, a proceeding may be commenced against that person in his own name.

Proceeding
commenced
against person
in a business
name

33. Where a proceeding is commenced against a person in a business name under rule 32 (a)—

(a) that business name shall, for the purpose of the proceeding, be a sufficient designation of that person in any court process; and

(b) a judgment or order made in the proceeding may be enforced against that person.

ORDER 7

STATEMENT OF CASE

Contents of
statement of
case

1. A statement of case shall—

(a) set out the material facts between the parties, as each party sees them, but not the evidence to prove them;

(b) show the areas where the parties agree;

(c) show the areas where the parties disagree that need to be decided by the Court;

(d) be as brief as the nature of the proceeding permits;

(e) identify any statute or principle of law on which the party relies, but not contain the legal arguments about the statute or principle;

(f) where the party is relying on customary law, state the customary law;

(g) state specifically any fact that if not stated specifically, it would take another party by surprise; and

(h) where the statement of case was prepared by a legal practitioner, state the name and address of the legal practitioner.

Statement of
case to set out
remedy sought

2. Where the statement of case is set out in a claim or counterclaim, it must also set out the remedy or order sought.

3. Unless the defendant files and serves a defence, he shall file and serve a response within the period required by Order 5 Rule 7 (2) (a), and the response must be completed and signed.	Defendant to file and serve response
4. The defendant need not file and serve a response if he files and serves a defence within 14 days of the date of service of the claim.	No need for response where defence served
5. Where the defendant intends to contest the claim, the defendant shall file and serve a defence on the claimant within the period required by Order 5 Rule 7 (2) (b).	Filing a defence
6. A defendant shall deal with each fact in the claim and shall not deny a claim generally.	No general denial
7. Where the defendant does not agree with a fact that the claimant has stated in the claim, the defendant shall file and serve a defence that denies the fact and states what the defendant alleges happened.	Defence to state facts denied
8. Where the defendant does not deny a particular fact, the defendant shall be taken to agree with that fact.	Non-denial deemed agreement
9. Where the defendant does not know about a particular fact and cannot reasonably find out about it, the defendant shall say so in the defence.	Lack of knowledge on fact
10. Where a claimant does not file and serve a reply, the claimant shall be taken to deny all the facts alleged in the defence.	Failure to reply deemed general denial
11. Where a claimant wishes to allege further material facts after the defence has been filed and served, the claimant shall seek the permission of the Court to file and serve a reply.	Reply with permission
12. Where the permission is granted under rule 11, the reply of the claimant shall— (a) contain a statement of case limited to matters raised for the first time in the defence; and (b) state what the claimant alleges as having happened.	Content of reply
13. Where the reply of the claimant does not deal with a particular fact, the claimant shall be taken to deny it.	Inference of claimant's denial
14. In a defence or a reply, the statement of case shall specifically mention a matter that— (a) makes another party's claim or defence untenable; (b) shows a transaction is void or voidable; or (c) raises a question of fact not arising out of a previous statement of case.	Content of statement of case in defence or reply

Notice of result of creditors' meeting to consider proposals

15. Where a defendant in a proceeding wants to make a counterclaim instead of bringing a separate proceeding, the defendant shall include details of the counterclaim in the defence.

Counterclaim to set out details as a claim

16. The counterclaim under rule 15 shall—

(a) be shown clearly as the counterclaim; and

(b) set out details of the counterclaim as if it were a claim.

Claimant's reply may include defence to counterclaim

17. A claimant may include a defence to the counterclaim in his reply where the defendant has made a counterclaim and rules 6 to 10 inclusive shall apply to the part of the reply that deals with the counterclaim as if the reply were a defence.

Defendant may file defence to reply in counterclaim

18. Where the claimant defends the counterclaim in a reply, the defendant may file a defence to the reply dealing with that part of the claimant's reply that relates to the counterclaim and rules 6 to 10 inclusive shall apply to the defence to the reply.

Effect of rule 20 to 22 to counterclaim

19. Rules 20 to 22 shall apply to the conduct of a counterclaim, whether the counterclaim is against a person who was a party before the counterclaim was made or not, as if—

(a) the counterclaim is a claim, and the person making it is a claimant in an original proceeding; and

(b) the party against whom the counterclaim is made is a defendant to an original proceeding.

Counterclaim against person other than claimant

20.—(1) A defendant may make a counterclaim against a person other than the claimant where—

(a) the person is also a party to the counterclaim; and

(b) either—

(i) the defendant alleges the person is liable with the claimant for the counterclaim; or

(ii) the relief the defendant claims against the person is related to, or connected with, the claim of the proceeding.

(2) The defendant shall serve the defence and counterclaim, and the claim, on the other party within the time allowed for service under Order 5 rule 7.

Claim for damages to state nature and amount, etc.

21. Where damages are claimed in a claim or counterclaim, the claim or counterclaim shall also state the nature and amount of the damages sought; including special, aggravated and exemplary damages, and the basis on which the amount claimed has been worked out or estimated.

Content of statement of case where damages sought

22. Where damages are sought, the statement of case shall include—

(a) the nature of the loss or damage suffered; and

(b) the exact circumstances in which the loss or damage was suffered.

23.—(1) A party may amend a statement of case to—

- (a) better identify the issues between the parties;
- (b) correct a mistake or defect; or
- (c) provide better facts about each issue.

Amendment
of statement
of case

(2) After closure of the statement of case, an amendment may only be made with the permission of the Court or the consent of the parties.

(3) In deciding whether to allow an amendment, the Court shall have regard to whether another party would be prejudiced in a way that cannot be remedied by—

- (a) awarding costs;
- (b) extending the time for anything to be done; or
- (c) adjourning the proceeding.

24.—(1) A party may, on application, file with the Court a statement of case after the time fixed by Order 5 rule 7.

Filing
statement of
case out of
time

(2) The Court may decide whether or not the document under sub rule (1) is effective for the proceeding.

(3) In deciding whether a statement of case filed out of time is effective, the Court may have regard to—

- (a) the reasons why the document was filed out of time; and
- (b) any additional expense or inconvenience incurred by the other party to the proceeding, and the disadvantage to the first party if the filing out of time is not allowed.

(4) Where the Court decides the filing of the document is not effective, the Court may—

- (a) make any order that is appropriate for the proceeding; and
- (b) make an order about the costs incurred by a party because of the late filing.

25.—(1) A summons shall be served within 3 months of the date endorsed by the Registrar under Order 5 rule 4.

Effect of
non-compliance
with
time of
service of
summons

(2) Where a summons is not served within 3 months of the date endorsed by the Registrar under Order 5 rule 4—

- (a) the claimant may apply to the Court to have the claim renewed; and
- (b) where the claimant does not apply for renewal, the summons ceases to be of any effect.

ORDER 8

SERVICE

1. Where these Rules require a document to be served, the party who filed the document shall be responsible for ensuring that the document is served.

Responsibility
of service by
party who
filed

Service by
person other
than party filing

2. The Court may, on application by a party responsible for the service, order that the document be served by the Sheriff or other person, if the Court is satisfied that the circumstances of the proceeding require it.

Copy of
summons, etc
to be served
personally

3. A copy of the summons, which has been sealed, and the response in Form 2 referred to in Order 5 rules 4 and 7 respectively, shall be served on the defendant personally, unless—

(a) Rule 20 applies; or

(b) the Court orders that the summons and the response in Form 2 may be served in another way.

Address for
service

4. An address for service is the address at which documents in a proceeding, other than a summons, can be served on the party giving the address, and shall be—

(a) a home or place of business located within the territory of Malawi;

(b) at a post office or postal agency; or

(c) where the party is represented by a legal practitioner, the address of the legal practitioner's office.

Party filing
document to
state address
for service

5. Every document filed shall state an address for service for the party filing the document.

Change in
address for
service

6.—(1) Where a party's address for service changes, the party shall, within 2 days of the change, give the Court and the other party a notice in writing of the new address and the notice shall include—

(a) the number of the proceeding; and

(b) the names of the parties.

(2) The notice shall be filed with the Court and served on the other party.

Last known
address
effective for
service

7. Service of a document at the last known address, given as an address for service of a party, is effective service, unless a notice of change of address for service has been given to the party serving the document.

Service of
documents
other than
summons

8. Subject to any specific provision in these Rules or any other written law, a document, other than a summons and a response, may be served—

(a) on a party personally;

(b) by leaving it at the party's address for service; or

(c) by sending it to the party's address for service by prepaid post, registered mail, courier service, facsimile, or, if the party has given an address for service by electronic mail, by electronic mail.

Alternative
service

9.—(1) Where a defendant has not filed a response or defence, or has not given an address for service and a document is not required to be served personally, the document may be served on the defendant by filing in the Court and sending a sealed or stamped copy by prepaid post, registered mail or courier service addressed to the defendant, at the last known address of the defendant.

(2) A document filed under this Rule shall state, on its first page, that it is filed under this Rule.

10. A document served by facsimile shall include a cover page stating the following— Service by facsimile

- (a) the name and address of the server;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages, including the cover page, transmitted;
- (e) the facsimile telephone number from which the document is transmitted;
- (f) the name and mobile cellular or fixed-line telephone number of a person to contact if there is a problem with the transmission; and
- (g) that the transmission is for service under these Rules.

11.—(1) Where a document is served by facsimile, the person serving the document shall make and file with the Court a sworn statement giving proof of service. Contents of sworn statement on service by facsimile

(2) A sworn statement of the service of a document by facsimile shall include, as an exhibit, the transmission advice, generated by the facsimile machine by the sender, indicating that the transmission was successful.

12.—(1) A document sent by electronic mail shall be capable of being printed by the recipient with the content and in the form in which it was created. Service by electronic mail

(2) A document sent by electronic mail shall include—

- (a) the name and cellular or fixed-line telephone number of a person to contact if there is a problem with the electronic mail; and
- (b) a statement that the electronic mail is for service under these Rules.

(3) Where a document is required under these Rules to be signed before it is served, it shall be sufficient if the person serving the document by electronic mail—

- (a) identifies himself in the electronic mail by stating his name and business address; and
- (b) states in the electronic mail that the original of the document sent by electronic mail was signed and by whom.

13. Where a document is required under these Rules to be sealed and stamped before it is served, it shall be sufficient if the document served by electronic mail— Service of sealed and stamped documents by electronic mail

- (a) is a copy of a document that was sealed and stamped on a specified date and the date is indicated on the document; and
- (b) the person who serves the document by electronic mail states that the original of the document was sealed and stamped on a specified date and the date is indicated on the document.

Service of
sworn
statement by
electronic mail

14. Where the document sent by electronic mail is a copy of a sworn statement, the original sworn statement is taken to have been sworn where—

(a) the original sworn statement was properly sworn; and

(b) the person who serves the copy of the sworn statement states in the electronic mail that the original was properly sworn.

Service out
of time

15.—(1) The Court may decide whether or not the service of a document out of time is effective in the proceeding.

(2) In deciding whether or not the service of a document out of time is effective, the Court may consider—

(a) the reasons why the document was served out of time; and

(b) any additional expense or inconvenience incurred by the other party to the proceeding, and the disadvantage to the first party if the service out of time is not allowed.

Power of court
on service out
of time

16. Where the Court decides the service of a document out of time is not effective, the Court may—

(a) make any order that is appropriate in the proceeding; and

(b) make an order about the costs incurred by a party because of the service out of time.

Personal
service of
documents

17. A document shall be served personally on an individual—

(a) by giving a copy of the document to the individual; or

(b) where the individual does not accept the document, by throwing it down in the individual's presence, drawing his attention to the document.

Service on
body corporate
or trust
Cap 46:03
Cap 5:03

18. A document shall be served on—

(a) a body corporate in accordance with section 372 of the Companies Act; a trust in accordance with section 13 of the Trustees Incorporation Act; or

(b) where a body corporate does not have a registered office in Malawi, by leaving a copy of the document at the principal place of business or at the principal office of the corporation in Malawi.

Service on
Government

19.—(1) All documents required to be served on the Government for the purpose of, or in connection with, any proceeding by or against the Government shall be served on the Attorney-General or upon another public officer or Government department, expressly authorized by a written law to institute or defend the proceeding in question on behalf of the Government.

(2) All documents required to be served on the Government under subrule (1), shall be served on the Attorney-General or upon another public officer or Government department—

(a) personally; or

(b) by sending it to the Attorney-General or upon another public officer or Government department through the address for service by prepaid post, registered mail, courier service, facsimile, or if the party has given an address for service by electronic mail, by electronic mail.

20.—(1) Where it is not practical for a party to serve a document personally and an alternative way of serving the document is reasonably unlikely to bring the document to the attention of the person to be served, the party may apply to the Court for an order that the document be served by other means (the ‘substituted service’).

Substituted
service

(2) The Court may order that a document be served—

(a) on a village or a faith community leader who lives in the area where it is believed the person to be served is living;

(b) on a spouse, parent or sibling of the person to be served;

(c) by putting a notice in a newspaper circulating in the area where the person to be served lives;

(d) by arranging for an announcement about the document to be broadcast on the local radio in the area where the person to be served lives;

(e) by leaving the document with an adult person at the last known address of the person to be served; or

(f) in any other way that the Court is satisfied will ensure that the person to be served knows about the document and its contents.

(3) A notice in the newspaper, or an announcement on the radio shall—

(a) be addressed to the person being served;

(b) give the name and last known address of the person being served and the name and address for service of the claimant;

(c) state where a copy of the document can be picked up by the person being served; and

(d) where the document requires the person to go to a court, state the time, date and the place of the Court where the person being served is to go.

21. A document to be served on a child shall be served—

Service on
children

(a) where the child is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(b) where the child is not a party to the proceeding, on the child’s parent or guardian, or on a person who appears to be acting in the position of the child’s parent or guardian.

22. Where a child is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the child with a document shall apply to the Court for the appointment of a litigation guardian of the child and serve the document on the litigation guardian.

Appointment
of litigation
guardian for a
child

23. A document to be served on a person with disability shall be served—

Service on
person with
disability

(a) where the person is a party to the proceeding and has a litigation guardian, on the litigation guardian; and

(b) where the person is not a party to the proceeding, on the person’s guardian, or on a person who appears to be acting in the position of the person’s guardian.

Appointment of litigation guardian for a person with disability	24. Where a person with disability is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the person with a document shall— (a) apply to the Court for the appointment of a litigation guardian for the person; and (b) serve the document on the litigation guardian.
Service on personal representative of deceased's estate	25. In a proceeding where the estate of a deceased person is a party, all documents must be served on one of the personal representatives of the estate or other fit and proper person acting on behalf of the estate.
Service on a partnership	26.—(1) A summons against a partnership must be served— (a) on a partner; or (b) at the principal place of business of the partnership. (2) Where a summons is served as required by sub rule (1), each partner who was a partner when the claim was issued is taken to have been served.
Proof of service of response or defence to counterclaim	27. Where a defendant files and serves a response or a defence to a claim, the claimant need not file a sworn statement giving proof of service.
Further action where party served fails to file document required by Rules	28. Where a party on whom another document is served does not subsequently file a document required by these Rules to be filed, the party serving the first document cannot take any further action in the proceeding unless he or she files a sworn statement setting out details of the time and manner in which the first document was served.
Content of sworn statement where document is served under rule 20	29. Where a document is served under rule 20, the sworn statement shall— (a) for service on a village head, give details of how and when the claim was served on the village head; (b) for service through a newspaper or by radio, give details of the service, including a copy of the notice or of the announcement; and (c) for service by other means, give details of how the document was served.
Service of summons outside Malawi	30.—(1) A party may apply to the Court for an order that a summons in the Court be served outside Malawi. (2) The Court shall, on application, order that a summons or other process be served outside Malawi where the Court is satisfied that the party seeking permission has a good and arguable case for the relief sought by the party in the proceeding, and— (a) the claim concerns land in Malawi; (b) an Act of Parliament, deed, will, contract, obligation or liability affecting land in Malawi is sought to be interpreted, rectified, set aside or enforced; (c) the claim is against a person who is domiciled or ordinarily resident in Malawi;

(d) the claim is for the administration of an estate of a person who was domiciled in Malawi at the date of the person's death;

(e) the claim is for the execution of a trust, the person to be served is the trustee, and the trust concerns property in Malawi;

(f) the claim concerns a contract made in Malawi or governed by the law of Malawi;

(g) the claim is based on a breach of contract committed in Malawi, whether or not the contract was made in Malawi;

(h) the claim is based on a tort committed in Malawi;

(i) the claim is for damage suffered in Malawi, whether or not the tort causing the damage happened in Malawi;

(j) the claim is for an amount payable under any law to a public institution in Malawi;

(k) the proceeding is brought against a person in Malawi and the other person outside Malawi is a necessary party to the proceeding;

(l) the proceeding is for an injunction ordering the person to do or not do anything in Malawi, whether or not damages are claimed; or

(m) for any other reason the Court is satisfied that it is necessary for the claim to be served on a person outside Malawi.

(3) An order that a summons or other process be served outside Malawi shall be on such terms and conditions as the Court considers appropriate.

31. Rule 30 shall apply to service of a counterclaim and a third party notice.	Application of rule 30
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32. The Court may give directions extending the time for service of a claim, filing a response or defence to the claim.	Extension of time for service
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33. A claimant shall serve on the person a copy of the order and each sworn statement made in support of the order.	Claimant to serve copy of the order
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34. A claimant shall file a sworn statement giving proof of service.	Claimant to file statement giving proof of service
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35. Where these Rules require a copy of a filed document to be served, the copy shall be a sealed copy.	Copy shall be sealed
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ORDER 9

CLOSURE OF STATEMENT OF CASE

1. The statement of case in a proceeding shall be deemed to be closed—	Closure of statement of case
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(a) at the expiration of 7 days after service of the reply or, where there is no reply but only a defence to counterclaim, at the expiration of 7 days after service of the defence to counterclaim; or

(b) where neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after service of the defence.

Compliance with a request or order for particulars immaterial

2. The statement of case in a proceeding shall be deemed to be closed at the time under rule 1 notwithstanding that any request or order of the Court for particulars has been made but has not been complied with at that time.

ORDER 10

APPLICATIONS IN PROCEEDINGS AND INTERLOCUTORY ORDERS

Application for an interlocutory order or direction

1. A party may apply during a proceeding for an interlocutory order or direction of the Court by filing an application in a proceeding in Form 4.

Particulars of an application in a proceeding

2.—(1) An application in a proceeding shall—

(a) be signed by the applicant or the applicant's legal practitioner;

(b) cite the same parties as in the proceeding and anyone whose interests are affected by the order sought; and

(c) be signed and sealed by the Registrar.

(2) Nothing in this rule shall prevent a party to a proceeding from making an oral application during the proceeding or the Court making an order on an oral application.

Time for making interlocutory applications

3. A party may apply for an interlocutory order at any stage, namely; before a proceeding has started, during a proceeding, or after a proceeding has been dealt with, and whether or not the party mentioned the particular relief being sought in his summons or counterclaim.

Particulars of an application for interlocutory orders

4. An application for an interlocutory order under rule 1 shall—

(a) state the relief sought by the applicant; and

(b) have with it a sworn statement by the applicant or his legal practitioner setting out the facts that support the relief sought, unless—

(i) there are no questions of fact that need to be decided in making the order sought; or

(ii) the facts relied on in the application are already known to the Court.

Service of an application for interlocutory orders

5. An application for an interlocutory order shall be served on the other party to the proceeding, unless —

(a) the matter is so urgent that the Court decides the application in a proceeding should be dealt with in the absence of the other party; or

(b) the Court orders, for good reason, that there is no need to serve it on the other party.

6. The application for an interlocutory order before the hearing of a proceeding shall be served at least 2 clear days before the time set for hearing, unless the Court orders otherwise.
7. An application for an interlocutory order made during a proceeding shall not be dealt with in open court unless—
- (a) it is in the public interest that the matter be dealt with in open court; or
 - (b) the Court is of the opinion, for good reason, that the matter should be dealt with in open court.
- 8.—(1) A person may apply for an interlocutory order before a proceeding has started by filing an application in a proceeding and the application shall—
- (a) set out the substance of the claim;
 - (b) have a brief statement of the evidence on which the applicant will rely on;
 - (c) set out the reasons why it is appropriate that the order be made before a proceeding has started; and
 - (d) have with it a sworn statement in support of the application.
- (2) The Court may make the order if it is satisfied that—
- (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and
 - (b) the balance of convenience favours the making of the order.
- (3) When making the order, the Court may also order that the applicant file an application by the time stated in the order.
9. The Court may allow an oral application in a proceeding to be made where—
- (a) the application is for urgent relief;
 - (b) the applicant undertakes to file an application in a proceeding within the time directed by the Court; and
 - (c) the Court considers it appropriate—
 - (i) because of the need to protect persons or property;
 - (ii) to prevent the removal of persons or property from Malawi;
 or
 - (iii) because of other circumstances that justify making the order asked for.

Service of an application for an interlocutory order before hearing of a proceeding

Hearing of interlocutory applications in open court an exception

Interlocutory order before commencement of a proceeding

Oral applications

FREEZING INJUNCTION

10. For purposes of rules 11 to 16, "owner", in relation to assets, includes the person entitled to possession and control of the assets.

Interpretation of "owner"

Freezing
injunction

11. The Court may, on application, make an order (the 'freezing injunction') restraining a person from removing assets from Malawi or dealing with assets in or outside Malawi.

Assets on
non-party and
conditions for
granting
freezing
injunction

12.—(1) The Court may make an order for a freezing injunction whether or not the owner of the assets is a party to an existing proceeding.

(2) The Court may make the order only where—

(a) the Court has already given judgment in favour of the applicant and the freezing injunction is ancillary to it; or

(b) the Court is satisfied that—

(i) the applicant has a good and arguable case;

(ii) a judgment or order in the matter, or its enforcement, is likely to involve the assets; and

(iii) the assets are likely to be removed from Malawi, or dealing with them should be restrained.

Particulars of
freezing
injunction
before and after
commence-
ment.

13.—(1) Where a proceeding has commenced, the application shall—

(a) describe the assets and their value and location; and

(b) include the name and address of the owner of the assets, if known, and the identity of anyone else who may be affected by the order and how they may be affected.

(2) Where the proceeding has not commenced, the summons or application shall state—

(a) the name and address of anyone else likely to be a defendant;

(b) the basis of the applicant's claim;

(c) the amount or nature of the claim;

(d) what has been done to recover the amount of the claim, or to get the relief claimed; and

(e) any possible defence to the claim.

(3) Where the application is made in any other proceeding, the application shall set out—

(a) how the assets to be subject to the order will form part of any judgment or its enforcement; and

(b) what will be done to preserve the assets;

(i) where the application has not been made on notice, the reason for the lack of notice; and

(ii) an undertaking as to damages that may be caused to the defendant or potential defendant, or anyone else who may be adversely affected, if the order is made; and a sworn statement in support of the application and a draft freezing injunction.

(4) The sworn statement under rule 3 (e) shall include—

(a) the reason why the applicant believes—

(i) the assets may be removed from Malawi; or

(ii) dealing with the assets should be restrained;

(b) where the Court has already made a judgment or order, the reason why the applicant believes the judgment or order already made may not be satisfied, or may be thwarted, if the freezing injunction is not made;

(c) where a proceeding has not been started and the name and address of the owner of the assets, and anyone else likely to be a defendant, are not known, what has been done to find out those names and addresses; and

(d) in any other case, how the assets to be subject to the order will form part of any judgment or its enforcement, what will be done to preserve the assets, and if the application has not been made on notice, the reason for the lack of notice.

14. Where the name and address of the owner of the assets is not known, the application for a freezing injunction may be served as follows—

Service of
freezing
injunction
where name
and address
not known

(a) for service on a vessel, by attaching it to the mast or other conspicuous place on the vessel;

(b) for service on an aircraft, by attaching it to the pilot controls or other conspicuous place on the aircraft; or

(c) in any other case, as the Court directs.

15. When making the freezing injunction, the Court shall—

Powers of the
court on
granting
freezing
injunction

(a) where a proceeding has commenced, fix a date on which the person to whom the order is granted is to report back to the Court on what has been done under the order; and

(b) where a proceeding has not commenced, order that—

(i) the applicant file a summons by the time stated in the order;

(ii) where the defendant is not known, the defendant be described in the claim as “person unknown”; and

(iii) where the name and address of the defendant or potential defendant is known, fix a time for serving the summons on him.

16. The Court may, on application, set aside or vary a freezing injunction.

Varying or
setting aside
freezing
injunction

SEIZING INJUNCTION

17. The Court may, on application, make an order (the ‘seizing injunction’) authorizing an applicant to seize documents and objects in the possession of another person.

Seizing
injunction

18. The Court may make the seizing injunction—

(a) without notice to the defendant or potential defendant; and

(b) where the matter is extremely urgent, before a proceeding has commenced.

Seizing
injunction
without
notice

19. The Court may make the seizing injunction, only if it is satisfied that—

Conditions
for granting
seizing
injunction

(a) the order is required to preserve documents and objects as

evidence;

(b) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Malawi;

(c) the applicant has a good and arguable case;

(d) where the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and

(e) there is clear evidence that the documents or objects are in the defendant's possession.

Particulars of
application for
seizing
injunction

20. An application for the seizing injunction shall—

(a) describe the documents and objects, or kinds of documents and objects, to be covered by the injunction;

(b) give the address of the premises for which the injunction is sought;

(c) set out the basis of the claim of the applicant;

(d) set out proposals for the matters listed in rule 22;

(e) include an undertaking as to damage that may be caused to the defendant or potential defendant, or any other person who may be adversely affected, if the injunction is granted; and

(f) be accompanied by a sworn statement in support of the application and a draft seizing injunction.

Contents of
sworn
statement
accompanying
application
for seizing
injunction

21. The sworn statement under rule 20 (f) shall include—

(a) the reason for the preservation of the documents or objects as evidence;

(b) the basis for the applicant's belief that—

(i) there is a real possibility that, unless the seizing injunction is granted, the defendant or potential defendant is likely to destroy, alter or conceal the documents or objects or remove them from Malawi; and

(ii) where the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the interests of the applicant;

(c) verification of the facts that support the claim;

(d) the evidence that the documents or objects are in possession of the defendant; and

(e) the damage the applicant is likely to suffer if the seizing injunction is not granted.

Seizing
injunctions to
detail the
processing of
the order

22. The seizing injunction shall include provisions pertaining to—

(a) service of the injunction on the defendant or potential defendant;

(b) the person who is to carry out the order, including the appointment of an independent legal practitioner to supervise the

implementation of the seizing injunction;

(c) the hours when the enforcement of the seizing injunction may be effected;

(d) the name of a neutral person who is to be present when the injunction is carried out and provisions in relation to payment of their costs;

(e) access to buildings, vehicles and vessels;

(f) the making of a record of seized documents or objects;

(g) the manner of the storage of the seized documents or objects;

(h) the time given for copying and returning documents;

(i) how long the injunction stays in force; and

(j) the setting down of a date on which the person to whom the injunction is granted is to report back to the Court on what has been done under the seizing injunction.

23. The Court may, under a seizing injunction—

(a) require the defendant to give the information stated in the injunction about the proceeding; and

(b) include another injunction restraining, for not more than 7 days, any person served with that injunction from telling another person about the seizing injunction, except for the purpose of obtaining legal advice.

Powers of the Court on granting seizing injunction

24.—(1) The Court may, under a seizing injunction, appoint a person to be the receiver of property owned by the defendant.

Appointment of receiver under seizing injunction

(2) In deciding whether to appoint a receiver, the Court shall consider—

(a) the amount of the claim by the applicant;

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and paying a receiver.

25.—(1) The Court shall not appoint a person as a receiver, unless the person consents to the appointment.

Conditions for appointment as receiver

(2) The Court may require the receiver to give security acceptable to the Court for performing his duties.

(3) An application for the appointment of a receiver shall be supported by a sworn statement.

(4) A sworn statement in support of the application for the appointment of a receiver shall—

(a) describe the property owned by the defendant; and

(b) give the reasons why the appointment of a receiver is necessary to preserve the property owned by the defendant.

(4) The order appointing the receiver shall—

(a) specify the duties of the receiver;

- (b) state the period of the appointment;
- (c) specify remuneration of the receiver;
- (d) require the receiver to file accounts and give copies to the parties, and at the times, the Court requires; and
- (e) specify any matter the Court requires.

Varying or
setting aside
seizing
injunction

26. The Court may, on application, set aside or vary the seizing injunction.

INTERLOCUTORY INJUNCTIONS

Interlocutory
injunctions

27. The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court—

- (a) there is a serious question to be tried;
- (b) damages may not be an adequate remedy; and
- (c) it shall be just to do so,

and the order may be made unconditionally or on such terms or conditions as the Court considers just.

Interlocutory
orders

28. The Court may make an interim declaration by an interlocutory order when it appears to the Court to be just and convenient to do so and the order may be made unconditionally or on such terms or conditions as the Court considers just.

Service of
interlocutory
order

29. An applicant shall serve a copy of an interlocutory order on—

- (a) the respondent; and
- (b) any other person who is required to comply with the order.

Claim for
urgent relief

30. Where a party seeks an urgent relief, the party shall—

- (a) state the urgent relief; and
- (b) inform the Court, that the party is seeking an urgent relief.

ORDER 11

PAYMENT INTO COURT

Payment into
Court

1. In a proceeding, a defendant may, when filing, or at any time after filing, a response or defence—

- (a) pay an amount into Court in satisfaction of—
 - (i) the claim for relief; or
 - (ii) where there are two or more causes of action included in a single proceeding, one or more of the claims for relief; or
- (b) in a proceeding for defamation, pay an amount into Court in anticipation of a remedy.

Notice of
payment into
Court to be
specific where
two claims
involved

2. Where there are two or more claims included in a single proceeding, and an amount is paid into Court in satisfaction of one or more of the claims for relief, the notice shall state—

- (a) the claim or each claim for which payment is made; and

(b) the part of the amount paid in satisfaction of the claim or each claim.

3. Where a defendant makes a payment into Court under this Order, the defendant shall serve the notice of payment into Court on the claimant and where there are two or more defendants, on each defendant, and where there are two or more claimants, the defendant shall serve the notice of payment into Court on each of the claimant.

Notice of payment into Court to be served on parties

4. A defendant who has paid an amount into Court may make further payments increasing the amount without the permission of the Court.

Power to increase payment

5. Where a party in a proceeding is liable to pay the costs of another party in the proceeding, the party may, at any time after the party becomes liable to pay the costs, pay an amount into Court in satisfaction of the costs.

Costs payable into Court where a party is liable to pay costs of another

6. This Order shall apply, with necessary changes, in relation to costs as if—

Application of this Order in relation to costs

(a) the party entitled to the costs is a claimant;

(b) the party liable to pay the costs is a defendant; and

(c) the entitlement of the party to costs is a claim for relief.

7.—(1) A party may lodge a bond for an amount with the Registrar instead of actually paying the amount into Court.

Lodging of bond

(2) The following persons may give a bond—

(a) a licensed bank or financial institution under the Banking Act;

Cap 44:01

(b) a licensed financial institution under the Financial Services Act;

Cap:44:05

(c) a licensed insurer registered under the Insurance Act;

Cap:47:01

(d) a body corporate approved by the Registrar; or

(e) a person who is authorized by the Court, in writing, to give the bond for an approved person.

(3) The bond shall remain in effect, unless the Court otherwise orders.

8. Where a bond is given by a person authorized to do so under rule 7(2), a copy of the authority of such person and the bond shall be filed with the Court, unless the authority has already been filed.

Copy of authority and bond to be filed with Court

9. An authority given by, or for, a person authorized to do so under rule 7(2) that has been filed shall bind the authorized person, until notice of its revocation is filed.

Bond to bind approved person

10. Where a bond is lodged by a party in accordance with rules 7 to 9, this Order shall apply as if the party had paid an amount of the bond into Court.

Effect of lodging bond

Security for payment instead of actual payment	11. A party may lodge a security for payment of an amount with the Registrar instead of actually paying the amount into Court or lodging a bond under rule 7.
Presumption of claim for interest	12. In this Order, a claim by a claimant for relief for a debt, liquidated demand or damages shall be presumed to include a claim for interest that might be included in a judgment, where judgment was given at the date of the payment into Court.
Claimant may accept amount paid into Court	13. Where an amount is paid into Court under this Order by a defendant, the claimant may accept the amount in satisfaction of the claim for relief or, where there are two or more causes of action included in a single proceeding, the claim or each claim for which the payment is made.
Rule 13 to apply to persons under disability	14. Rule 13 shall apply in relation to a proceeding in which there is a claim for an amount, including an amount of damages, by or on behalf of a person under a disability, subject to the approval of the Court under rule 31.
Acceptance to be by service of notice of acceptance	15. The claimant may accept the amount by serving a notice of acceptance on the defendant or, where the payment was made by one of two or more defendants, each defendant— (a) not later than 14 days after the day notice of payment into Court is served on the claimant; or (b) where two or more payments into Court have been made, not later than 14 days after the day the notice of the last payment into Court is served on the claimant.
Defendant to pay amount of bond upon notice of acceptance	16. Where the claimant paid the amount into Court by bond or other security, the defendant shall pay into Court the amount of the bond or security not later than 14 days after the day the notice of acceptance is served on the defendant.
Effect of non-compliance	17. Where the defendant does not comply with rule 16, he is not entitled to any advantage under this Order for the payment into Court, and the claimant may— (a) withdraw, by a notice in writing, his acceptance; or (b) request the Registrar to assign the bond or security to the claimant in order that he can enforce the bond or security.
Payment in a claim by beneficiary	18. Where an amount was paid into Court in a proceeding involving a claim by a beneficiary arising out of the death of a person, the amount shall only be paid out under an order of the Court.
Payment by order of Court where party under disability	19. Where an amount was paid into Court in a proceeding where one of the parties is a person under a disability, an amount shall not be paid out of court without an order of the Judge or Registrar, as the case may be.
Parties may agree payment out of Court	20. Subject to rules 18 and 19, where an amount was paid into Court in a proceeding, the parties may agree that the amount be paid out of Court.

21. Unless the Court orders otherwise, payment shall be made to the claimant or, if the claimant has given written authority for payment to be made to his legal practitioner, then the legal practitioner.

Payment to claimant or legal practitioner

22. Where a payment out of Court is made, the claim for relief or stated claim shall be permanently stayed.

Payment to stay claim

23.—(1) Where a claimant in a proceeding where there is one or more causes of action accepts an amount paid into court in satisfaction of all claims for relief, the claimant may file a bill of costs for assessment not earlier than 7 days after the day the amount is paid out of Court.

Taxation for costs where payment satisfies all claims

(2) The costs claimed in the bill of costs may include—

- (a) the costs incurred to the day of payment into Court;
- (b) the costs reasonably incurred in accepting the payment; and
- (c) the costs incurred in preparing the bill of costs.

24. Where—

Payment into Court as stay of claims for relief in counterclaim

(a) an amount is paid into Court by counterclaim;

(b) the defendant stated in the notice of payment into court that in making the payment the defendant had taken into account and intended to dispose of all the claims for relief, or stated claims, for which the defendant counterclaimed; and

(c) the claimant accepts the amount,

the claims for relief, or stated claims, are permanently stayed against the claimant.

25.—(1) Where an amount paid into Court is not taken out under rules 13 to 22, the amount may be paid out only with the agreement of all parties to the proceeding or under an order of the Court.

Amount paid out with agreement of parties or Court order

(2) The order under sub rule (1) may be made at any time before, during or after the trial of the proceeding.

26. This Order applies, with the necessary changes, to a claimant or any other person, made a defendant to a counterclaim, who pays an amount into Court under this Order.

Application of this Order

27.—(1) Until judgment has been given, the Court at the trial of the proceeding shall not be informed about any payment into Court.

Informing Court of payment into Court

(2) Once judgment has been given, the Court shall be made aware of the payment into Court.

28. When exercising the discretion about costs of a proceeding, other than an application for which a separate order for costs is to be made, the Court shall take into account—

Consideration on determination of costs

- (a) the fact that an amount has been paid into Court;
- (b) the date the payment was made; and
- (c) the amount of the payment or any other relevant factors.

29. Rules 30 to 31 shall apply—

(a) where a claimant (the 'recovering party') brings a proceeding to recover, or a defendant (the 'recovering party') in a counterclaim seeks to recover, property other than land; and

(b) the party (the 'holding party') from whom the recovery is sought does not dispute the right of the recovering party to the property, but claims to be entitled to retain the property because of a lien or other security for an amount.

Payment in
relation to a
holding and
recovering
party

30.—(1) The Court may order that the recovering party pay the amount under rule 29, and an amount, if any, for interest or costs, into Court.

(2) The Court may make the order under sub rule (1) at any time after the claim mentioned in rule 29 (b) is made in the statement of case or where there is no statement of case, by sworn statement or otherwise to the satisfaction of the Court.

(3) Once a payment into Court has been made, the holding party shall surrender the property to the recovering party.

Payment only
with approval
of Court in
disability
proceedings

31.—(1) In a proceeding or intended proceeding under which there is a claim for an amount, including an amount of damages, by, or on behalf of, a person under a disability, a settlement or compromise may only be entered into, and an amount paid into Court may only be accepted, with the approval of the Court.

(2) The application for the approval of the Court shall be made in the summons, unless the application is made in a proceeding that has commenced.

(3) The Court may make an order directing how an amount recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a claimant who is a person under a disability shall be dealt with.

(4) Without prejudice to sub rule (3), the Court may, by order, direct—

(a) the payment of all or part of the amount to—

(i) the claimant or the claimant's litigation guardian for—

(A) expenses incurred by or paid for the claimant; or

(B) the maintenance or benefit of the claimant; or

(ii) the claimant's legal practitioner for costs;

(b) the investment of all, or part, of the amount for the claimant in the way stated in the order;

(c) the investment of all, or part, of the interest received from an investment under this rule for the claimant in the way stated in the order;

(d) the changing of an investment made for the claimant under this rule;

(e) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or

(f) the payment of all, or part, of the amount, or the transfer of a security or investment under this rule, including an account with an authorized deposit-taking institution, for the claimant.

ORDER 12

ENDING A PROCEEDING EARLY

1. Where a proceeding is for a claim for money or the return of goods, the proceeding shall be stayed if, within the time allowed for filing any response or defence, the defendant—
- (a) pays the claimant—
- (i) the amount claimed;
 - (ii) any amounts claimed for interest; and
 - (iii) the amount of any filing and service fees actually paid; or
- (b) returns the goods or pays the value of the goods.
- 2.—(1) This rule shall apply where a proceeding has been stayed under Rule 1.
- (2) The claimant may have his costs assessed where—
- (a) rule 5 applies; or
 - (b) he claims costs to be assessed.
- 3.—(1) The defendant shall file a statement acknowledging the amount and interest, if any, that has been claimed.
- (2) Sub rule (1) shall not apply if the defendant has filed a defence or the claimant has filed an application for a judgment in default under these Rules.
- (3) Where a statement has been filed under sub rule (1), the Court may enter judgment for the claimant for the amount and interest, if any, that has been claimed.
- (4) Where interest is claimed under a proceeding and a judgement has been entered under sub rule (3), interest shall be assessed using the rate stated in the summons to the date of judgment or, where a rate of interest is not stated in the summons, interest shall be assessed using statutory interest to the date of judgment, or a lump sum instead of that interest, which shall be decided by the Court.
- (5) Where a claimant has claimed costs and disbursements, the Court may order the amount applicable under rule 5 or, in any other case, the Court shall order costs that have been agreed by parties or assessed by the Court.
- 4.—(1) The Court may enter judgment for the claimant without a hearing.
- (2) A judgment entered under sub rule (1) fully discharges all the claims in the proceeding.

A proceeding to be stayed where claim for money or return of goods satisfied

Application of rule 1 and assessment of costs

Statement acknowledging amount and interest

Power to enter judgment without hearing

Costs when a proceeding could have been commenced in subordinate court

5. Where a proceeding is in the Court, and the proceeding could properly have been brought in the subordinate courts, the amount of costs to be awarded to the claimant or defendant, as the case may be, shall be the amount applying under the subordinate court scale.

JUDGEMENT IN DEFAULT

Judgment in default

6. Where a defendant—

(a) does not file and serve a response or a defence within 14 days after service of the summons; or

(b) files a response within the time under paragraph (a) but does not file and serve a defence within 28 days after the service of the summons, the claimant may file a sworn statement as a 'proof of service' that the summons and response in Form 2 was served on the defendant as required by Order 5 rule 7, and he may—

(i) apply to the Court for a judgment in default to be entered under this Order against the defendant; and

(ii) carry on the proceeding against any other party to the proceeding.

Application for default judgment for liquidated claims to be made by filing draft judgment and sworn statement

7.—(1) An application for a judgment in default for liquidated claims, unliquidated monetary claims, including claims for damages, the detention of goods, the recovery or delivery of possession of land in an application for possession of land, may be made by filing a draft of the judgment together with a sworn statement in support of the application.

(2) The draft of the judgment in default and the sworn statement under sub rule (1) need not be served on any person unless the Court otherwise orders.

Default judgment under rule 7 may be entered without hearing

8.—(1) The Court may enter a judgment in default for the claimant under rule 7 without a hearing for liquidated claims, unliquidated monetary claims, including claims for damages, the detention of goods, the recovery or delivery of possession of land in an application for possession of land, interest from the date of filing the application at a rate fixed by the Court, and costs.

(2) Where a judgment in default is entered in respect of an unliquidated claim, the claimant shall serve on the defendant a notice of assessment of damages.

Contents of sworn statement under rule 7

9. The sworn statement under rule 7 shall—

(a) state the liquidated amount owing, or the unliquidated damages due, to the claimant, in relation to the claim for relief, at the time the application was filed;

(b) give particulars of any reduction of the amount owing and costs, due to any payments made, or credits accrued, since the application was filed;

(c) state the amount claimed for interest, and how the amount is worked out;

(d) state that the proceeding has not been settled with the defendant;

- (d) state any amounts paid in relation to the claim; and
- (e) state the costs claimed.

10. Where a claim for a judgment in default is only for a debt or liquidated demand, with or without interest, and the Court enters judgment for the claimant under rule 7, the costs and disbursements, including any filing and service fees actually paid, shall be allowed without assessment if the costs and disbursements claimed, other than any filing and service fees actually paid, are not more than the costs applying, from time to time.

Determination of costs on default judgment for debt or liquidated demand

11. The costs and disbursements for the claimant shall be agreed or determined by the Court or assessed where the costs and disbursements claimed, other than any filing and service fees actually paid, are more than the costs applying under these Rules.

Court to assess costs

12. The claimant may file a request for judgment in default to be entered against the defendant under rule 7 for an amount to be assessed by the Court under rule 13.

Request for default judgment for unliquidated claim

13. The Court may enter a judgment in default against a defendant for an amount to be determined; and determine the amount of damages, or where there is not enough information before the Court to do so, fix a date for a conference or hearing to determine the amount of damages.

Powers of Court on default judgment for unliquidated claim

POSSESSION OF LAND

14—(1) Where an application is for the recovery of possession of land, the Court may enter a judgment for the claimant under rule 7(1) for recovery of possession of the land against the defendant and costs.

Application for recovery of possession of land

(2) The application shall be supported by a sworn statement.

(3) A sworn statement in support of the application under sub rule (1) shall—

(a) identify a person, other than the parties to the proceeding, who is in actual possession of the land or any part of it—

(i) at the time the application was filed; or

(ii) where the claim for possession arises from an amendment to the application, at the time the amendment was made;

(b) where the claim for possession of the land arises from a failure to pay an amount, give particulars of the failure; and

(c) state the costs claimed.

(3) The Court shall award the costs for issuing the application, costs for obtaining judgment, and any other fees and payments, to the extent they have been reasonably incurred and paid.

15. Where, before judgment is entered, a person files an application under Order 6 rule 7 for the person to be added as a defendant, the Court shall not enter judgment under rule 14 until it disposes of the application.

Court not to enter judgement

RETURN OF GOODS

Application for
return of goods

16.—(1) Where an application is in relation to the detention of goods, the Court shall enter judgment for the claimant against the defendant under rule 7(1) for the return of the goods to the applicant, payment to the applicant for the loss of use of the goods and costs, or payment to the applicant of the value of the goods and costs.

(2) The application shall be supported by a sworn statement.

(3) The sworn statement in support of the application under sub rule (2) shall—

(a) state which goods have, and which have not, been delivered to the applicant since the claim or counterclaim was filed;

(b) give particulars of any payments the defendant has made to the applicant for the goods, or state that no payments have been made, since the claim or counterclaim was filed; and

(c) state the costs claimed.

(3) Where the Court enters judgment under sub rule (1), and the claimant subsequently applies for an order under this rule, the Court may make an order for the return of the goods to the claimant without the option of the defendant paying the value of the goods.

(4) The Court shall specify a date before which the return of the goods shall take place under the judgment entered under sub rule (1).

(5) Where the Court enters judgment for the return of goods, and the goods are subsequently damaged, destroyed or otherwise made unavailable for their return, the Court may, on an application by the claimant, order the defendant to pay the value of the goods to the claimant.

(6) The “value” of the goods under this Order means the value as assessed by, or in accordance with the directions of, the Court.

Determination
of costs in
relation to
detention of
goods

17.—(1) Where a claim for a judgment in default is only in relation to detention of goods, with or without interest, and the Court enters judgment for the claimant under rule 7, his costs and disbursements, plus any filing and service fees actually paid, must be allowed without assessment where the costs and disbursements claimed, other than any filing and service fees actually paid, are not more than the costs amount applying, from time to time, under these Rules.

(2) The costs and disbursements must be agreed or determined by the Court or assessed where the costs and disbursements claimed, other than any filing and service fees actually paid, are more than the costs amount applying under these Rules.

Powers of
the Court in
relation to
rules 6 and 7

18. Where a defendant is in default under rule 6 and the claimant is not entitled to apply for judgment under rule 7, the Court may enter the judgment it considers just even if the judgment was not claimed.

ASSESSMENT OF DAMAGES

19.—(1) The Court shall conduct the assessment of the amount of damages in the same way as a trial. Assessment of damages to be conducted as trial

(2) The Court may give directions about—

(a) the procedure to be followed before the assessment takes place;

(b) disclosure of information and documents;

(c) filing of statements of the case; and

(d) the conduct of the assessment generally.

(3) After damages have been assessed, the claimant shall enter judgment setting out the amount of damages and, unless the defendant was present when the damages were assessed, serve a copy of the judgment on the defendant.

20. The Court may determine damages without conducting a trial where— Determination of damages without trial

(a) the claimant has filed a sworn statement as to the precise amount claimed;

(b) the sworn statement provides sufficient information for the Court to determine the amount for which judgment is to be entered; and

(c) the defendant has not challenged the amount and information.

SETTING ASIDE JUDGMENT IN DEFAULT

21.—(1) A defendant against whom judgment in default has been entered may apply to the Court to have the judgment set aside. Application to set aside default judgment

(2) The application under sub rule (1) may be made not later than 3 months after the judgment is entered and shall—

(a) set out the reasons why the defendant did not defend the application;

(b) where the application is made more than 3 months after the judgment was entered, explain the delay; and the Court shall not set the judgment aside, unless it is satisfied that it is in the interests of justice to do so;

(c) give details of the defence to the application; and

(d) have a sworn statement in support of the application.

(3) The Court may set aside the judgment in default if it is satisfied that the defendant—

(a) has shown reasonable cause for not defending the application; and

(b) has a meritorious defence, either about his liability for the application or about the amount of the application.

(4) At the hearing of the application, the Court shall—

(a) give directions about the filing of the defence and other statements of the case;

(b) make an order about the payment of the costs incurred to date;

(c) consider whether an order for security for costs should be made; and

(d) make any other order necessary for the proper progress of the proceeding.

Application of
rule 21

22.—(1) Rule 21 shall apply to a proceeding as if the proceeding were contested.

(2) Where a judgment in default against the defendant has been set aside under rule 21(3), the defendant shall not file a statement acknowledging the amount claimed without the permission of the Court.

SUMMARY JUDGMENT

Summary
judgment

23.—(1) The claimant may apply to the Court for a summary judgment where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claim.

(2) Summary judgement shall not apply to a claim for libel, slander, false prosecution, false imprisonment, seduction or an Admiralty action *in rem*.

Contents of
sworn
statement
supporting an
application
for summary
judgment

24. An application for summary judgment shall be supported with a sworn statement which shall—

(a) verify the facts stated in the application;

(b) state that the applicant believes there is no defence to the claim or part of it; and

(c) state the specific orders that are sought by the claimant.

Procedure for
an application
for summary
judgment

25. For purposes of rule 23—

(a) the claimant shall file the application and sworn statement, and shall serve a sealed copy of the application and statement on the defendant not less than 14 days before the date of hearing;

(b) the defendant may file a sworn statement setting out the reasons why the defendant has a good and arguable defence, and shall serve the statement on the claimant at least 7 days before the date of hearing; and

(c) the claimant may file a sworn statement in reply and shall serve the statement on the defendant at least 2 days before the date of hearing.

(2) Where the Court is satisfied that—

(a) the defendant has no arguable defence to the claim or part of the claim as presented in the application; and

(b) there is no need for a trial of the application or that part of the application, the Court shall—

(i) give judgment for the applicant for the application or part of the application; and

(ii) make any other order the Court may deem appropriate.

26. The Court shall not enter summary judgment against a defendant where it is satisfied that there is a relevant dispute between the parties about a fact or an arguable question of law.

No summary judgment where there is relevant dispute

27. Where the Court refuses to enter summary judgment, it may order the defendant to give security for costs within the time stated in the order.

Security for costs

JUDGEMENT ON ADMISSIONS

28.—(1) A party may admit the truth of the whole or any part of another party's claim.

Admissions to be in writing

(2) The party may do this by giving notice in writing, such as in a statement of case or by letter.

(3) Where the only remedy which the claimant is seeking is the payment of money, the defendant may also make an admission in accordance with—

(a) rule 32;

(b) rule 33;

(c) rule 34; or

(d) rule 35.

(4) Where the defendant makes an admission as mentioned in paragraph (3), the claimant has a right to enter judgment, except where—

(a) the defendant is a person under a disability; or

(b) the claimant is a person under a disability and the admission is made under rule 33 or 35.

(5) The permission of the Court shall be required to amend or withdraw an admission.

29.—(1) A person may, by giving notice in writing, admit the truth of the whole or any part of another party's claim before the commencement of a proceeding (a 'pre-action admission').

Admissions made before commencement of proceedings

(2) Sub-rules (3) to (5) of this rule apply to a pre-action admission if one of the following conditions is met—

(a) it is made after the party making it has received a letter before claim; or

(b) it is made before the party receives the letter under paragraph (a), but it is stated to be made under this rule.

(3) A person may, by giving notice in writing, withdraw a pre-action admission—

(a) before the commencement of a proceeding, if the person to whom the admission was made agrees; or

(b) after the commencement of a proceeding, if all parties to the proceeding consent or with the permission of the Court.

(4) After the commencement of a proceeding—

(a) any party may apply for judgment on the pre-action admission; and

(b) the party who made the pre-action admission may apply to withdraw it.

(5) An application to withdraw a pre-action admission or to enter judgment on such an admission may be made—

(a) in accordance with Order 10; or

(b) as a cross-application.

Period for
returning
admissions

30.—(1) The period for returning an admission under rule 32 or for filing it under rules 33, 34 or 35 is—

(a) where the defendant is served with a claim form which states that particulars of claim will follow, 14 days after service of the particulars; and

(b) in any other case, 14 days after service of the claim form.

(2) Sub-rule (1) shall be subject to the following rules—

(a) Order 8 rule 30; and

(b) Order 7 rule 6.

(3) A defendant may return an admission under rule 32 or file it under rules 33, 34 or 35 after the end of the period for returning or filing it specified in paragraph (1) if the claimant has not obtained a judgment in default under rule 6.

(4) Where the defendant returns an admission, rule 28 shall apply as if the admission had been made within that period.

Admissions
by notice in
writing

31.—(1) Where a party makes an admission under rule 28 (2), any other party may apply for judgment on the admission.

(2) Judgment shall be such judgment as it appears to the Court that the applicant is entitled to on the admission.

Admission of
whole of claim
for specified
amount money

32.—(1) This rule shall apply where—

(a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(b) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by returning to the claimant an admission in the relevant practice form.

(3) The claimant may obtain judgment by filing a request in Form 5 and, where they do so—

(a) where the defendant has not requested time to pay, the procedure in sub-rule (4) to (6) shall apply; and

(b) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(4) The claimant may specify in his request for judgment—

(a) the date by which the whole of the judgment debt is to be paid; or

(b) the times and rate at which it is to be paid by instalments.

(5) On receipt of the request for judgment, the Court shall enter judgment.

(6) Judgment shall be for the amount of the claim, less any payments made, and costs—

(a) to be paid by the date or at the rate specified in the request for judgment; or

(b) if none is specified, immediately.

33.—(1) This rule shall apply where—

(a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and

(b) the defendant admits part of the claim.

Admission of
part of a
claim for a
specified
amount of
money

(2) The defendant may admit part of the claim by filing an admission in Form 6.

(3) On receipt of the admission, the Court shall serve a notice on the claimant requiring the return of the notice stating that—

(a) the claimant accepts the amount admitted in satisfaction of the claim;

(b) the claimant does not accept the amount admitted by the defendant and wishes the proceedings to continue; or

(c) where the defendant has requested time to pay, the claimant accepts the amount admitted in satisfaction of the claim, but not the defendant's proposals as to payment.

(4) The claimant shall—

(a) file the notice; and

(b) serve a copy on the defendant,

within 14 days after it is served.

(5) Where the claimant does not file the notice within 14 days after it is served on him, the claim is stayed until the notice is filed.

(6) Where the claimant accepts the amount admitted in satisfaction of the claim, they may obtain judgment by filing a request in Form 7 and, if they do so—

(a) where the defendant has not requested time to pay, the procedure in sub-rules (7) to (9) shall apply;

(b) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(7) The claimant may specify, in his request for judgment—

(a) the date by which the whole of the judgment debt is to be paid; or

(b) the time and rate at which it is to be paid by instalments.

(8) On receipt of the request for judgment, the court shall enter judgment.

(9) Judgment shall be for the amount admitted, less any payments made, and costs—

(a) to be paid by the date or at the rate specified in the request for judgment; or

(b) if none is specified, immediately.

Admission of liability to pay whole of claim for unspecified amount of money

34.—(1) This rule shall apply where—

(a) the only remedy which the claimant is seeking is the payment of money;

(b) the amount of the claim is not specified; and

(c) the defendant admits liability but does not offer to pay a specified amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by filing an admission in Form 8.

(3) On receipt of the admission, the Court shall serve a copy on the claimant.

(4) The claimant may obtain judgment by filing a request in Form 9.

(5) Where the claimant does not file a request for judgment within 14 days after service of the admission, the claim shall be stayed until the request is filed.

(6) On receipt of the request for judgment, the Court shall enter judgment.

(7) Judgment shall be for an amount to be decided by the Court and costs.

Admission of liability to pay claim for unspecified amount of money where defendant offers a sum in satisfaction of the claim

35.—(1) This rule shall apply where—

(a) the only remedy which the claimant is seeking is the payment of money;

(b) the amount of the claim is not specified; and

(c) the defendant—

(i) admits liability; and

(ii) offers to pay a specified amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by filing an admission in Form 10.

(3) On receipt of the admission, the Court shall serve a notice on the claimant requiring the return of the notice stating whether or not the claimant accepts the amount in satisfaction of the claim.

(4) Where the claimant does not file the notice within 14 days after it is served, the claim is stayed until the notice is filed.

(5) Where the claimant accepts the offer, they may obtain judgment by filing a request in Form 11, and if they do so—

(a) where the defendant has not requested time to pay, the procedure in sub rules (6) to (8) shall apply; and

(b) where the defendant has requested time to pay, the procedure in rule 37 shall apply.

(6) The claimant may specify in his request for judgment—

(a) the date by which the whole of the judgment debt is to be paid; or

(b) the times and rate at which it is to be paid by instalments.

(7) On receipt of the request for judgment, the Court shall enter judgment.

(8) Judgment shall be for the amount offered by the defendant, less any payments made, and costs—

(a) to be paid on the date or at the rate specified in the request for judgment; or

(b) where none is specified, immediately.

(9) Where the claimant does not accept the amount offered by the defendant, the claimant may obtain judgment by filing a request in Form 12.

(10) Judgment under sub-rule (9) shall be for an amount to be decided by the Court and costs.

36. Where the Court enters judgment under rule 35 for an amount to be decided by the Court, it shall—

(a) give any directions it considers appropriate; and

(b) where it considers it appropriate, set down the proceeding for hearing.

Allocation of
claims in
relation to
outstanding
matters

37.—(1) A defendant who makes an admission under rules 32, 33 or 35 may make a request for time to pay.

Request for
time to pay

(2) The defendant's request for time to pay must be served or filed, as the case may be, with his admission.

(3) Where the claimant accepts the defendant's request, they may obtain judgment by filing a request in Form 13.

(4) On receipt of the request for judgment, the Court shall enter judgment.

(5) Judgment shall be—

(a) where rule 32 applies, for the amount of the claim, less any payments made, and costs;

(b) where rule 33 applies, for the amount admitted, less any payments made, and costs; or

(c) where rule 35 applies, for the amount offered by the defendant, less any payments made, and costs,

and, in all cases, shall be for payment at the time and rate specified in the defendant's request for time to pay.

Determination
of rate of
payment

38.—(1) This rule shall apply where the defendant makes a request for time to pay under rule 37.

(2) Where the claimant does not accept the defendant's proposals for payment, he shall file a notice in Form 14.

(3) Where the defendant's admission was served direct on the claimant, a copy of the admission and the request for time to pay must be filed with the claimant's notice.

(4) When the Court receives the claimant's notice, it shall enter judgment for the amount admitted, less any payments made, to be paid at the time and rate of payment determined by the Court.

Determination
of rate of
payment by
Judge

39.—(1) Where a Judge is to determine the time and rate of payment, he may do so without a hearing.

(2) Where a Judge is to determine the time and rate of payment at a hearing, the proceeding shall be in open court.

(3) Where there is to be a hearing to determine the time and rate of payment, the Court shall give each party at least 7 days' notice of the hearing.

Right of
redetermination

40.—(1) Where a Judge has determined the time and rate of payment under rule 39 without a hearing, either party may apply for the decision to be re-determined by the Judge.

(2) An application for re-determination shall be made within 14 days after service of the determination on the applicant.

Interest

41. Where judgment is entered under rule 32, interest shall be calculated according to rule 3 (4).

WITHDRAWAL AND DISCONTINUANCE

Discontinuance

42. The claimant may discontinue his claim at any time.

Effect of
abandoning
claim to one or
more remedies

43. A claimant who—

(a) claims more than one remedy; and

(b) subsequently abandons his claim to one or more of the remedies but continues with his claim for the other remedies, is not treated as discontinuing all or part of a claim under these Rules.

Procedure
for amending
statement of
case

44. The procedure for amending a statement of case, set out under Order 7, shall apply where a claimant abandons a claim for a particular remedy but wishes to continue with his claim for other remedies.

45.—(1) Subject to sub rule (2), (3) and (4), a claimant may discontinue all or part of a claim at any time.

Right to
discontinue
claim

(2) A claimant shall obtain the permission of the Court if he wishes to discontinue all or part of a claim in relation to which—

- (a) the Court has granted an interim injunction; or
- (b) any party has given an undertaking to the Court.

(3) Where the claimant has received an interim payment in relation to a claim, whether voluntarily or under Order 10, he may discontinue that claim only if—

- (a) the defendant who made the interim payment consents in writing; or
- (b) the Court gives permission.

(4) Where there is more than one claimant, a claimant may not discontinue a claim, unless—

- (a) every other claimant consents in writing; or
- (b) the Court gives permission.

(5) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

46.—(1) In order to discontinue a claim or part of a claim, a claimant shall—

Procedure for
discontinu-
ance

- (a) file a notice of discontinuance; and
- (b) serve a copy of the notice on every other party to the proceeding.

(2) The claimant shall state in the notice of discontinuance which he files, that he has served the notice of discontinuance on every other party to the proceeding.

(3) Where the claimant needs the consent of another party, a copy of the consent shall be attached to the notice of discontinuance.

(4) Where the claimant needs the permission of the Court, the notice of discontinuance shall contain details of the order by which the Court gave permission.

(5) Where there is more than one defendant, the notice of discontinuance shall specify against which defendant the claim is discontinued.

47.—(1) Where the claimant discontinues a claim, the defendant may apply to the Court to have the notice of discontinuance set aside and to file an application for assessment of costs.

Right to
apply to have
notice of
discontinu-
ance set aside

(2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on him.

48.—(1) Subject to rule 47, discontinuance against a defendant shall take effect on the date when the notice of discontinuance is served on him under rule 46.

Effect of
discontinu-
ance

(2) Discontinuance shall not affect any proceeding on determination or assessment of costs by the Court.

Liability for costs

49.—(1) Unless the Court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which the notice of discontinuance was served on the defendant.

(2) Where a proceeding is partly discontinued—

(a) the claimant is liable under sub-rule (1) for costs relating only to the part of the proceeding which he is discontinuing; and

(b) unless the Court orders otherwise, the costs which the claimant is liable to pay shall not be assessed until the conclusion of the rest of the proceeding.

Discontinuance and subsequent proceedings

50.—(1) Where a claimant discontinues a claim after the defendant against whom he discontinued filed a defence, and the claimant makes a subsequent claim—

(a) against the same defendant;

(b) arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(c) the claimant has not paid the defendant's costs of the discontinued claim,

the Court may stay the subsequent claim until such time as the costs of the discontinued claim are paid.

Stay of remainder of partly discontinued proceedings where costs not paid

51.—(1) This rule applies where—

(a) a proceeding is partly discontinued;

(b) a claimant is liable to pay costs under rule 49; and

(c) the claimant fails to pay those costs or make the payment within 14 days of—

(i) the date on which the parties agreed the sum payable by the claimant; or

(ii) the date on which the Court ordered the costs to be paid or the payment to be made.

(2) Where this rule applies, the Court may stay the remainder of the proceeding until the claimant pays the whole of the costs which the claimant is liable to pay under rule 49.

Discontinuance against several defendants

52. Where there are several defendants to a proceeding, the claimant may discontinue against one or some of the defendants and the claim shall continue in force against the remaining defendants.

Effect of discontinuance

53. Where a claimant discontinues a claim—

(a) he may not revive the proceeding without the permission of the Court;

(b) a counter-claim by a defendant continues in force; and

(c) the party against whom the claimant discontinued the claim may apply to the Court for costs against the claimant.

WANT OF PROSECUTION

54—(1) A defendant in a proceeding may apply to the Court for an order dismissing the proceeding for want of prosecution where the claimant is required to take a step in the proceeding under these Rules or to comply with an order of the Court, not later than the end of the period specified under these Rules or the order and he does not do what is required before the end of the period.

Dismissal for
want of
prosecution

(2) The Court may dismiss the proceeding or make any other order it considers appropriate.

55—(1) An order dismissing a proceeding for want of prosecution may be set aside on appeal or where the parties agree that the order be set aside.

Order of
discontinu-
ance may be
amended or
set aside on
appeal

(2) Notwithstanding sub rule (1), the Court may amend or set aside an order dismissing the proceeding for want of prosecution that has been made in the absence of the claimant without the need for an appeal.

STRIKING OUT PROCEEDINGS

56. The Court may strike out a proceeding without notice, if there has been no step taken in the proceeding for 12 months.

Striking out
proceedings
without
notice

57—(1) Where a step has not been taken in a proceeding for 6 months, the Court may give the claimant notice to appear before the Court on a date specified in the notice to show cause why the proceeding should not be struck out.

Striking out
proceedings
with notice

(2) Where the claimant does not appear before the Court, or does not show cause why the proceeding should not be struck out, the Court shall strike out the proceeding, including any interlocutory relief that has been ordered in the proceeding.

58. Where the Court strikes out a proceeding, the Registrar shall send a notice to the parties informing them that the proceeding has been struck out.

Notice of
struck out
proceedings

ORDER 13

MANDATORY MEDIATION

1.—(1) Subject to sub rule (2), all proceedings shall first go through mediation in accordance with this Order.

Mediation
mandatory
for all
proceedings

(2) This Order shall not apply to proceedings—

- (a) in a matter where by law or practice, the trial is expedited;
- (b) in an application for summary judgment;
- (c) in an application for judgment on admission; or
- (d) where the Court, in its discretion, so orders.

2.—(1) In conducting a mediation session under this Order—

(a) the parties shall strive to reduce costs and delay in litigation, and facilitate the early and fair resolution of disputes; and

(b) the Judge shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution.

(2) Without derogation from the generality of sub rule (1), the Judge—

(a) shall do everything necessary, in an independent and impartial manner, to help the parties to resolve their dispute;

(b) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations for a settlement;

(c) may, where the services of an expert may be obtained at no cost or minimal cost, and if parties agree to pay the cost, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner;

(d) shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things—

(i) the rights and obligations of the parties;

(ii) the usage of the trade concerned; and

(iii) the circumstances surrounding the disputes, including any previous business practices between the parties;

(e) may, at any stage of the mediation session and in a manner that the Judge considers appropriate, take into account the wishes of the parties, including any request by either of the parties that the Judge should hear oral statements for a speedy settlement of the dispute; and

(f) may, at any stage of the mediation session, make proposals for the settlement of the dispute.

(3) A request for the services of an expert under this Order may be made by the Judge or by any party with the consent of the other party or parties and the Court.

3.—(1) Within 7 days from the time the statement of case is deemed to be closed, every party shall prepare a statement in Form 15 and provide a copy to every other party to the mediation session and to the Judge.

(2) The Judge shall, within 2 days from the time the statement of case shall be deemed to be closed, issue a notice in Form 16 to the parties, advising them on the date of the mediation session.

(3) The statement referred to in sub rule (1) shall identify the factual and legal issues in dispute and briefly set out the position and interest of the party making the statement.

(4) A party who makes a statement under this rule shall attach to it any material which the party considers of central importance in the matter.

4.—(1) The parties and their legal practitioners, if the parties are represented, shall attend the mediation session.

Parties and legal practitioners to attend mediation session

(2) Where a third party may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the claim, the third party and a legal practitioner of the third party may also attend the mediation session, unless the Court orders otherwise.

5.—(1) A party to a mediation session shall have authority to settle a matter during the mediation session.

Power to settle a matter

(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other person throughout the session.

6.—(1) Where it is not practical to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the Judge may—

Non-attendance without good cause

(a) dismiss the claim, where the non-complying party is a claimant, or strike out the defence, where the non-complying party is a defendant;

(b) order a party to pay costs; or

(c) make any other order that is deemed just.

(2) A party whose case has been dismissed for non-attendance may apply to the Court for restoration of the case.

7.—(1) All communication at a mediation session and the mediation notes and records of the Judge shall be confidential.

Confidentiality of the Judge's notes and records

(2) Without derogation from the generality of sub rule (1)—

(a) a record, report, settlement agreement, except where its disclosure is necessary for the purpose of implementation and enforcement, and any other documents required in the course of mediation shall be confidential;

(b) a Judge shall not—

(i) disclose information given in the course of the mediation to a person who is not a party to the mediation without the consent of the parties; or

(ii) be a witness in a proceeding relating to the same matter; and

(c) a party to a mediation shall not rely on—

(i) the record of the mediation;

(ii) a statement made at the mediation session; or

(iii) any information obtained during the mediation, as evidence in a proceeding or any other subsequent settlement initiative, except in relation to a proceeding brought by either party to vitiate the settlement agreement on the ground of fraud.

8.—(1) Where it appears to the Judge that there exists elements of an agreement on a settlement which may be acceptable to the parties, the Judge

Settlement agreement

shall formulate the terms of a possible settlement and submit them to the parties for their consideration, and after receiving the observations of the parties, the Judge may reformulate the terms of a possible settlement in the light of those observations and resubmit them to the parties as it appears to him expedient.

(2) Where the parties reach an agreement on a settlement of the dispute—

(a) the Judge shall immediately thereafter draw up a settlement agreement in conjunction with the parties; and

(b) the parties shall sign the settlement agreement in the presence of each other, and the Judge shall also sign the settlement agreement in the presence of the parties.

(3) The Judge shall furnish a copy of the signed settlement agreement to each of the parties and the agreement shall be deemed to be a judgment of the Court and may be enforced as such.

(4) An appeal shall not lie against a settlement agreement under sub rule (3).

Failure to
agree
settlement

9.—(1) Where upon the conclusion of mediation a settlement agreement is not reached, the claim shall be referred to another Judge who shall continue with the claim from the point where, and at which, the claim was referred for mediation.

(2) Where there is no settlement agreement, the Judge who presided over the mediation shall make an order outlining the issues where the parties are in agreement and the issues where the parties are in disagreement and the order shall be referred to the Judge who shall continue with the claim.

Period of
mediation
session

10.—(1) The period of a mediation session shall not exceed a period of 21 days from the date of the first meeting of session.

(2) The Judge may extend the period of the mediation session for a further period not exceeding 14 days from the date of expiry of the period.

End of
mediation
session

11. A mediation session shall end when—

(a) the parties execute a settlement agreement;

(b) the Judge cancels a mediation session for non-compliance on the part of any party; or

(c) the Judge, after consultation with the parties, makes a declaration to the effect that further mediation is not worthwhile.

ORDER 14

PRE-TRIAL PROCEDURE

Application of
this Order

1. This Order shall apply to all proceedings where there is no settlement agreement arising from a mediation session under Order 13.

Scheduling
conference

2.—(1) Where a defendant files a defence in a proceeding, the Judge shall set a date for a scheduling conference and shall inform the parties the date set for the conference, unless a date for the hearing of an application in a

case has previously been fixed, in which case the conference shall take place on that date.

(2) Unless the Judge orders otherwise, the date for the scheduling conference shall not be set down later than 28 days after the day the defence is filed.

(3) The parties to a proceeding shall lodge with the Judge a trial check list in Form 17, not later than 2 days before the date of the scheduling conference, with copies to other parties.

(4) The Judge shall make directions at the scheduling conference on the conduct of the trial.

(5) The Judge may, on application by a party or on his own initiative, amend or revoke a direction made under sub rule (4).

3. A party who is represented by a legal practitioner need not attend a scheduling conference in person unless, the Judge orders him to attend.

Represented party not required to attend

4.—(1) The Judge may set a date for a pre-trial conference not less than 14 days before the date of trial unless, in his opinion, the proceeding can be set down for trial without further conference.

Pre-trial conference

(2) At a pre-trial conference, the Judge shall ascertain that parties have complied with the directions given at the scheduling conference.

5. Where a party fails to comply with any of the directions, the Judge may make the following orders—

Effect of non-compliance with directions

(a) dismiss the claim, where the non-complying party is a claimant;

(b) strike out the defence, where the non-complying party is a defendant;

(c) order costs against the non-complying party, or against his legal practitioner; or

(d) any other order that is deemed just.

6. A pre-trial conference may be held by fixed-line or mobile telephone, electronic mail, video conferencing or other means where the Judge and all parties are able to participate.

Pre-trial conference may be by phone, etc.

ORDER 15

DISCLOSURE OF DOCUMENTS AND INFORMATION

1. A party shall disclose a document where—

(a) the party is relying on the document; or

(b) the party is aware of the document,

and the document to a material extent adversely affects that party's case or supports another party's case.

Disclosure of documents

2. A party shall disclose a document that he is, after a reasonable search, aware of at the time of disclosure.

Disclosure after reasonable search

Disclosure of copies	3. A party shall disclose a copy of a document only where the copy has been changed from the original or previous copy of the document.
Copy not necessary where original disclosed	4. A copy of a document shall not be disclosed where the original or another copy of the document has already been disclosed.
Disclosure by sworn statement	5.—(1) A party shall disclose documents by making a sworn statement that— (a) lists the documents; (b) states that the party understands the obligation to disclose documents; (c) states that, to the best of the knowledge of the party, he has disclosed all documents that he must disclose; and (d) specifies the documents that are privileged and gives the reasons for claiming such privilege. (2) The party shall file and serve a copy of the sworn statement on each party to a proceeding.
Sworn statement by a body corporate	6. A sworn statement by a party who is a body corporate shall— (a) be made by a responsible officer or employee; (b) give the name and position of the person who identified the persons who may be aware of documents that are to be disclosed; and (c) give the name and position of the persons who have been asked whether they are aware of any of those documents.
Privilege	7. Where a party claims that a document cannot be disclosed on the grounds of privilege, that party shall make an application for an order dispensing with the disclosure of the document on that ground.
Accuracy of list of documents	8. A party who believes a list of documents is not accurate, or that documents claimed as privileged are not privileged, may make an application for an order to correct the list.
Non-disclosure by order of court	9. A party need not list documents if the Court orders that the documents shall not be disclosed.
Handling of privileged documents by legal practitioner	10. Where a privileged document is disclosed to a legal practitioner, he shall not use it if, due to the manner and circumstances of its disclosure, he realizes that— (a) the document is, in fact, privileged; and (b) it was disclosed by mistake.
Inspection of documents	11.—(1) A party (the 'inspecting party') may inspect the original copies of documents on a list served by another party except, documents that are no longer in the possession, custody or control of the other party or documents that are privileged. (2) The inspecting party may obtain a copy of a document on the list

served by another party and shall pay the reasonable costs of copying the document.

(3) The inspecting party shall give the other party reasonable notice to inspect the documents.

12. The duty to disclose documents continues throughout a proceeding. Continuation of disclosure

13. Where a party becomes aware of a document that ought to have been disclosed, but has not been disclosed, the party shall disclose the documents— Disclosure of previously unknown documents

(a) within 7 days of becoming aware of the document, and in any case before the trial commences; or

(b) where the party becomes aware of the document after the trial has commenced, as soon as it is reasonably practicable, after becoming aware of the document.

14.—(1) The Court may, on application of a party, order disclosure of specific documents or of a class of documents where the Court is satisfied that disclosure is necessary to decide the matter fairly or save costs. Disclosure of specific documents

(2) In considering the application under sub rule (1), the Court shall—

(a) weigh the likely advantage or disadvantage of disclosure; and

(b) assess whether the party who may be required to disclose the documents has sufficient financial resources to do so.

(3) The Court may order that the documents be disclosed in stages.

(4) The Court may order that a party need not disclose some or any documents where the Court is satisfied that—

(a) the documents are not relevant to the issues between the parties;

(b) disclosure is not necessary to decide the matter fairly;

(c) the costs of disclosure would outweigh the benefits; or

(d) for any other reason, the Court is satisfied that the documents need not be disclosed.

(5) The Court shall not order the disclosure of a document, unless the Court is satisfied that the person in possession, custody or control of the document has had an opportunity to be heard.

(6) The order of the Court may state the time and place of disclosure.

15. A party who fails to disclose a document may not rely on the document, unless the Court allows it. Effect of non-disclosure

16.—(1) Where the Court makes an order compelling a party to disclose a document, the order shall be served on that party as soon as it is reasonably practicable. Order compelling disclosure

(2) Where a party fails to disclose a document within 7 days from the date of service of the order made under sub rule (1), the Court may—

- (a) order that all or part of the proceeding be stayed;
- (b) dismiss the claim where the non-compliant party is the claimant;
- (c) strike out the defence and enter judgment in favour of the claimant, where the non-compliant party is the defendant; or
- (d) make any other order the Court thinks fit.

Effect on contempt 17. This Order shall not affect the power of the Court to punish a party for contempt of court.

Restrictions on use of disclosed documents 18.—(1) A party to whom a document is disclosed may only use the document for the purposes of the proceeding, unless the document has been read to, or by, the Court, or referred to in open court.

(2) A party, or person in possession or control of a document, may apply for an order restricting or prohibiting the use of a document even where it has been read to, or by, the Court, or referred to in open court.

(3) The Court may make an order restricting or prohibiting the use of a document where it is satisfied that the benefits of restricting or prohibiting its use outweigh the benefits of allowing the document to be used.

Originals to be brought to trial 19. The original copies of all documents to be relied upon by a party shall be brought to the trial, unless the Court orders otherwise.

Indexing and numbering 20.—(1) The documents that the parties have agreed on shall be gathered together, indexed and numbered.

(2) Where the parties do not agree about the disclosure of some documents or their use at the trial, the party in possession of the documents shall bring the documents to the trial.

Questionnaire on disclosure of information 21.—(1) A party may apply to the Court for permission to ask another party a set of written questions.

(2) Where the Court makes an order under sub rule (1), the set of written questions shall be served on every party.

(3) A party shall answer, in writing, the set of written questions within 14 days of service of the questions.

(4) A party shall set out each question, followed by the answer and shall be verified by a sworn statement made by the party answering the questions.

(5) The answer shall address the substance of each question, without evasion or resorting to technicality.

(6) A party may object to answering the questions and the objection shall set out the grounds for the objection and briefly state the facts on which the objection is based.

(7) A person may object to answering a written question only on the following grounds—

- (a) the question does not relate to a matter at issue, or likely to be at issue, between the parties;
- (b) the question is not reasonably necessary to enable the Court to

decide the matters at issue between the parties;

(c) there is likely to be a simpler and cheaper way available at the trial to prove the matters asked about;

(d) the question is vexatious or oppressive; or

(e) privilege.

(8) The objection shall be dealt with at a scheduling conference.

(9) Where a party does not answer, or does not give a sufficient answer, to a written question, the Court may, on application, order the party to answer the question or attend Court to answer the question under oath.

(10) Where the party does not comply with the order under sub rule (9), the Court may—

(a) order that all or part of the proceeding be stayed;

(b) dismiss the claim where the non-compliant party is the claimant;

(c) strike out the defence and enter judgment in favour of the claimant, where the non-compliant party is the defendant; or

(d) make any other order the Court considers just.

ORDER 16

TRIAL

1. A claimant shall, not later than 14 days before the date of the trial, file and serve on all parties a bundle (the 'Trial Bundle'), containing the following—

(a) the chronology of events;

(b) the summons;

(c) the defence;

(d) list of authorities;

(e) skeleton arguments;

(f) witness statements;

(g) any directions for particulars of any of the statement of case, and the particulars filed in response to such a direction;

(h) the third party notice, if any;

(i) any notice claiming contribution or indemnity;

(j) expert reports, including medical reports, if any;

(k) any sworn statement to be used at trial;

(l) any order in the proceeding to add a party; and

(m) any other document agreed by the parties to be included in the Trial Bundle.

2. Where there are two or more parties to the proceeding, evidence shall be brought and addresses made, in the following order—

(a) the claimant may make an address opening the proceeding not

exceeding 10 minutes and, where evidence is to be given orally, bring evidence in support of his claim;

(b) the defendant and other party may cross-examine the claimant or his witness, if any;

(c) the defendant and other party may make an address opening his case not exceeding 10 minutes and, where evidence is to be given orally, bring evidence in support of his defence;

(d) the claimant may cross-examine the defendant or the other party or their witnesses, if any;

(e) the claimant or the defendant may re-examine their witnesses, if need be; and

(f) the parties may make closing addresses respectively not exceeding 60 minutes.

Parties other than claimants to make opening case

3. Notwithstanding rule 2, the Court may allow a party other than the claimant or defendant to make an opening address of his case before any evidence is given.

Trial to be in open court

4. The trial of a proceeding shall be held in open court unless the Court orders otherwise.

Adjournment

5. The Court may adjourn trial at any time for good reason, which reason shall at all times be endorsed on the Court record.

Preliminary hearing

6.—(1) The Court may hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties where it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.

(2) Where the parties have agreed on the facts but there remains a question of law in dispute, the Court may hear arguments from the parties about the question of law.

Effect on non-attendance but—

7.—(1) The Court may proceed with a trial in the absence of a party

(a) where a party does not attend the trial, it may strike out the whole of the proceeding;

(b) where a claimant does not attend, it may strike out his claim and any defence to a counterclaim; and

(c) where a defendant does not attend, it may strike out his defence and dismiss his counterclaim.

(2) Where the Court strikes out the proceeding or any part of it under this rule, it may, on application of a party, subsequently restore the proceeding, or that part of the proceeding that was struck out.

(3) Where a party does not attend and the Court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under sub rules (2) or (3) respectively must be supported by evidence.

(5) Where an application is made under sub rules (2) or (3) respectively by a party who failed to attend the trial, the Court may grant the application only if the applicant—

(a) acted promptly when he found out that the Court had exercised its power to strike out or to enter judgment or make an order against him;

(b) had a good reason for not attending the trial; and

(c) has a reasonable prospect of success at the trial.

8. The Court may, on application, order the re-opening of a proceeding after trial but before judgment where the Court is satisfied that it is necessary to do so in the interests of justice.

Re-opening
proceedings
after trial

9.—(1) The Court shall deliver its judgment within 90 days from the last date the parties in a trial file written submissions.

Time limits
for delivery
of judgments
and rulings

(2) Where the Court has not delivered its judgment under sub rule (1), the judge who conducted the trial shall—

(a) within 14 days of the expiry of the period in sub rule (1) set down the proceeding for mention;

(b) provide reasons to the parties for the failure to deliver the judgment; and

(c) fix a date, within 30 days from the expiry of the period in sub rule (1) for delivery of the judgment, with appropriate directions for such delivery of the judgment.

(3) The Court shall deliver its ruling on an application heard in chambers within 30 days from the last date the parties in the application file written submissions.

(4) Where the Court has not delivered its ruling under sub rule (3), the judge who heard the application shall—

(a) within 7 days of the expiry of the period in sub rule (3) set down the proceeding for mention;

(b) provide reasons to the parties for the failure to deliver the ruling; and

(c) fix a date, within 14 days from the expiry of the period in sub rule (3) for delivery of the ruling, with appropriate directions for such delivery of the ruling.

10.—(1) The Court shall, on each day of the trial, record the times when the trial commences and ends.

Recording
time

(2) Where the costs of a party to the proceeding are to be assessed, the times recorded under sub rule (1) shall be forwarded to the Registrar for the assessment.

(3) The Court shall record—

(a) the orders made by the Judge about judgment;

- (b) the certificates, if any, given by the Judge; and
- (c) any direction by the Judge.

ORDER 17

EVIDENCE

Directions on
evidence

1.—(1) The Court shall control evidence in a proceeding by giving directions in relation to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence shall be placed before the Court.

(2) The Court may use its power under this Order to exclude evidence that would otherwise be admissible.

(3) The Court may limit cross-examination.

Proof by
evidence of
a witness

2.—(1) Subject to sub rule (2), any fact which needs to be proved by the evidence of a witness shall be proved—

- (a) at trial, by his oral evidence given in public; and
- (b) at any other hearing, by his evidence in writing.

(2) These Rules, or an order of the Court, may specify the manner of giving evidence.

Evidence via
video link or
other means

3.—(1) The Court may, on an application by a party, allow a witness to give evidence through a video link or by other means.

(2) The application for evidence to be given by the video link or other means shall be supported by a sworn statement setting out—

- (a) the name and address of the witness and the place where he shall be giving evidence;
- (b) the matter on which the witness will be giving evidence;
- (c) the type of video link or other means to be used and the specific facility to be used;
- (d) the reason for the absence of the witness from the Court;
- (e) information about the cost of the video link or other means; and
- (f) any other information that will help the Court to make a fair and just decision.

(3) In making an order under sub rule (2), the Court may take into account the interests of justice as to whether to allow the video link or other means, including—

- (a) the public interest;
- (b) fairness to the parties and the balance to their competing interests;

(c) the importance of the evidence to the proceeding;

(d) the reasonableness of the application having regard to the convenience and cost of the witness to attend the Court; and

(e) the reliability and quality of video link or other means.

4.—(1) The Court may order a party to serve on the other party or parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.

Witness
statement

(2) The Court may give directions as to the order in which witness statements are to be served.

5.—(1) Where a party has served a witness statement and he wishes to rely at trial on the evidence of the witness who made the statement, he shall call the witness to give oral evidence unless the Court orders otherwise or he puts the statement in as hearsay evidence.

Effect of
witness
statement at
trial

(2) Where a witness is called to give oral evidence under sub rule (1), his witness statement shall stand as his evidence in chief unless the Court orders otherwise.

(3) A witness giving oral evidence at trial may with the permission of the Court—

(a) amplify his witness statement; and

(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The Court may give permission under sub rule (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(5) Where a party who has served a witness statement does not call the witness to give evidence at trial or put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence.

6.—(1) Subject to sub rule (2), the evidence at a hearing other than the trial shall be by witness statement unless the Court, a practice direction or any other law requires otherwise.

Witness
statement at
hearing other
than trial

(2) At a hearing other than the trial, a party may rely on the matters set out in his claim or his application if the claim or application is verified by a sworn statement.

7.—(1) Where, at a hearing other than a trial, evidence is given in writing, any party may apply to the Court for permission to cross-examine the person giving the evidence.

Cross -
examination
at hearing
other than
trial

(2) Where the Court gives permission under sub rule (1) but the person in question does not attend as required by the order, his evidence may not be used at the hearing unless the Court gives permission that the evidence shall be used at the hearing.

Form of
witness
statement

8. A witness statement shall be in Form 18 and shall be verified by a sworn statement.

Witness
summary

9.—(1) A party who is required to serve a witness statement for use at trial, but is unable to obtain one, may apply, without notice, for permission to serve a witness summary instead.

(2) A witness summary is a summary of—

(a) the evidence, if known, which would otherwise be included in a witness statement; or

(b) the matters about which the party serving the witness summary proposes to question the witness where the evidence is not known.

(3) Unless the Court orders otherwise, a witness summary shall include the name and address of the intended witness.

(4) Unless the Court orders otherwise, a witness summary shall be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable, rules 4, 5 (3) (a) and 8 shall apply to the summary.

Failure to serve
witness
statement or
summary

10. Where a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the Court, then the witness may not be called to give oral evidence unless the Court gives permission that the witness shall be called to give the evidence.

Cross-
examination
on witness
statement

11. Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement whether or not the statement or any part of it was referred to during the witness's evidence in chief.

12.—(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceeding in which it is served.

(2) Sub rule (1) does not apply where, and to the extent that—

(a) the witness gives consent in writing to some other use of it;

(b) the Court gives permission for some other use; or

(c) the witness statement has been put in evidence at a hearing held in public.

Inspection
of witness
statement

13.—(1) A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the Court otherwise directs.

(2) Any person may ask for a direction that a witness statement is not open to inspection.

(3) The Court shall not make a direction under sub rule (2) unless it is satisfied that a witness statement shall not be open to inspection because of—

(a) the interests of justice;

(b) the public interest;

(c) the nature of any expert medical evidence in the statement;

(d) the nature of any confidential information, including information relating to personal financial matters, in the statement; or

(e) the need to protect the interests of any child or protected party.

(4) The Court may exclude from inspection words or passages in the statement.

14.—(1) A proceeding for contempt of court may be brought against a person where he makes, or causes to be made, a false statement in a document verified by a sworn statement without an honest belief in its truth.

Contempt
for false
statement

(2) The proceeding under this rule may be brought only with the permission of the Court.

15.—(1) A party may apply to the Court for an order that a witness gives evidence before trial.

Giving
evidence
before trial

(2) The Court may order that the witness gives evidence before trial where the Court is satisfied that—

(a) the witness can give evidence that will be relevant to the case;

(b) the evidence is admissible; and

(c) the witness will not be available to give evidence at the trial because of his state of health, the witness is leaving Malawi either permanently or for an extended period of time, or for any other valid reason.

(3) The witness must give the evidence to the Court, in the presence of the legal practitioners for each party, if any; and may be cross-examined and re-examined.

(4) The Court may allow a person giving evidence before trial to give the evidence by video link or other means and the legal practitioner for each party, if any, shall be present.

EVIDENCE BY CHILDREN AND OTHER VULNERABLE PERSONS

16.—(1) Where a child or other vulnerable person is required to give evidence, the Court shall take the necessary steps to enable the child or the vulnerable person to give evidence without intimidation, restraint or influence.

Evidence by
children or
vulnerable
persons

(2) In particular, the Court may—

(a) allow the child or the vulnerable person to give evidence while screened or otherwise obscured from the rest of the courtroom but remains in the full view of the Court;

(b) sit in a place other than the courtroom;

(c) allow only the legal practitioners of the parties to the proceeding to be present while the child or the vulnerable person gives evidence;

(d) appoint a person to be with the child or the vulnerable person while the child or the person gives evidence;

(e) allow the child or the vulnerable person to give evidence from a

place outside the courtroom which shall be transmitted to the courtroom by means of a video link or other means; and

(f) do anything else that may assist the child or the vulnerable person to give evidence.

EXPERT EVIDENCE

Expert evidence 17. Expert evidence shall be restricted to a matter or issue which ought to be specifically clarified in order to determine a proceeding.

Duty of an expert 18. It is the duty of an expert to help the Court on a matter within his expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom he is paid.

Court's permission on expert evidence 19.—(1) A party may not call an expert or put in evidence an expert's report without the permission of the Court.

(2) Where a party applies for permission to call for an expert, he shall identify—

(a) the matter or issue which requires expert evidence; and

(b) where practicable, the name of the proposed expert.

(3) The Court may grant the permission to call an expert in relation only to the expert named or the matter or issue identified under sub rule (2).

(4) The permission under sub rule (3) may be given for evidence from only one expert on a particular matter or issue.

(5) The Court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

Expert evidence in written report 20.—(1) Expert evidence shall be given in a written report unless the Court directs otherwise.

(2) The Court may direct that an expert need not attend a hearing unless it is necessary to do so in the interests of justice.

Written questions to expert instructed by other party 21.—(1) A party may put written questions about an expert's report to an expert instructed by another party.

(2) The written questions under sub rule (1)—

(a) may be put once;

(b) shall be put within 28 days of service of the expert's report; and

(c) shall be for the purpose only of clarification of the report, unless in any case the Court gives permission or the other party agrees.

(3) An expert's answers to questions put under sub rule (1) shall be treated as part of the expert's report.

(4) Where a party has put a written question to an expert instructed by another party and the expert does not answer that question, the Court may make one or both of the following orders in relation to the party who instructed the expert—

(a) that the party may not rely on the evidence of that expert; or

(b) that the party may not recover the fees and expenses of that expert from any other party.

22.—(1) Where two or more parties wish to submit expert evidence on a particular matter or issue, the Court may direct that the evidence on that issue is to be given by a single joint expert. Single joint expert

(2) Where the parties who wish to submit the evidence cannot agree who should be the single joint expert, the Court may—

(a) select the expert from a list prepared or identified by the relevant parties; or

(b) direct that the expert be selected in such other manner as the Court may direct.

23.—(1) Where the Court gives a direction under rule 22 for a single joint expert to be used, any of the parties to the proceeding may give instructions to the single joint expert. Instructions and fees to single joint expert

(2) When a party gives instructions to the single joint expert that party shall, at the same time, send a copy to the other party or parties.

(3) The Court may give directions about the payment of the single joint expert's fees and expenses and any inspection, examination or experiments which the single joint expert wishes to carry out.

(4) The Court may, before a single joint expert is instructed—

(a) limit the amount that can be paid as fees and expenses to the single joint expert; and

(b) direct that some or all of the relevant parties pay that amount into Court.

(5) Unless the Court otherwise directs, the parties are jointly and severally liable for the payment of the single joint expert's fees and expenses.

24. Where a party has access to information which is not reasonably available to another party, the Court may, on application by a party, direct the party who has access to the information to prepare and file a document recording the information and serve a copy of that document on the other party. Access to information not available to other party

25.—(1) An expert's report shall comply with the following requirements— Expert's report

(a) expert evidence shall be the independent product of the expert uninfluenced by the pressure of a party to a proceeding;

(b) an expert shall assist the Court by providing objective, unbiased opinions on matters within his expertise, and shall not assume the role of an advocate;

(c) an expert shall consider all material facts, including those which might detract from his opinion;

(d) an expert shall make it clear—

- (i) when a question or issue falls outside his expertise; and
- (ii) when he is not able to reach a definite opinion;
- (e) where after producing a report, an expert's view changes on any material matter, such change of view shall be communicated to all the parties without delay, and when appropriate to the Court;
- (f) an expert's report shall be addressed to the Court and not to the party from whom the expert has received instructions; and
- (g) an expert's report shall—
 - (i) give details of the expert's qualifications;
 - (ii) give details of any literature or other material which has been relied on in making the report;
 - (iii) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
 - (iv) make clear which of the facts stated in the report are within the expert's own knowledge;
 - (v) state who carried out any examination, measurement, test of experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
 - (vi) where there is a range of opinion on the matters dealt with in the report—
 - (A) summarize the range of opinions; and
 - (B) give reasons for the expert's own opinion;
 - (vii) contain a summary of the conclusions reached;
 - (viii) where the expert is not able to give an opinion without qualifications, state the qualification; and
 - (ix) contain a statement that the expert understands their duty to the Court, and has complied with that duty.

(2) At the end of an expert's report, there shall be a statement that the expert understands and has complied with his duty to the Court.

(3) The expert's report shall state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(4) The instructions referred to in sub rule (3) shall not be privileged against disclosure, but the Court shall not, in relation to those instructions—

- (a) order disclosure of any specific document; or
- (b) permit any questioning in Court, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under sub rule (3) to be inaccurate or incomplete.

27.—(1) The Court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to identify and discuss the expert issues in the proceeding and, where possible, reach an agreed opinion on those issues.

Discussion
between
experts

(2) The Court may specify the issues which the experts shall discuss.

(3) The Court may direct that following a discussion between the experts, the experts shall prepare a statement for the Court setting out those issues on which they agree and they disagree, with a summary of their reasons for the disagreement.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach an agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

28. A party who fails to disclose an expert's report may not use the report at the trial or call the expert to give evidence orally unless the Court gives permission.

Failure to
disclose an
expert's
report

29.—(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

Expert's
written
requests for
directions

(2) Experts shall, unless the Court orders otherwise, provide copies of the proposed requests for directions under sub rule (1)—

(a) to a party instructing them, at least 7 days before they file the requests; and

(b) to all other parties, at least 4 days before they file them.

(3) The Court, when it gives directions, may also direct that a party be served with a copy of the directions.

ASSESSORS

30.—(1) The Court may appoint an assessor to assist the Court in dealing with a matter in which the assessor has skill and experience.

Assessors

(2) An assessor will take such part in the proceeding as the Court may direct and in particular the Court may direct an assessor to—

(a) prepare a report for the Court on any matter at issue in the proceeding; and

(b) attend the whole or any part of the trial to advise the Court on any such matter.

(3) Where an assessor prepares a report for the Court before the trial has begun, the Court will send a copy to each of the parties and the parties may use the copy at trial.

(4) The remuneration to be paid to an assessor shall be determined by the Court and will form part of the costs of the proceeding.

(5) The Court may order any party to deposit into Court a specified sum in respect of an assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

ATTENDANCE OF WITNESSES

Witness
summons

31.—(1) A witness summons may require a witness to attend Court to give evidence, produce documents to the Court, or both, on either a date fixed for the hearing or such date as the Court may direct.

(2) Three copies of the witness summons shall be filed with the Court for sealing, one of which will be retained on the Court file.

(3) A mistake in the name or address of a person named in a witness summons may be corrected if the summons has not been served.

(4) The corrected summons shall be re-sealed by the Court and marked "Amended and Re-Sealed".

Witness
summons in
aid of tribunal

32.—(1) A witness summons may be issued in the Court in aid of a tribunal which does not have the power to issue a witness summons in relation to a proceeding before it.

(2) A witness summons referred to in sub rule (1) may be set aside by the Court which issued it.

(3) An application to set aside a witness summons referred to in sub rule (1) shall be heard by the Court.

(4) Unless the Court directs otherwise, the applicant must give at least 2 days' notice to the party who issued the witness summons of the application under sub rule (3), which will normally be dealt with at a hearing.

Witness
expenses

33.—(1) When a witness is served with a witness summons, he shall be offered a sum of money to cover his travelling expenses to and from the Court and compensation for his loss of time.

(2) Where the witness summons is to be served by the Court, the party issuing the summons shall deposit with the Court—

(a) a sum sufficient to pay for the witness's expenses in travelling to the Court and in returning to his home or place of work; and

(b) a sum in respect of the period during which earnings or benefit are lost, or such lesser sum as it may be proved that the witness will lose as a result of his attendance at Court in answer to the witness summons.

Service by
party issuing
summons

34. Where a party issuing the witness summons wishes to serve it himself, he shall—

(a) notify the Court in writing that he wishes to do so; and

(b) at the time of service offer the witness the sums mentioned in rule 33 (2) (a).

Non-attendance
of witness

35. Where a witness does not attend the Court without reasonable excuse, the Court may—

(d) order the proceeding to be stayed until the witness attends the Court; or

(b) take the circumstances of the witness's refusal into account when considering the person's evidence.

DEPOSITIONS

36. A party may apply for an order for a person to be examined on oath before a Judge, an examiner of the Court or such other person as the Court may appoint. Depositions

37.—(1) The party who obtains an order for the examination of a deponent under rule 36 before an examiner of the Court shall— Allocation of an examiner

(a) apply to the Court for the allocation of an examiner;

(b) when allocated, provide the examiner with copies of all documents in the proceedings necessary to inform the examiner of the issues; and

(c) pay the deponent a sum to cover his travelling expenses to and from the examination and compensation for his loss of time.

(2) In ensuring that the deponent's evidence is recorded in full, the Court or the examiner may permit it to be recorded on audiotape or videotape, but the deposition shall always be recorded in writing by the Court or the examiner.

(3) Where the deposition is not recorded word for word, it must contain, as nearly as possible, the statement of the deponent; the examiner may record word for word any particular questions and answers which appear to him to have special importance.

(4) Where the deposition is recorded before a person appointed by the Court, the Court shall give directions on the manner that the deposition shall be recorded.

38.—(1) Where a deponent objects to answering any question or where any objection is taken to any question, the examiner shall— Objection to examiner's question

(a) record in the deposition or a document attached to it the question, the nature of and grounds for the objection, and any answer given; and

(b) give his opinion as to the validity of the objection and shall record it in the deposition or a document attached to it.

(2) The Court will decide as to the validity of the objection and any question of costs arising from it.

39. Any document or exhibit given during the deposition shall— Documents or exhibits on deposition

(a) have an identifying number or letter marked on them by the examiner; and

(b) be preserved by the party or his legal practitioner who obtained the order for the examination, or as the Court or the examiner may direct.

Questioning of
deponent

40. The examiner may put any question to the deponent as to the meaning of any of his answers, or any matter arising in the course of the examination.

Certificate
of refusal or
failure

41.—(1) Where a deponent fails to attend the examination, refuses to be sworn or answer any lawful question or to produce any document, the examiner will sign a certificate of such failure or refusal and may include in his certificate any comment as to the conduct of the deponent or of any person attending the examination.

(2) The party who obtained the order for the examination shall file the certificate with the Court and may apply for an order that the deponent attend for examination.

(3) The application under sub rule (2) may be made without notice.

(4) The Court will make such order on the application under sub rule (2) as it considers appropriate including an order for the deponent to pay any costs resulting from his failure or refusal.

(5) A deponent who wilfully refuses to obey an order made against him under this rule may be proceeded against for contempt of court.

Particulars of
a deposition

42. A deposition shall—

(a) be signed by the examiner;

(b) have any amendments to it initialed by the examiner and the deponent;

(c) be endorsed by the examiner with—

(i) a statement of the time occupied by the examination, and

(ii) a record of any refusal by the deponent to sign the deposition and of his reasons for not doing so; and

(d) be sent by the examiner to the Court where the proceedings are taking place for filing on the Court file.

DEPOSITIONS TAKEN ABROAD FOR USE AS EVIDENCE IN PROCEEDINGS IN MALAWI

Depositions
taken abroad
for use in
Malawi

43.—(1) A party may apply to the Court for an order to take a deposition from a person outside the jurisdiction.

(2) An application under sub rule (1) shall be supported by a sworn statement which shows—

(a) the relevance and admissibility of the evidence sought;

(b) the reason why the evidence cannot be obtained in Malawi; and

(c) there is an arrangement between Malawi and the jurisdiction concerned providing for the taking of evidence in that jurisdiction for the use in a proceeding in the Court or other court in Malawi.

(3) Upon hearing the application under sub rule (1), the Court may order the issue of a letter of request to the judicial authority of the jurisdiction in which the proposed deponent is residing.

DEPOSITIONS TAKEN IN MALAWI FOR USE AS EVIDENCE FOR COURTS ABROAD

44. Where the Court receives a letter of request from a court in another jurisdiction for the taking of evidence in Malawi to use in a proceeding in that jurisdiction, the evidence shall be taken in accordance with rule 46. Letter of request from Court in another jurisdiction
45. The letter of request referred to in rule 44 shall be supported by a sworn statement by an officer of the Court of the other jurisdiction verifying the letter of request. Sworn statement in support of letter of request
46. The Court shall give effect to the letter of request by— Giving effect to letter of request
- (a) issuing a summons to the person named in the letter to appear and give evidence, produce documents or both;
 - (b) hearing the witness's evidence orally;
 - (c) making a written record of the evidence; and
 - (d) sending the record of the evidence to the court in the other jurisdiction.
47. The written record of the evidence shall be signed and sealed by the Judge before whom the evidence is given. Record of evidence to be signed and
48. A person who gives evidence for use in a proceeding outside Malawi is to be treated as if the person is giving evidence in a proceeding before the Court. Effect of evidence by letter of request

NOTICE TO A NON-PARTY TO PRODUCE DOCUMENTS

- 49.—(1) At the request of a party to a proceeding, the Court shall issue a notice requiring a person who is not a party to the proceeding to produce a document for inspection which— Notice to non-party to produce documents
- (a) relates to an issue in the proceeding;
 - (b) is in the possession of that person; and
 - (c) the person shall be required to produce the document at the trial of the proceeding.
- (2) A party may not seek the production of a document where it is possible to prove the issue in the proceeding through simple and inexpensive means.
- (3) The notice under sub rule (1) shall be served on the person who is not a party personally.
- (4) The notice under sub rule (1) shall be served on every party to the proceeding not later than 2 days from the date the notice is served on the person who is not a party.
- (5) The party who requests the notice under sub rule (1) shall bear the costs of compliance with the notice by the person who is not a party to the proceeding or the other party.

Inspection of documents upon production notice

50.—(1) A person or party served under rule 49 (3) and (4) may inspect the document stated in the notice before it is produced under the notice in order to determine whether or not to claim privilege.

(2) A person or party served under rule 49 (3) and (4) may produce the document sought, and the party seeking the production of the document may at his own cost, make a copy of the document.

Amendment or setting aside of notice

51. A person served with a notice under rule 49 (1) or a party to the proceeding may apply to the Court to amend or set aside the notice.

Objecting the production of documents

52.—(1) A person served with a notice under rule 49 (1) or a party to the proceeding may object to the production of a document and shall file a sworn statement, and serve a stamped copy on the person or party making the application under rule 49 (1), which—

(a) specifies the document that the person objects to being produced; and

(b) gives the reason why the person claims privilege or otherwise objects to the document being produced.

(2) The basis of the objection under sub rule (1) may include, but is not limited to—

(a) the expense and convenience likely to be incurred through the compliance with the notice;

(b) the lack of relevance of the document to the proceeding;

(c) the lack of particularity with which the document is described;

(d) the confidential nature of the document or its contents;

(e) the effect disclosure of the document would have on any person;

or

(f) the effect of absence of the service of the notice.

(3) The party to whom a notice under rule 49 is issued may apply to the Court for an order against any objection made under this rule.

Failure to produce a document

53. A person who fails to produce a document under a notice issued under rule 49 may, on application, be held in contempt of court.

Return of documents, etc

54.—(1) The Court shall, within 6 months after a hearing, trial or appeal from a trial, return any document, exhibit or other thing to the party who put the document, exhibit or thing in evidence during a proceeding.

(2) Where the document, exhibit or other thing has not been returned under sub rule 1, the Court may destroy or otherwise dispose of the document, exhibit or thing at the end of 6 months after the date of the hearing or, trial; or appeal from a trial.

HEARSAY EVIDENCE

Hearsay evidence

55.—(1) Where a party intends to rely on hearsay evidence at trial and either—

(a) that evidence is to be given by a witness giving oral evidence; or

(b) that evidence is contained in a witness statement of a person who is not being called to give oral evidence, that party shall notify any other party of that fact and, on request, give particulars of or relating to, the evidence when serving a witness statement on the other parties in accordance with the Court's order.

(2) Where sub rule (1) (b) applies, the party intending to rely on the hearsay evidence shall, when he serves the witness statement—

(a) inform the other parties that the witness is not being called to give oral evidence; and

(b) give the reason why the witness will not be called.

(3) In all other cases where a party intends to rely on hearsay evidence at trial, that party shall notify any other party of that fact and, on request, give particulars of or relating to, the evidence when serving a notice on the other parties which—

(a) identifies the hearsay evidence;

(b) states that the party serving the notice proposes to rely on the hearsay evidence at trial; and

(c) gives the reason why the witness will not be called.

(4) The party proposing to rely on the hearsay evidence shall—

(a) serve the notice not later than the latest date for serving witness statements; and

(b) where the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.

56. The duty to give notice of intention to rely on hearsay evidence does not apply—

(a) to evidence at a hearing other than a trial;

(b) to a sworn statement or witness statement which is to be used at a trial but which does not contain hearsay evidence;

(c) to a statement which a party to a probate action wishes to put in evidence and which is alleged to have been made by the person whose estate is the subject of the proceeding; or

(d) where the requirement is excluded by a practice direction.

Exception of
duty to give
notice of
hearsay
evidence

57.—(1) Where a party proposes to rely on hearsay evidence and does not propose to call the person who made the original statement to give oral evidence, the Court may, on the application of any other party, permit that party to call the maker of the statement to be cross-examined on the contents of the statement.

Application
to cross-
examine
maker of
hearsay
statement

(2) An application for permission to cross-examine under this rule shall be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.

Notice of
intention to
attack
credibility
of maker of
hearsay
statement

58.—(1) Where a party proposes to rely on hearsay evidence but does not propose to call the person who made the original statement to give oral evidence and another party wishes to call evidence to attack the credibility of the person who made the statement, the party who so wishes shall give notice of his intention to the party who proposes to give the hearsay statement in evidence.

(2) A party must give notice under sub rule (1) not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

PLANS, PHOTOGRAPHS OR MODELS

Evidence of
plans,
photographs
or models

59.—(1) This rule applies to evidence, such as a plan, photograph or model, which is not—

(a) contained in a witness statement, sworn statement or expert's report;

(b) to be given orally at trial; or

(c) evidence of which prior notice is required to be given under rule 55.

(2) This rule includes documents which may be received in evidence without further proof in cases where the documents form part of the records of a business or public authority.

(3) Unless the Court orders otherwise, the evidence shall not be receivable at a trial unless the party intending to put it in evidence has given notice to the other parties in accordance with this rule.

(4) Where a party intends to use the evidence as evidence of any fact then, except where sub rule (6) applies, he shall give notice not later than the latest date for serving witness statements.

(5) A party must give notice at least 21 days before the hearing at which he proposes to put in the evidence, if there are not to be witness statements, or he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.

(6) Where the evidence forms part of expert evidence, a party shall give notice after the expert's report has been served on the other party.

(7) Where the evidence is being produced to the Court for any reason other than as part of factual or expert evidence, a party shall give notice at least 21 days before the hearing at which he proposes to put in the evidence.

(8) Where a party has given notice that he intends to put in the evidence, the party shall give every other party an opportunity to inspect it and to agree to its admission without further proof.

60.—(1) This rule sets out the procedure which shall be followed by a party who intends to put in evidence of finding on a question of foreign law.

Evidence of finding on a question of foreign law

(2) A person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any jurisdiction outside Malawi, irrespective of whether he has acted or is entitled to act as a legal practitioner in that jurisdiction.

(3) Where any question arises as to the law of any jurisdiction outside Malawi, with respect to any matter which has been determined in a proceeding specified in sub rule (6) than in a proceeding before a court which cannot take judicial notice of the law—

(a) a finding made or decision given on that question in the first-mentioned proceeding shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that jurisdiction; and

(b) where that finding or decision, as reported or recorded, is given for that purpose, the law of that jurisdiction with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved.

(4) Sub rule (3) (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question given under this rule in the same proceeding.

(5) A party shall—

(a) give any other party notice of his intention if there are to be witness statements, not later than the latest date for serving them or otherwise, not less than 21 days before the hearing at which he proposes to put the finding in evidence;

(b) specify the question on which the finding was made and enclose a copy of a document where it is reported or recorded; or

(c) with the permission of the Court, give in evidence a finding or decision under sub rule (3) without prior notice to every other party to the proceeding that he intends to do so.

(6) The proceeding referred to in sub rule (3) is a civil proceeding at first instance in the Court and appeals arising out of any such proceeding.

ORDER 18

SWORN STATEMENTS

1.—(1) In any Act or subsidiary legislation, a reference to an affidavit shall be deemed to be a reference to a sworn statement.

Sworn statements

(2) A sworn statement for use in a proceeding may be sworn before or after the commencement of the proceeding.

(3) A sworn statement shall be sworn before a Judge, a magistrate, a commissioner for oaths, a notary public, a legal practitioner with a valid

practising licence, or an officer authorized to administer oaths under the provisions of any Act or subsidiary legislation.

(4) A person authorized under sub rule (3) to take a sworn statement shall not do so in relation to a document in a proceeding in which the person is the legal practitioner to any of the parties, a clerk to any such legal practitioner or in which the person has an interest.

Documents
verifiable
by sworn
statement and
nature and
content of
sworn
statement

2.—(1) The following documents shall be verified by a sworn statement—

- (a) a claim;
- (b) a defence;
- (c) a response ;
- (d) a witness statement ;
- (e) a certificate of service; and
- (f) any document where a rule or practice direction so requires.

(2) Where a claim is amended, the amendment shall be verified by a sworn statement unless the Court orders otherwise.

(3) Where a claimant wishes to rely on matters set out in his claim as evidence, the claim shall be verified by a sworn statement.

(4) Subject to sub rule (5), a sworn statement is a confirmation that—

- (a) the party putting forward the document;
 - (b) in the case of a witness statement, the maker of the witness statement; or
 - (c) in the case of a certificate of service, the person who signs the certificate,
- believes the facts stated in the document are true.

(5) Where a party is conducting a proceeding with a litigation friend, the sworn statement in—

- (a) a claim;
- (b) a defence; or
- (c) an application,

is a confirmation that the litigation friend believes the facts stated in the document being verified are true.

(6) The sworn statement shall be signed by—

- (a) in the case of a claim, a defence or an application—
 - (i) the party or litigation friend; or
 - (ii) the legal practitioner on behalf of the party or litigation friend; and
- (b) in the case of a witness statement, the maker of the statement.

(7) A sworn statement which is not contained in the document which it verifies, shall clearly identify that document.

3.—(1) Where a party fails to verify his claim by a sworn statement—

(a) the claim shall remain effective unless struck out; but

(b) the party may not rely on the claim as evidence of any of the matters set out in it.

Failure to
verify claim
by statement
in sworn
statement

(2) The Court may strike out a claim which is not verified by a sworn statement.

(3) Any party may apply for an order under sub rule (2).

4. Where the maker of a witness statement fails to verify the witness statement by a sworn statement the Court may direct that it shall not be admissible as evidence.

Power of
Court to order
verification of
document

5.—(1) The Court may order a person who has failed to verify a document under rule 2 (1) to verify the document.

Failure to
verify witness
statement in
sworn
statement

(2) Any party may apply for an order under sub rule (1).

6.—(1) Subject to sub rule (2), a sworn statement shall only contain facts that the deponent is able to prove with his own knowledge.

Content of
sworn
statement

(2) A sworn statement may contain a statement of information and belief provided the sources of the information or the basis for the belief are also set out in the statement.

7.—(1) The body of a sworn statement shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

Numbering,
paragraphs
of sworn
statement

(2) Each page of a sworn statement, including any exhibit, shall be numbered legibly and distinctively, beginning on the first page of the statement with the Arabic numeral '1'.

(3) Each exhibit to a sworn statement shall be identified sequentially on the first page of the exhibit by—

(a) a letter of the alphabet, beginning with the Roman letter 'A' for the first exhibit; or

(b) the initials of the deponent followed by a number, beginning with the Arabic numeral '1' for the first exhibit.

(4) The full name of the deponent and the date on which the sworn statement was sworn shall appear on the first visible page of the sworn statement.

(5) A sworn statement shall contain an authorizing part at the end of the body of the statement that—

(a) states whether the sworn statement was sworn or affirmed;

(b) states the place the person made the sworn statement;

(c) states the person making the sworn statement understands the sworn statement shall be used in a proceeding;

(d) states the person who made the statement acknowledges that if he made a false statement he may commit perjury and be liable to a substantial penalty; and

(e) is signed by the person taking the sworn statement, above a statement of the person's full name, address and capacity to take the sworn statement.

Illiterate or
blind deponent

8. Where it appears to the person before whom a sworn statement is sworn that the deponent is illiterate or blind, the person shall certify in, or below, the authorizing part, that—

(a) the sworn statement was read in his presence to the deponent;

(b) the deponent seemed to understand the sworn statement; and

(c) the deponent signed the sworn statement in his presence.

Sworn
statement in
language not
understood by
deponent

9. Where it appears to the person before whom a sworn statement is sworn that the statement is in a language not understood by the deponent, the person shall certify in or below the authorizing part that—

(a) the sworn statement was translated to the deponent in a language the deponent understands;

(b) the deponent confirmed to understand the translation of the statement; and

(c) the deponent signed the sworn statement in their presence.

Use of mark
or thumb

10. Where the deponent makes a mark or thumb impression instead of signing, the person before whom the sworn statement is made shall certify in or below that authorizing part that the deponent made the mark or thumb impression in his presence.

Inability to
sign, mark or
make thumb
impression

11. Where it appears to the person before whom a sworn statement is sworn that the deponent is by reason of physical incapacity unable to sign, make a mark or leave thumb impression on the statement, the person shall certify in or below the authorizing part that—

(a) the sworn statement was read out in his presence to the deponent;

(b) the deponent confirmed to understand the sworn statement; and

(c) the deponent signified he swore the sworn statement.

Non-compliance with rule 8

12. Where a sworn statement is made by an illiterate or blind deponent and a certification under rule 8 does not appear on the sworn statement, the statement may not be used in a proceeding unless the Court is satisfied that the statement was read to the deponent and the deponent confirmed to understand it.

Alteration or
erasure on
sworn
statement

13.—(1) Where there is an inter-lineation, erasure or other alteration in the authorizing part or body of a sworn statement, the statement may be filed, unless the Court orders otherwise.

(2) Notwithstanding sub rule (1), the sworn statement may not be used without the permission of the Court unless the person before whom the sworn statement is sworn initials the alteration and, in the case of an erasure,

re-writes in the margin of the statement any words or figures written on the erasure and signs or initials them.

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| 14.—(1) A copy of a document to be used in conjunction with a sworn statement shall be exhibited to the sworn statement. | Copies to be exhibited to a sworn statement |
| (2) Copies of all documents exhibited to a sworn statement shall be served with the sworn statement. | |
| 15. Where it is impracticable to copy a document to be used in conjunction with a sworn statement, a transcript or diagram of the document shall be exhibited to the sworn statement and the sworn statement shall give the reason why it is impracticable to copy the document. | Impracticability to copy document |
| 16. A person taking a sworn statement with exhibits need not see the original documents and may certify that the copies, transcripts or diagrams were produced to them as true copies, transcripts or diagrams of the original documents. | Certification as true copies of original |
| 17. Another party may require that the original of a copy of a document exhibited to a sworn statement be produced in Court. | Request to produce original document |
| 18. Unless the Court orders otherwise, a sworn statement may be filed despite any defects in form. | Defects |
| 19. A sworn statement shall not be used in a proceeding without the permission of the Court if it has not been filed or it has been filed in a defective form. | Use of statement with permission |
| 20. A party intending to use a sworn statement shall serve the statement on each interested party not later than 2 clear days or as the Court orders otherwise before the occasion for using the statement arises. | Service of a sworn statement |
| 21. The Court may give directions concerning the service of sworn statements. | Directions on service of statement |
| 22. Where there is a scandalous or an oppressive matter in a sworn statement, the Court may order that the whole or part of the statement be taken off the Court file. | Scandalous content |
| 23.—(1) A party may require the attendance, for cross-examination, of a person making a sworn statement. | Attendance and cross-examination of person making statement |
| (2) The requirement under sub rule (1) shall be made by notice to the party filing or proposing to use the sworn statement. | |
| (3) Where the attendance of a person is required under sub rule (1) and that person does not attend the Court, his sworn statement may not be used in the proceeding without the permission of the Court. | |
| 24. Where a person making a sworn statement is cross-examined, the party using the sworn statement may re-examine the person. | Re-examination of a person making statement |

PARTICULAR PROCEEDINGS

PART I

MATTERS UNDER THE CONSTITUTION

Application of
Part I

1. This Part shall apply to a proceeding on the interpretation or application of the Constitution which is certified by the Chief Justice under rule 2 and shall be dealt with in the manner specified under section 9 (2) of the Act.

Certification

2.—(1) The Chief Justice may certify a proceeding under section 9 (3) of the Act where the proceeding involves—

- (a) a matter under section 89 (1) (h) of the Constitution;
- (b) the determination of the constitutionality of an Act of Parliament or its part;
- (c) the determination of the constitutionality of an act or omission of an organ of State or other person;
- (d) a matter concerning the status, powers or functions of State or a public authority under the Constitution;
- (e) the determination of the relationship between the Constitution and a treaty or part of the treaty; or
- (f) the enforcement and protection of the Constitution.

(2) The certification by the Chief Justice under sub rule (1) shall be in Form 19.

(3) The certification by the Chief Justice shall be made within 7 days from the date a proceeding is filed before, or referred to, him for such certification.

(4) The certification by the Chief Justice under this rule is an administrative function and the Chief Justice shall not hear arguments from the parties nor deliver a judicial determination on the certification.

Commence-
ment of a
proceeding
under this

3.—(1) Subject to sub rule (2), a proceeding under this Part shall be commenced by summons under Order 5.

(2) In the case of a referral by the President under section 89 (1) (h) of the Constitution, the proceeding shall be commenced by a notice of referral under rule 6.

(3) In the case of a referral by any other court under rule 7, the proceeding shall be commenced by a notice of referral in Form 20.

General Proceedings

Nature and
content of
summons

4. Notwithstanding Order 5, every summons under rule 3 shall be signed by the claimant or his legal practitioner, and shall contain a concise statement of case indicating the provision or provisions of the Constitution which the Court shall interpret or apply.

5.—(1) A defendant who wishes to defend the whole or any part of the summons under rule 3 shall, within 7 days after service of the summons, inclusive of the day of service, file his response. Responses

(2) The defendant who has filed a response shall serve on the claimant a defence within 14 days from the date of the response.

(3) The Court shall, within 7 days from the date of the filing of the defence, set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the proceeding.

(4) The Court shall hear the summons within 21 days from the date of the scheduling conference.

(5) In the absence of a defence, the Court shall hear the summons within 21 days from the date of service of the summons.

Referral by the President

6.—(1) A referral by the President under section 89 (1) (h) of the Constitution shall be signed and sealed by the President, and shall contain a concise statement of facts indicating the provision or provisions of the Constitution forming the basis of the referral, and the referral shall be filed with the Court for certification by the Chief Justice under rule 2. Particulars and content of referral

(2) The Court shall, within 7 days of the filing of the referral under sub rule (1)—

(a) cause to be published in the *Gazette*, and at least 2 daily newspapers of wide circulation in Malawi; and

(b) place at conspicuous places at the Court, a notice of the referral, and the Court shall invite written arguments from any interested person, who shall file arguments with the Court within 14 days from the date of the notice.

(3) The Court shall, within 14 days after the expiry of the period referred to in sub rule (2), set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the matter.

(4) The referral shall be heard within 21 days from the date of the scheduling conference.

Referral by other courts

7.—(1) Where a referral to the Court in relation to any matter on the interpretation or application of the Constitution is necessary as determined by an original court, the Judge, magistrate or chairperson of the original court shall, within 7 days from the date of the determination, submit the referral in Form 20 to the Chief Justice for certification under rule 2. Referral by other courts

(2) Where the original court has made a referral under sub rule (1), the proceeding in the original court shall be stayed pending a decision of the Court.

(3) Where a referral has been certified by the Chief Justice under sub rule

(1), the Court shall, within 14 days from the date of the certification, set down the matter for a scheduling conference where the Court shall give directions on the further conduct of the matter.

(4) The Court shall hear the referral within 21 days from the date of the scheduling conference.

(5) The decision of the Court shall be remitted to the original court which shall decide the proceeding before it in accordance with the decision of the Court.

Process to be served on Attorney General

8. Every process under this Part shall be served on the Attorney General whether or not the Attorney General is a party to the proceeding.

Amicus Curiae

Amicus curiae

9. Any person interested in any matter in a proceeding before the Court may, with the permission of the Court, be admitted as *amicus curiae* upon such terms and conditions as the Court may determine.

Application as *amicus curiae*

10. An application to be admitted as *amicus curiae* shall briefly—

(a) describe the interest of the *amicus curiae* in the proceeding;

(b) identify the position to be taken by the *amicus curiae* in the proceeding; and

(c) set out the arguments to be advanced by the *amicus curiae*, their relevance to the proceeding and the reasons for believing that the arguments will be useful to the Court.

Effect upon appointment as *amicus curiae*

11. *Amicus curiae* shall, upon being admitted, be heard orally and lodge written submissions with the Court under the terms and conditions determined by the Court under rule 9.

Delivery of Decision

Time of delivery of the decision

12.—(1) Each Judge on the panel shall deliver a decision in respect of a proceeding under this Part within 45 days of the conclusion of the proceeding.

(2) Notwithstanding sub rule (1), a Judge may elect to concur with a decision of another Judge and such concurrence shall constitute a decision for purposes of this Order.

PART II—ELECTION MATTERS

Commencement of an election matter
Cap 2:01
Cap 22:02

13. An election matter shall commence in the manner specified under the Parliamentary and Presidential Elections Act, the Local Government Elections Act or, in any other event, by an application.

Service of response

14. Within 7 days of the date of service of an application on the respondent, or on the Attorney General, as the case may be, the respondent or the Attorney General shall file with the Court and serve on the applicant a sworn statement in reply with skeleton arguments.

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| 15. Within 3 days of being served with the sworn statement in response, the applicant may file with the Court and serve on the respondent, or on the Attorney General, as the case may be, a sworn statement in reply with skeleton arguments. | Statement on reply |
| 16. The Court shall hear the application within 3 days after the service of the sworn statement in reply. | Hearing of application |
| 17. The Court shall deliver its decision on the application within 14 days of the conclusion of the hearing of the petition or application. | Delivery of decision in an election matter |
| 18. Where the applicant considers his matter to be of a constitutional nature requiring certification by the Chief Justice under rule 2, the Chief Justice shall certify the matter within 24 hours from the time the matter was filed with his office. | Certification as constitutional matter |
| 19. An application for an interim injunction in connection with an election matter shall be made <i>inter partes</i> and shall be heard before a Judge. | Application for injunction to be <i>inter partes</i> |

PART III—JUDICIAL REVIEW

20.—(1) Judicial review shall cover the review of—

(a) a law, an action or a decision of the Government or a public officer for conformity with the Constitution; or

(b) a decision, action or failure to act in relation to the exercise of a public function in order to determine—

- (i) its lawfulness;
- (ii) its procedural fairness;
- (iii) its justification of the reasons provided, if any; or
- (iv) bad faith, if any,

where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened.

Application for judicial review

(2) A person making an application for judicial review shall have sufficient interest in the matter to which the application relates.

(3) Subject to sub-rule (3), an application for judicial review shall be commenced *ex-parte* with the permission of the Court.

(4) The Court may upon hearing an *ex parte* hearing direct an *inter-partes* hearing.

(5) Subject to sub-rule (6), an application for judicial review under sub rule (3) shall be filed promptly and shall be made not later than 3 months of the decision.

(6) The Court may extend the period under sub-rule (5).

21. An application for a mandatory order, a prohibiting order or a quashing order shall be made with an application to the Court for judicial review.

Application for mandatory order, etc

Application for
a declaration or
an injunction

22. An application for a declaration or an injunction shall be made with an application to the Court for judicial review and the Court may grant a declaration or injunction where it considers that it would be in the interests of justice to do so having regard to—

(a) the nature of the matter in which relief may be granted by a mandatory order, a prohibiting order or a quashing order;

(b) the nature of the person or institution against whom relief may be granted by such an order; and

(c) all the circumstances of the case.

Grounds for
making
application
and content

23.—(1) An application for judicial review shall set out the grounds for making the application and shall be supported by a sworn statement.

(2) An application under sub rule (1) shall name as defendant—

(a) for a declaration in relation to an Act or subsidiary legislation, the Attorney General;

(b) for an order that a person shall do or shall not do something, the person in question; and

(c) for an order about a decision, the person who made or should have made the decision.

(3) An application under sub rule (1) shall be served on—

(a) the defendant within 28 days from the date of filing the application;

(b) any other person who is directly affected by the application, within 28 days of filing the application; and

(c) any other person the Court may order that he may be added as a party, within 28 days of the order.

Defence

24. The defendant shall, within 14 days of service of the application, file a defence supported by a sworn statement.

Scheduling
conference

25. The Court shall set down a date for a scheduling conference not later than 28 days from the date of filing the defence and Order 14 shall, with the necessary adaptation, apply to the application under this Part.

PART IV—*HABEAS CORPUS*

Habeas Corpus

26.—(1) A person may make an application to the Court for a writ of *habeas corpus* for the release of a person who is being held under unlawful detention.

(2) An application under sub rule (1) shall be supported by a sworn statement by the person under unlawful detention or a person who is applying on behalf of the person under unlawful detention.

(3) The application under sub rule (1) need not be served on any other person.

(4) The application under sub rule (1) shall name, as defendant, the

person who, to the best of the applicant's knowledge, is responsible for the unlawful detention of the person who is the subject of the application.

(5) At the hearing of the application, the Court shall order that—

- (a) the person be released from unlawful detention;
- (b) the application and sworn statement be served on the defendant and any other person named in the order;
- (c) the defendant and any other person file a defence and serve the same on the applicant within the date and time stated in the order;
- (d) the application shall be further heard at the date and time stated in the order;
- (e) the defendant brings the person in unlawful detention to the Court at the date and time stated in the order;
- (f) the applicant or defendant comply with any other step stated in the order; or
- (g) the application is dismissed.

(6) At any further hearing of the application under sub rule (5) (d), the Court shall—

- (a) hear evidence in support of the application;
- (b) let the defendant show cause why the person should not be released;
- (c) order the release of the person or order that the person be held in another place;
- (d) dismiss the application;
- (e) where the Court is satisfied that a person other than the defendant has custody of the person in unlawful detention, adjourn the proceeding and make orders about the service of the application and other matters the Court considers appropriate to deal with the application; or
- (f) make any other orders it considers appropriate.

PART V—DECLARATORY ORDERS

27.—(1) A person may make an application to the Court for a declaratory order. Declaratory order

(2) An objection to a proceeding may not be made on the ground that the proceeding is merely seeking a declaratory order.

(3) The Court may make a binding declaratory order based on a right even if no consequential relief is or may be claimed.

ORDER 20

SKELETON ARGUMENTS AND SUBMISSIONS

1.—(1) In all interlocutory applications the parties shall file and serve skeleton arguments to be relied upon at least 2 days before the hearing of the application. Skeleton arguments

(2) Where the parties are required at the conclusion of a trial to make written submissions, they shall file the same within 14 days from the last day of trial.

ORDER 21

APPEALS

- Record of Appeal
Cap.3:02 sub. leg. p. 79
1. An appeal from a subordinate court or other tribunal and other judicial and quasi-judicial bodies shall, with the necessary adaptation, be governed by Order XXXIII of the Subordinate Court Rules where there is no appellate procedure governing an appeal from that court or tribunal.
- Record of appeal
2. On receipt of the copies of a Record of Appeal from a subordinate court or other tribunal and other judicial and quasi-judicial bodies, the Registrar shall—
- (a) give notice to the Appellant of the hearing fees payable in respect of the Appeal and demand payment; and
- (b) serve the Respondent with the copy of the Record of Appeal.
- Hearing fee.
3. The Registrar shall, upon payment of hearing fees, enter the appeal and fix a date for the hearing thereof and shall give notice to the parties of the date so fixed.

ORDER 22

CASE STATED

1. A subordinate court or other tribunal may refer to the Court a question in the form of a case stated which shall—
- (a) state the question to be decided by the Court;
- (b) briefly state the facts and attach all documents giving rise to the question to be decided by the Court ; and
- (c) be divided into paragraphs numbered consecutively.
- Content of case stated
2. Unless the subordinate court or other tribunal directs otherwise, the case stated shall—
- (a) be prepared in draft by the initiating party after consultation with the other party;
- (b) contain an address for service for each party;
- (c) be settled by the subordinate court or the tribunal;
- (d) be served on each party; and
- Particulars of case stated
- (e) be filed in the Court by the initiating party on behalf of the subordinate court or the tribunal.

3.—(1) Where a person with a disability is a party to the case stated, the case stated shall be set down for hearing with the permission of the Court.

Case stated with permission where a party is a person with disability

(2) The application for permission under sub rule (1) shall be supported by sufficient evidence that the statements contained in the case stated are true, as far as they affect the interests of the person with a disability.

4.—(1) The Court shall—

Directions, notice and hearing

(a) set a date for the directions of the case stated; and

(b) notify each party of the date of the hearing of the directions of the case stated.

(2) Where the Court is satisfied that each party has been served with the case stated, and the case stated is ready for hearing, the Court shall—

(a) set a date for the hearing of the case stated; and

(b) notify each party of the date of the hearing of the case stated.

5. Where the case stated has not complied with rule 1, the Court may—

Non-compliance with rule 1

(a) with the agreement of each party, amend the case stated;

(b) order the initiating party to amend the case stated; or

(c) receive evidence, make findings of fact, and, by its own initiative, amend case stated.

ORDER 23

JUDGMENTS AND OTHER ORDERS

1—(1) Subject to sections 3 and 8 of the Act, every judgment shall state the name and judicial title of the person who made it.

Particulars and contents of judgement and orders

(2) A judgment shall—

(a) be in writing;

(b) contain a point or points for determination, the decision on the point or points and the reasons for the decision;

(c) bear the date on which it is given or made; and

(d) be sealed by the Court.

(3) Where a party applies for permission to appeal against a judgment at the hearing at which the judgment was made, the judgment shall state—

(a) whether or not the judgment is final;

(b) whether an appeal lies from the judgment and, if so, to which Court of Appeal; and

(c) whether the Court gives permission to appeal.

(4) Where the permission to appeal is not granted under sub rule (3), the judgment shall state the appropriate Court of Appeal to which any further application for permission may be made.

Judgements or
orders drawn
by party

2.—(1) A judgment or order shall be drawn up by a party except for a judgment or an order made by the Court of its own initiative and unless the Court orders otherwise.

(2) The Court may direct that—

(a) a judgment or an order drawn up by a party must be checked by the Court before it is sealed; or

(b) before a judgment or an order is drawn up by the Court, the parties shall file an agreed statement of its terms.

(3) Where a judgment or an order is to be drawn up by a party—

(a) he shall file it not later than 7 days after the date on which the Court ordered or permitted him to draw it up so that it can be sealed by the Court; and

(b) where he fails to file it within that period, any other party may draw it up and file it.

Service by
court of
judgement
drawn by party

3.—(1) Where a judgment or an order has been drawn up by a party and is to be served by the Court—

(a) the party who drew it up must file a copy to be retained at the Court and sufficient copies for service on him and on the other parties; and

(b) once it has been sealed, the Court must serve a copy of it on each party to the proceeding.

(2) Unless the Court directs otherwise, any order made otherwise than at trial shall be served on—

(a) the applicant and the respondent; and

(b) any other person on whom the Court orders it to be served.

Service on
party and legal
practitioner

4. Where a party on whom a judgment or order is to be served is acting through a legal practitioner, the Court may order the judgment or order to be served on the party and on his legal practitioner.

Agreed
judgement
or order

5.—(1) This rule applies where all the parties agree on the terms in which a judgment should be given or an order should be made.

(2) The Court may enter and seal an agreed judgment or order if—

(a) the judgment or order is listed in sub rule (3);

(b) none of the parties is a litigant in person; and

(c) the approval of the Court is not required by these Rules, a practice direction or any enactment before an agreed order can be made.

(3) The judgments and orders referred to in sub rule (2) are—

(a) a judgment or order for—

(i) the payment of an amount of money, including a judgment or order for damages or the value of goods to be decided by the Court; or

(ii) the delivery of goods with or without the option of paying

the value of the goods or the agreed value.

(b) an order for—

(i) the dismissal of a proceeding, in whole or in part;

(ii) the stay of a proceeding on agreed terms, disposing of the proceeding, whether those terms are recorded in a schedule to the order or elsewhere;

(iii) the stay of enforcement of a judgment, without condition or on condition that the money due under the judgment is paid by instalments specified in the order;

(iv) the setting aside of a judgment in default which has not been satisfied;

(v) the payment out of money which has been paid into Court;

(vi) the discharge from liability of any party; or

(vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed.

(4) Rule 3 applies to judgments and orders entered and sealed by the Court under sub rule (2) as it applies to other judgments and orders.

(5) Where sub rule (2) does not apply, any party may apply for a judgment or order on the terms agreed.

(6) The Court may deal with an application under sub rule (5) without a hearing.

(7) Where this rule applies, the order—

(a) which is agreed by the parties shall be drawn up in the terms agreed;

(b) shall be expressed as being 'By Consent'; and

(c) shall be signed by the legal representative acting for each of the parties to whom the order relates or, where sub rule (5) applies, by the party if he is a litigant in person.

6.—(1) A judgment or order takes effect from the day when it is given or made, or such later date as the Court may specify.

Time for
judgement to
take effect

(2) This rule applies to all judgments and orders.

7. Every judgment in a proceeding shall carry interest at the rate of 5 per centum per annum or such other rate as may be prescribed.

Calculating
interest on
judgement

8. A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

Persons who
may set aside
judgement

9. A party shall comply with a judgment or order for the payment of an amount of money, including costs, within 14 days of the date of the judgment or order, unless—

Compliance
with
judgements
for payment

(a) the judgment or order specifies a different date for compliance,

including specifying payment by instalments;

(b) any of these Rules specifies a different date for compliance; or

(c) the Court has stayed the proceeding or judgment.

Correction of
judgment

10.—(1) The Court may at any time correct an inadvertent slip or omission in a judgment or order.

(2) A party may apply for a correction of a judgment or order without notice.

Judgement for
amount for a
claim and
counter-claim

11.—(1) This rule applies where the Court gives judgment for a specified amount both for the claimant on his claim and against the claimant on a counterclaim.

(2) If there is a balance in favour of one of the parties, the Court may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the Court may make a separate order as to costs against each party.

Part owners

12.—(1) In this rule, 'part owner' means one of two or more persons who have an interest in the same goods.

(2) Where a part owner makes a claim relating to the detention of the goods and the claim is not based on a right to possession, a judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

Judgement
book

13.—(1) The Court shall keep a judgment book.

(2) The judgment book may be kept in electronic form.

(3) The Court shall record in the judgment book—

(a) the distinguishing number or other unique identifier given to the proceeding for which a judgment has been entered;

(b) the judgment in the proceeding;

(c) the date the judgment was entered; and

(d) any other information the Court may record in the judgment book.

ORDER 24

DOCUMENTS AND FORMS

Forms

1. All documents filed in a proceeding shall be in the forms set out in the *First Schedule*.

Particulars of
documents

2. All documents filed in a proceeding shall—

(a) be type written in Times New Roman font, size 12, spacing 1.5;

(b) be prepared on A4 International Standards Organization paper of durable quality having a margin, not less than 3.5 centimetres wide, on the left hand-side and on the right-hand side;

(c) be printed on one side only;

(d) have each page consecutively numbered;

(e) be divided into consecutively numbered paragraphs, with each paragraph dealing with a separate matter; and

(f) show the address of the party's legal practitioner or, where the party is not represented by a legal practitioner, the party's address.

3.—(1) A document may be filed by delivering it to the appropriate registry of the Court by hand or by post, and upon payment of the appropriate filing fees. Filing of documents

(2) A document is filed when it is accepted by the Court and stamped with the seal of the Court.

(3) Where there are more than two claimants in a proceeding, the heading of a document shall state the full name of the first claimant followed by the words "and others" and a similar style shall apply with respect to defendants and other parties.

ORDER 25

POWERS AND FUNCTIONS OF REGISTRARS

1. Subject to the direction of a Judge, the Registrar may exercise the jurisdiction, powers and functions of the Court to make, or refuse to make, an order, on any or all of the following— Powers and functions of Registrars

(a) interlocutory orders, except orders for injunctions;

(b) orders consented to by—

(i) the parties to the application for the order; and

(ii) any other person who will be required to comply with the order or to suffer anything to be done under the order;

(c) the amendment of documents;

(d) the extension or abridgment of time;

(e) the consolidation of proceedings;

(f) service of documents;

(g) entering judgment on acknowledgment of a claim of money;

(h) entering a judgment in default;

(i) setting aside a judgment in default;

(j) striking out a proceeding;

(k) issuing a summons to give evidence or produce documents;

(l) inspection of a document or thing produced in response to summons;

(m) the enforcement of judgments or orders;

(n) assessment of damages;

(o) assessment of costs;

(p) costs in respect of any order granted or refused by the Registrar;
or

(q) an injunction where the parties consent to any order under a proceeding.

Referral to
Judge in
Chambers

2.—(1) The Registrar may, of his own initiative, or on application by a party, refer a proceeding before him to a Judge in chambers.

(2) Upon receipt of reference of a proceeding under sub rule (1), the Judge may—

(a) hear and determine any issue which was before the Registrar in the proceeding; or

(b) determine any question arising in the proceeding and may return the proceeding to the Registrar with directions as the Court considers appropriate.

ORDER 26

FEEs

Fees

1. The Court shall levy the fees as set out in the *Second Schedule*.

ORDER 27

RECORD KEEPING

Record keeping

1. The Court shall keep a record of all documents filed in the Court.

Records and
documents not
to be taken out

2. Subject to Order 16 rule 54, unless the Court orders otherwise, the Court shall not allow a document filed in the Court, or a record kept by the Court, to be taken out of the Court.

Court seal

3.—(1) The Court shall keep a seal showing the name of the Court and its location.

(2) The Court seal shall be stamped on each document filed in the Court or issued by the Court.

4.—(1) Subject to sub rule (2), a party, or a person who has a proper interest in a proceeding, may request the Court for a copy of a document filed in the Court.

(2) The Court shall release the copy requested under sub rule (1) after the party or the person has paid for the cost of making the copy.

(3) The copy shall be sealed and stamped with the word "copy" on the first or cover page of the copy.

ORDER 28

ENFORCEMENT OF JUDGMENTS

1. A judgment shall be enforced under an enforcement order as set out in this Order and the costs of enforcing an order shall be recoverable as part of the order. Enforcement of judgment

2.—(1) A judgment may be enforced by one or more of the following means— Modes of enforcement

- (a) a seizure and sale order;
- (b) third party debt order;
- (c) a charging order;
- (d) an appointment of a receiver;
- (e) an order for possession of land;
- (f) an order for delivery of goods; or
- (g) an order to do or not to do a thing.

(2) The orders in sub rule (1) (a), (b), (c) and (d) apply as money orders and the orders in sub rule (1) (e), (f) and (g) apply as non-money orders.

(3) The Sheriff shall enforce the orders under sub rule (1) (a), (e), (f) and (g) and an enforcement creditor shall enforce the orders under sub rule (1) (b), (c) and (d).

ENFORCEMENT OF MONEY ORDERS—GENERAL

3.—(1) Subject to sub rule (2), an enforcement creditor may apply for the issue of an enforcement order to enforce a money order. Enforcement of money order

(2) An enforcement creditor may, except where a written law provides otherwise, use more than one method of enforcement of a money order, either at the same time or one after the other.

(3) An enforcement creditor shall file—

- (a) an application;
- (b) a copy of the money order;
- (c) 5 copies of the form of enforcement order; and
- (d) a sworn statement setting out—
 - (i) the date of the money order;
 - (ii) the amount payable under the order;
 - (iii) the date and amount of any payment made under the order;
 - (iv) the costs of previous enforcement;
 - (v) the interest due at the date of the statement;
 - (vi) any other details needed to work out the amount payable under the money order at the date of the statement, and how the amount is worked out;
 - (vii) the daily amount of future interest; and
 - (viii) any other information needed for the order.

(4) Unless the Court orders otherwise, the application shall be dealt with

or without a hearing and in the absence of the parties.

Particulars of
enforcement
order

4. The Court may issue an enforcement order which shall state—
- (a) the enforcement debtor's name;
 - (b) the date, within one year of the date of the order, which the order ends; and
 - (c) the amount recoverable under the order, including—
 - (i) costs of the enforcement; and
 - (ii) the amount of interest.

ENFORCEMENT HEARING

Enforcement
hearing

5.—(1) An enforcement creditor may apply to the Court for an order (an 'enforcement hearing order') that the enforcement debtor or independent witness attends an enforcement hearing and be examined about his financial circumstances and how he proposes to pay the amount of the judgment debt and bring sufficient documents to enable him to give a fair and accurate account of his financial circumstances.

(2) Where the Court orders an enforcement hearing it shall set a date for the hearing.

(3) Where the enforcement debtor or independent witness is not present when the Court orders an enforcement hearing, the enforcement creditor shall ensure that the order is served on the enforcement debtor or independent witness not less than 7 days from the date of the hearing.

(4) Where the enforcement debtor or independent witness does not, without good reason, appear at the enforcement hearing to answer to an order, the debtor or independent witness may be in contempt of court.

SEIZURE AND SALE ORDER

Seizure and
sale by sheriff
Cap. 3:05

6. The Court may issue an enforcement order authorizing the Sheriff to seize and sell moveable property, other than property from seizure and sale under the Sheriff's Act, in which an enforcement debtor has legal title.

Sheriff to
enforce orders

7. The Court shall give an enforcement order to the Sheriff for enforcement.

Chronological
execution

8. Where there are several enforcement orders against the same enforcement debtor, the Sheriff shall execute the orders chronologically.

Disposal of
seized property

9.—(1) Subject to the Sheriff's Act, the Sheriff may dispose of property seized under an enforcement order by public auction or private sale.

(2) The Sheriff shall, within 7 days after the public auction or private sale, pay the proceeds of the auction or sale to the Court.

(3) Upon receipt of the proceeds of the auction or sale under sub rule (2), the Court shall, in the following sequence—

- (a) pay the Sheriff the costs of executing the enforcement order;
- (b) pay any balance, up to the amount of the enforcement order, to

the enforcement creditor; and

(c) pay any balance remaining after the payment to the enforcement creditor, to the enforcement debtor.

THIRD PARTY DEBT ORDERS

10.—(1) Upon the application of an enforcement creditor, the Court may make an order (a third party debt order¹) requiring a third party to pay to the enforcement creditor—

Third party
debt order

(a) the amount of any debt due or, accruing due to the enforcement debtor from the third party; or

(b) so much of that debt as is sufficient to satisfy the judgment debt and the enforcement creditor's costs of the application.

(2) The Court shall not make an order under sub rule (1) without first making an order (an 'interim third party debt order') under rule 13 (2).

11.—(1) An application for a third party debt order may be made without notice and shall be issued in the Court which made the judgment or order which it is sought to enforce; except that if the proceedings have since been transferred to a different registry, it shall be issued in that registry.

Application
for third party
debt order

(2) The application notice shall be in Form 21 and shall contain the information specified in sub rule (3) verified by a sworn statement.

(3) The application notice must contain the following information—

(a) the name and address of the enforcement debtor;

(b) details of the judgment or order sought to be enforced;

(c) the amount of money remaining due under the judgment or order;

(d) where the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;

(e) the name and address of the third party;

(f) where the third party is a bank, building society or other financial institution—

(i) its name and the address of the branch at which the enforcement debtor's account is believed to be held;

(ii) the account number; and

(iii) where the enforcement creditor does not know all or part of this information, that fact;

(g) confirmation that to the best of the judgment creditor's knowledge or belief the third party is within the jurisdiction and owes money to or holds money to the credit of the enforcement debtor;

(h) where the enforcement creditor knows or believes that any person other than the enforcement debtor has any claim to the money owed by the third party—

(i) his name and, if known his address; and

- (ii) such information as is known to the enforcement creditor about the person's claim;
- (i) details of any other applications for third party debt orders issued by the enforcement creditor in respect of the same judgment debt; and
- (f) the sources or grounds of the enforcement creditor's knowledge or belief of the matters referred to in (g) and (h).

Interim third party debt order

12. The Court shall not grant a speculative application for a third party debt order, and shall only make an interim third party debt order against a bank, building society or financial institution where the enforcement creditor's application notice contains evidence to substantiate his belief that the enforcement debtor has an account with the bank, building society or financial institution in question.

Third party debt order without hearing

13.—(1) An application for a third party debt order shall initially be dealt with by the Court without a hearing.

(2) The Court may make an interim third party debt order—

(a) fixing a hearing to consider whether to make a final third party debt order; and

(b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.

(3) An interim third party debt order shall specify the amount of money which the third party must retain, which will be the total of—

(a) the amount of money remaining due to the judgment creditor under the money order; and

(b) an amount for the enforcement creditor's fixed costs of the application.

(4) An interim third party debt order becomes binding on a third party when it is served on him.

(5) The date of the hearing to consider the application shall not be less than 28 days after the interim third party debt order is made.

Service of document in support of application

14.—(1) Copies of an interim third party debt order, the application notice and any documents filed in support of an interim third party debt order shall be served—

(a) on the third party, not less than 21 days before the date fixed for the hearing; and

(b) on the enforcement debtor not less than 7 days before the date fixed for the hearing.

(2) Where the enforcement creditor serves the order, he shall either—

(a) file a certificate of service not less than 2 days before the hearing; or

(b) produce a certificate of service at the hearing.

15.—(1) A bank, building society or other financial institution served with an interim third party debt order shall carry out a search to identify all accounts held with it by the enforcement debtor.

Obligations
of a financial
institution
served with
an order

(2) The bank, building society or other financial institution shall disclose to the Court and the enforcement creditor, within 7 days of being served with the order, in respect of each account held by the enforcement debtor—

- (a) the number of the account;
- (b) whether the account is in credit; and
- (c) if the account is in credit—
 - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
 - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
 - (iii) whether the bank, building society or other financial institution asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

(3) Where—

(a) the enforcement debtor does not hold an account with the bank, building society or other financial institution; or

(b) the bank, building society or other financial institution is unable to comply with the order for any other reason,
the bank, building society or other financial institution shall inform the Court and the enforcement creditor of that fact within 7 days of being served with the order.

(4) Any third party other than a bank, building society or financial institution served with an interim third party debt order shall notify the Court and the enforcement creditor in writing within 7 days of being served with the order, if he claims—

- (a) not to owe any money to the enforcement debtor; or
- (b) to owe less than the amount specified in the order.

16.—(1) Where a judgment debtor is—

Hardship
payment
order

(a) an individual;

(b) prevented from withdrawing money from his account with a bank, building society or other financial institution as a result of an interim third party debt order; and

(c) suffering hardship, by himself or his family, in meeting ordinary living expenses as a result,
the Court may, on an application by the enforcement debtor, make an order ('a hardship payment order') permitting the bank, building society or other financial institution to make a payment or payments out of the account.

(2) An application for a hardship payment order may be made in the proceeding.

(3) An application notice seeking a hardship payment order shall—

(a) include detailed evidence explaining why the enforcement debtor needs a payment of the amount requested; and

(b) be verified by a sworn statement.

(4) Unless the Court orders otherwise, the application notice shall be served on the judgment creditor at least 2 days before the hearing but does not need to be served on the third party.

(5) A hardship payment order may—

(a) permit the third party to make one or more payments out of the account; and

(b) specify to whom the payments may be made.

Contesting
third party
debt order

17.—(1) Where the enforcement debtor or the third party objects to the Court making a final third party debt order, he shall file and serve written evidence stating the grounds for his objections.

(2) Where the enforcement debtor or the third party knows or believes that a person other than the enforcement debtor has a claim to the money specified in the interim order, he shall file and serve written evidence stating his knowledge of that matter.

(3) Where the third party has given notice under rule 15 (4) that he does not owe any money to the enforcement debtor, or that the amount which he owes is less than the amount specified in the interim order and the enforcement creditor wishes to dispute such assertion, the enforcement creditor shall file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under sub rules (1), (2) or (3) shall be filed and served on each party, as soon as possible, and in any event not less than 3 days before the hearing.

(5) Where the Court is notified that a person other than the enforcement debtor may have a claim to the money specified in the interim order, the Court will serve on that person notice of the application and the hearing.

(6) At the hearing the Court may—

(a) make a final third party debt order;

(b) discharge the interim third party debt order and dismiss the application;

(c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or

(d) direct a trial of any such issues, and if necessary give directions.

18.—(1) A final third party debt order shall be enforceable as an order to pay money.

Third party debt order enforceable as order to pay

(2) Where the third party pays money to the enforcement creditor in compliance with a third party debt order or the order is enforced against him, the third party shall, to the extent of the amount paid by him or realized by enforcement against him, be discharged from his debt to the enforcement debtor.

(3) Sub rule (2) applies even where the third party debt order, or the original judgment or order against the judgment debtor, is later set aside.

19.—(1) Where money is standing to the credit of the enforcement debtor in Court, the enforcement creditor may not apply for a third party debt order in respect of that money but he may apply for an order that the money in Court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

Money standing to the credit of enforcement debtor

(2) An application notice seeking an order under this rule must be served on the enforcement debtor and the Registrar.

(3) Where an application notice has been issued under this Rule, the money in Court shall not be paid out until the application has been disposed of.

20. Where the enforcement creditor is awarded costs on an application for an order under rules 10 or 19—

Costs

(a) he shall, unless the Court otherwise directs, retain those costs out of the money recovered by him under the order; and

(b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

CHARGING ORDERS

21.—(1) An application for a charging order may be made without notice.

Application for a charging order

(2) An application for a charging order shall be issued in the Court which made the judgment or order which it is sought to enforce, unless—

(a) the proceeding has since been transferred to a different Court, in which case the application shall be issued in that Court;

(b) the application is for a charging order over an interest in a fund in Court, in which case it must be issued in the Court in which the claim relating to that fund is or was proceeding; or

(c) the application is to enforce a judgment or order of the Court.

(3) Subject to sub rule (2), a judgment creditor may apply for a single charging order in respect of more than one judgment or order against the same debtor.

(4) The application notice shall be verified by a sworn statement and shall contain the following information—

- (a) the name and address of the judgment debtor;
- (b) details of the judgment or order sought to be enforced;
- (c) the amount of money remaining due under the judgment or order;
- (d) where the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
- (e) where the judgment creditor knows of the existence of any other creditors of the judgment debtor, their names and, if known, their addresses;
- (f) identification of the asset or assets which it is intended to charge;
- (g) details of the judgment debtor's interest in the asset; and
- (h) the names and addresses of the persons on whom an interim charging order shall be served.

Interim
charging order

22.—(1) An application for a charging order shall initially be dealt with by a judge without a hearing.

(2) The judge may make an order (an 'interim charging order')—

(a) imposing a charge over the judgment debtor's interest in the asset to which the application relates; and

(b) fixing a hearing to consider whether to make a final charging order.

(3) Copies of the interim charging order, the application notice and any documents filed in support of it shall, not less than 21 days before the hearing, be served on the following persons—

- (a) the judgment debtor;
- (b) such other creditors as the Court directs;
- (c) where the order relates to an interest under a trust, on such of the trustees as the Court directs;
- (d) where the interest charged is in securities other than securities held in Court, then—
 - (i) in the case of securities for which the Reserve Bank of Malawi keeps the register, the Reserve Bank of Malawi;
 - (ii) in the case of government securities to which sub paragraph (i) does not apply, the keeper of the register;
 - (iii) in the case of securities of a body corporate incorporated within the jurisdiction, that body corporate;
 - (iv) in the case of securities of a body corporate incorporated outside the jurisdiction, which is registered in a register kept within the jurisdiction, the keeper of that register;
 - (v) in the case of units of any unit trust in respect of which a register of the unit holders is kept within the jurisdiction, the keeper of that register; and

(e) where the interest charged is in funds in Court, the Registrar.

(4) Where the judgment creditor serves the order, he shall either—

(a) file a certificate of service not less than 2 days before the hearing; or

(b) produce a certificate of service at the hearing.

23.—(1) Where a judgment debtor disposes of his interest in any securities, while they are subject to an interim charging order which has been served on him, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

Effect of
disposition of
property
subject to
interim
charging
order

(2) A person served under rule 22 (3) with an interim charging order relating to securities shall not, unless the Court gives permission—

(a) permit any transfer of any of the securities; or

(b) pay any dividend, interest or redemption payment relating to them.

(3) Where a person acts in breach of sub rule (2), he shall be liable to pay to the judgment creditor—

(a) the value of the securities transferred or the amount of the payment made, as the case may be; or

(b) if less, the amount necessary to satisfy the debt in relation to which the interim charging order was made.

24. Where a judgment debtor disposes of his interest in funds in Court while they are subject to an interim charging order which has been served on him and on the Registrar, that disposition shall not, so long as that order remains in force, be valid as against the judgment creditor.

Effect of
disposition of
interest in
funds subject
to interim
order

25.—(1) Where a person objects to the Court making a final charging order, he shall file and serve on the applicant written evidence stating the grounds of his objections, not less than 7 days before the hearing.

Contesting
application
for final
charging
order

(2) At the hearing, the Court may—

(a) make a final charging order confirming that the charge imposed by the interim charging order shall continue, with or without modification;

(b) discharge the interim charging order and dismiss the application;

(c) decide any issues in dispute between the parties, or between any of the parties and any other person who objects to the court making a final charging order; or

(d) direct a trial of any such issues, and where necessary give directions.

(3) Where the Court makes a final charging order which charges securities other than securities held in Court, the order shall include a stop notice unless the Court orders otherwise.

(4) An order made at the hearing shall be served on all the persons on whom the interim charging order was required to be served.

Contesting
application for
final charging
order

26.—(1) An application to discharge or vary a charging order shall be made to the Court which made the charging order.

(2) The Court may direct that—

(a) an interested person should be joined as a party to such an application; or

(b) the application should be served on such a person.

(3) An order discharging or varying a charging order must be served on all the persons on whom the charging order was required to be served.

Enforcement of
charging order
through sale

27.—(1) Subject to any other written law, the Court may, upon an application by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order.

(2) An application for an order for sale under this rule shall be made to the Court which made the charging order, unless that court does not have jurisdiction to make an order for sale.

(3) An application under this rule shall be verified by a sworn statement.

(4) A copy of the charging order shall be filed with the application.

RECEIVERS

Interpretation
of receiver

28. For purposes of rules 28 to 36, “receiver” includes a manager.

Appointment of
receiver

29.—(1) The Court may appoint a receiver—

(b) before a proceeding has started;

(c) in an existing proceeding; or

(d) on or after judgment.

(2) A receiver shall be an individual.

(3) The Court may at any time terminate the appointment of a receiver and appoint another receiver in his place.

Application
without notice

30. An application for the appointment of a receiver may be made without notice and shall be supported by written evidence.

Service of order
appointing
receiver

31. An order appointing a receiver shall be served by the party who applied for it on—

(a) the person appointed as receiver;

(b) unless the Court orders otherwise, every other party to the proceeding; and

(c) such other persons as the Court may direct.

Directions for
receiver

32.—(1) The Court may direct that before a receiver begins to act or within a specified time he shall either—

(a) give such security as the Court may determine; or

(b) file and serve on all parties to the proceedings evidence that he already has in force sufficient security, to cover his liability for his acts and omissions as a receiver.

(2) The Court may terminate the appointment of the receiver if he fails to give the security or satisfy the Court as to the security he has in force by the date specified.

33.—(1) A receiver may apply to the Court at any time for directions to assist him in carrying out his function as a receiver. Application for directions

(2) The Court, when it gives directions, may also direct the receiver to serve on any person the directions and the application for directions.

34.—(1) A receiver may only charge for his services if the Court so directs and specifies the basis on which the receiver is to be remunerated. Remuneration

(2) The Court may specify who is to be responsible for paying the receiver and the fund or property from which the receiver is to recover his remuneration.

(3) Where the Court directs that the amount of a receiver's remuneration is to be determined by the Court—

(a) the receiver may not recover any remuneration for his services without a determination by the Court; and

(b) the receiver or any party may apply at any time for such a determination to take place.

(4) Unless the Court orders otherwise, in determining the remuneration of a receiver the Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account—

(a) the time properly given by him and his staff to the receivership;

(b) the complexity of the receivership;

(c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(e) the value and nature of the subject matter of the receivers.

(5) The Court may refer the determination of a receiver's remuneration to a single Judge.

35.—(1) The Court may order a receiver to prepare and serve accounts. Preparation and service of accounts

(2) A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

(3) A party may, within 14 days of being served with the accounts, serve notice on the receiver—

(a) specifying an item in the accounts to which he objects;

(b) giving the reason for such objection; and

(c) requiring the receiver, within 14 days of receipt of the notice, either—

(i) to notify all the parties who were served with the accounts that he accepts the objection; or

(ii) where he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

(4) When the receiver applies for the examination of the accounts he shall at the same time file the accounts and a copy of the notice served on him under this Rule.

(5) Where the receiver fails to comply with sub rule (3) (c), any party may apply to the Court for an examination of the accounts in relation to the contested item.

(6) At the conclusion of its examination of the accounts, the Court shall certify the result.

Non-compliance by a receiver

36.—(1) Where a receiver fails to comply with any rule or direction of the Court, the Court may order him to attend a hearing to explain his non-compliance.

(2) At the hearing, the Court may make an order it considers appropriate, including—

(a) terminating the appointment of the receiver;

(b) reducing the receiver's remuneration or disallowing it completely; and

(c) ordering the receiver to pay the costs of any party.

(3) Where the Court has ordered a receiver to pay a sum of money into Court and the receiver has failed to do so, the Court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

POSSESSION OF LAND

Order of possession

37. The Court may issue an enforcement order for possession of land.

Effect of order of possession

38. The enforcement order authorizes the Sheriff to enter on the land described in the order and deliver possession of the land to the person named in the order as being entitled to possession of the land.

Display and service of order

39. The enforcement order shall be—

(a) served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and

(b) displayed prominently at the entrance to the land.

Enforcement of order

40. The enforcement order shall not be enforced until 30 days after the display and the latest date of service.

DELIVERY OF GOODS

41. The Court may issue an enforcement order for the delivery of goods where—
- (a) the order for the delivery of the goods does not give the person against whom the order is made the option of keeping the goods and paying the assessed value of the goods; or
 - (b) the order gives the person the option of keeping the goods and paying the assessed value of the goods, but the person does not choose to pay for the goods.
42. The enforcement order authorizes the Sheriff to seize the goods and give them to the person who is entitled to them under the order.
43. Where the order gives the person the option for keeping the goods and paying the assessed value of the goods and the person chooses to keep the goods and pay the assessed value of the goods, the order may be enforced in the same way as a money order.

Order for
delivery of
goods

Effect of
order for
delivery of
goods

Enforcement
as money
order

ORDERS TO DO OR NOT TO DO A THING

44. Rules 44 to 51 apply to an order where—
- (a) it is a non-money order;
 - (b) it requires a person to do an act within a specified time; and
 - (c) the person does not do the act within the time.
45. The order may be enforced in one or more of the following—
- (a) holding the person in contempt of court;
 - (b) seizing the person's property; or
 - (c) where the person is a body corporate, holding its officers in contempt of court, or seizing its property.
46. The Court may also enforce an order to do an act by—
- (a) appointing another person to do the act; and
 - (b) ordering the person required to do the act to pay the costs and expenses caused by not doing the act.
47. The costs and expenses may be recovered under an enforcement order for a money order.
48. An enforcement respondent may apply to the Court for an order suspending the enforcement of an order.
49. The application under rule 48 shall be supported by a sworn statement and shall be filed and served on the enforcement creditor at least 7 days before the application is to be heard.

Application
of Rules 44
and 51

Enforcement
of order not
to do an act

Enforcement
of an order
not to do an
act by the
Court

Recovery of
costs and
expenses
under money
order

Suspension of
enforcement
order

Statement in
support of
suspension

50. The Court may—

(a) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and

(b) make other orders it considers appropriate, including another enforcement order.

VALIDITY OF ENFORCEMENT ORDER AND OTHER MATTERS

Validity of
enforcement
order

51. An enforcement order remains in force for 1 year after the day it is made unless the order states that it ends at an earlier time.

Renewal of
enforcement
order

52. An enforcement order may be renewed for further periods of not longer than 1 year at a time.

Application for
renewal of
enforcement
order

53. An application for renewal of an enforcement order shall be made—

(a) before the order expires; and

(b) by filing in Court—

(i) a request for the order to be renewed for a stated period not longer than 1 year; and

(ii) a sworn statement setting out—

(A) the matters required to be included in the sworn statement in support of an application for an enforcement order of that kind; and

(B) the reasons why the order has not been enforced during the period that the order has been in force.

Application for
renewal without
hearing

54. Unless the Court orders otherwise, an application for the renewal of an enforcement order shall be dealt with without a hearing and in the absence of the parties.

Enforcement
against a
partnership

55.—(1) An order against partners in the partnership's name may be enforced against one or more of the following—

(a) property belonging to a partnership;

(b) a partner who filed a defence;

(c) a person who has admitted being a partner;

(d) a person who the Court has decided is a partner; or

(e) a person who has been individually served as a partner with the originating process and who has not filed a defence.

(2) On application by a person entitled to enforce an order against partners in the partnership name, the Court may amend the order to make it an order against the people who were partners when the cause of action arose.

(3) On application by a person entitled to enforce an order against partners in the partnership name, the Court may give permission for the order to be enforced against someone else who is liable to satisfy the order.

(4) The application for permission under rule 58 shall be served on the person against whom the order is sought to be enforced.

(5) Where, on the hearing of the application for permission, the person denies liability, the Court may decide liability summarily or give directions about how liability is to be decided.

(6) An enforcement order shall not be made against property of a partnership except to enforce an order against the partnership.

56.—(1) Where a proceeding is brought against a person under a business name and Order 6 applies to the business name, an order in the proceeding may be enforced against any property of the person.

Enforcement
against a
business

(2) The Court may amend an order made in the proceeding to make it an order against the person.

57. An enforcement order is enforceable throughout the jurisdiction.

Enforceability
of
enforcement
order

58. Where the enforcement debtor has died, only the assets of his estate can be the subject of an enforcement order.

Enforcement
on debtor's
estate

59. The Court may issue an instalment order authorizing satisfaction of the amount payable under the judgment debt by instalments by the enforcement debtor.

Payment by
instalment
order

60. The Court may make an instalment order—

When to
make an
instalment
order

(a) on application by the enforcement debtor when making the money order;

(b) after an enforcement hearing;

(c) after suspending another enforcement order;

(d) on application by the enforcement creditor for an instalment order; or

(e) on application by an enforcement debtor.

61. An application by an enforcement debtor for an instalment order shall be made by filing in the Court—

Application
for instalment
order

(a) a sworn statement of the enforcement debtor's financial position; and

(b) a draft of the order sought.

62. (1) In deciding whether to make an instalment order the Court shall have regard to the following matters as far as they are known to the Court—

Considerations when
making
instalment
order

(a) whether the enforcement debtor is employed;

(b) the enforcement debtor's means of satisfying the judgment debt;

(c) whether the judgment debt, including any interest, shall be satisfied within a reasonable time;

(d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(e) other liabilities of the enforcement debtor; and

(f) where the applicant is the enforcement debtor, whether having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly.

(2) In deciding whether to make an instalment order, the Court may also have regard to any other matters the Court considers relevant.

Enforcement against debtor's estate 63. In deciding the amount and timing of instalments, the Court shall be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor.

Sealed copy of order to be served on debtor 64. Where the Court makes an instalment order on the application of the enforcement creditor in the absence of the enforcement debtor, the enforcement creditor is responsible for ensuring a sealed copy of the order is served on the enforcement debtor.

Sealed copy of order to be served on creditor 65. Where the Court makes an instalment order on the application of the enforcement debtor in the absence of the enforcement creditor, the enforcement debtor is responsible for ensuring a sealed copy of the order is served on the enforcement creditor.

Determination of instalment order 66. An instalment order ceases to have effect where—
(a) the enforcement debtor fails to make two consecutive payments under the order at the time required by the order; and
(b) the enforcement creditor files in the Court a sworn statement stating that the enforcement debtor has failed to make two consecutive payments under the order at the time required by the order.

ORDER 29

INTERPLEADER PROCEEDINGS

Application of Order 29 1. This Order shall apply where—
(a) a person, other than the Sheriff, (the 'stakeholder') is under a liability in relation to a debt or personal property (the 'disputed property'); and

(b) the stakeholder is, or expects to be, sued by two or more claimants making adverse claims to the disputed property.

Mode of application 2. A stakeholder shall apply for an interpleader relief, where a proceeding subsists, under the proceeding; or where there is no proceeding, by an application.

Sworn statement in support of application 3. An application under rule 2 shall be supported by a sworn statement which shall state that the stakeholder—

(a) makes no rival claim to the disputed property, other than for charges or costs;

(b) is not in collusion with any claimant; and

(c) is willing to—

- (i) pay or transfer the disputed property into Court;
- (ii) dispose of the property as the Court directs; or
- (iii) give security to the value of the property to the Court's satisfaction.

4.—(1) A sealed or stamped copy of the application and supporting sworn statement under rules 2 and 3 shall be served on each claimant.

Copy of application to be served on claimant

(2) The application and sworn statement may be served by post but where a claimant is not a party to the proceeding, the application and sworn statement shall be served personally.

5.—(1) On hearing an application under rule 2, the Court may make orders it considers appropriate for hearing and deciding all matters in dispute, including—

Orders on hearing application for interpleader

(a) where a proceeding is pending against the stakeholder in relation to any of the disputed property, an order that a claimant in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the stakeholder;

(b) an order staying or dismissing the proceeding;

(c) an order that a question between claimants to the disputed property be stated and tried, and further direct which of the claimants is to be the claimant and the defendant respectively, and give any necessary directions for the trial;

(d) an order that the stakeholder pay or transfer all or any of the property in dispute or the proceeds of sale into Court or otherwise dispose of the property or proceeds of sale;

(e) where a claimant claims to be entitled to any of the disputed property by way of security for a debt, orders for the sale of all or part of the property and for the application of the proceeds of sale or other appropriate orders as the Court considers appropriate;

(f) decide summarily a question of law or fact arising on the application;

(g) order that a case stated be tried on a question of law under Order 22;

(h) release the stakeholder from further attendance on the stakeholder's undertaking to not dispose of the property otherwise than in accordance with an order of the Court, and abide by the order in relation to that property; or

(i) an order to finally dispose of all issues arising in the proceeding.

(2) Orders 14 and 16 shall apply to a direction for a trial under sub rule (1) (c).

6. The Court may, having regard to the value of the disputed property, decide the claimants' claims summarily on any conditions it considers appropriate where—

Summary determination of claim

(a) the claimants so consent; or

(b) a claimant applies to the Court for the Court to decide the claims summarily.

Relief where
titles
independent

7. A stakeholder may still be entitled to relief even if the titles of the claimants do not have a common origin, but are adverse to, and independent of, one another.

Failure to
appear and
non-compliance

8. Where a claimant, having been served with an application under rule 2, does not appear on the hearing of the application or, having appeared, fails or refuses to comply with an order made in the application, the Court may order that the claimant, and all persons claiming under him, be barred from prosecuting his claim against the stakeholder for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

Order affecting
several
proceedings

9. Where the Court considers it necessary or expedient to make an order under this Order in several proceedings before different Judges, the Court may make such an order; and the order shall be entitled in all those proceedings and shall be binding on all the parties to them.

ORDER 30

COMMITTAL PROCEEDINGS

Contempt of
Court

1.—(1) Rules 2 and 3 of this Order shall apply where a party applies to the Court to deal with another party or person for contempt of court.

(2) Rules 2 and 4 of this Order shall apply where the Court, on its own initiative, enquires into what appears to be a contempt of court.

(3) In this Order, “respondent” means any person accused of contempt of court under rule 5 or into whose conduct the Court enquires under rule 13.

GENERAL RULES

Determination
of application
under rule 5
and enquiry
under rule 13

2.—(1) The Court shall determine any application under rule 5 and pursue any enquiry under rule 13—

(a) at a hearing; and

(b) in the presence of a person making such an application.

(2) The Court may adjourn a hearing at any stage for good reasons which shall be endorsed in the court record.

(3) The Court shall not proceed in the respondent’s absence unless—

(a) the respondent has had at least 14 days’ notice of the hearing, or was present when it was set down; or

(b) the respondent’s disorderly behaviour makes it impracticable to proceed otherwise.

Suspension of
imprisonment
for contempt
voluntary
arrangement

3.—(1) This rule applies where the Court suspends an order of imprisonment for contempt of court and the respondent is absent when the Court suspends the order.

(2) The respondent shall be served with notice of the terms of the Court's order—

- (a) by any applicant under rule 5; or
- (b) by the Court, in any other case.

4.—(1) This rule applies where the Court can discharge an order for a respondent's imprisonment for contempt of court.

Discharging
imprisonment
for contempt

(2) A respondent who seeks the Court to discharge such an order shall—

- (a) apply in writing, unless the Court directs otherwise, and serve any written application on the Court and any applicant under rule 5;
- (b) explain why it is appropriate for the order for imprisonment to be discharged; and
- (c) request for a hearing, if the respondent seeks one.

PROCEDURE ON APPLICATION

5.—(1) A person who seeks the Court to deal with a respondent for contempt of court shall—

Procedure on
application

- (a) apply in writing and serve the application on the Court;
 - (b) serve on the respondent—
 - (i) the application; and
 - (ii) notice of where and when the Court will hear the application; and
 - (c) the application shall be heard not less than 14 days after the date of service.
- (2) The application shall—
- (a) identify the respondent;
 - (b) explain that it is an application for the respondent to be dealt with for contempt of court;
 - (c) contain such particulars of the conduct constituting contempt of court as to make clear what the applicant alleges against the respondent; and
 - (d) include a notice warning the respondent that the Court—
 - (i) can impose imprisonment, or a fine, or both, for contempt of court, and
 - (ii) may deal with the application in the respondent's absence, where the respondent does not attend the hearing of the application.

6.—(1) A party who wants to introduce in evidence the written statement of a witness, or other hearsay, shall—

Statement of
a witness or
hearsay

- (a) serve a copy of the statement, or notice of other hearsay, on—
 - (i) the Court; and
 - (ii) the other party; and
- (b) serve the copy or notice—

(i) when serving the application under rule 5, in the case of the applicant, or

(ii) not more than 7 days after service of that application, in the case of the respondent.

(2) Such service is notice of that party's intention to introduce in evidence that written witness statement, or other hearsay, unless that party otherwise indicates when effecting service.

(3) A party entitled to receive such notice may waive that entitlement by so informing the Court and the party who would have given such notice.

Declaration of a
witness in a
written
statement

7.—(1) This rule applies to a written witness statement served under rule 6.

(2) A written witness statement must contain a declaration by the person making it that it is true to the best of that person's knowledge and belief.

Contempt for
false statement
in written
statement

8.—(1) The Court may punish for contempt of court a person who makes, or causes to be made, a false statement in such a written witness statement without an honest belief in its truth.

(2) The Court may exercise its power to punish that person for contempt of court—

(a) on an application by a party, with the Court's permission; or

(b) on its own initiative.

(3) A person who wants the Court to exercise that power shall comply with the rules in this Order.

Notice of
hearsay

9.—(1) This rule applies to a notice of hearsay, other than a written witness statement, served under rule 6.

(2) Such a notice shall—

(a) set out the evidence, or attach the document that contains it; and

(b) identify the person who made the statement that is hearsay.

Cross-
examination of
person whose
statement is to
be used as
hearsay

10.—(1) This rule applies where a party wants the Court's permission to cross-examine a person who made a statement which another party wants to introduce as hearsay.

(2) The party who wants to cross-examine that person shall—

(a) apply in writing, with reasons; and

(b) serve the application on—

(i) a court officer, and

(ii) the party who served the hearsay.

(3) A respondent who wants to cross-examine such a person shall apply to do so not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to cross-examine such a person shall apply to do so not more than 3 days after service of the hearsay by the respondent.

(5) The Court—

(a) may decide an application under this rule without a hearing; but

(b) must not dismiss such an application unless the person making it has had an opportunity to make representations at a hearing.

11.—(1) This rule applies where a party wants to challenge the credibility or consistency of a person who made a statement which another party wants to introduce as hearsay.

Credibility of person whose statement is to be used as hearsay

(2) The party who wants to challenge the credibility or consistency of that person must—

(a) serve a written notice of intention to do so on—

(i) a court officer;

(ii) the party who served the hearsay; and

(b) in it, identify any statement or other material on which that party relies.

(3) A respondent who wants to challenge such a person's credibility or consistency must serve such a notice not more than 7 days after service of the hearsay by the applicant.

(4) An applicant who wants to challenge such a person's credibility or consistency must serve such a notice not more than 3 days after service of the hearsay by the respondent.

(5) The party who served the hearsay—

(a) may call that person to give oral evidence instead; and

(b) if so, must serve a notice of intention to do so on—

(i) a court officer; and

(ii) the other party, as soon as it is reasonably practicable, after service of the notice under sub rule (2).

12.—(1) The Court may shorten or extend a time limit, even after it has expired, under rules 6, 10 or 11.

Abridgement or variation of time

(2) A person who wants an extension of time shall—

(a) apply when serving the statement, notice or application for which extension of time is needed; and

(b) explain the delay.

PROCEDURE ON ENQUIRY

13.—(1) Unless the respondent's disorderly behaviour makes it impracticable to do so, the Court shall—

Procedure on enquiry

(a) explain, in terms the respondent can understand, with help, if necessary—

(i) the conduct that is in question;

(ii) that the Court can impose imprisonment, or a fine, or both, for such conduct;

(iii) where relevant, that the Court has power to order the

respondent's immediate temporary detention, if in the Court's opinion that is required;

(iv) that the respondent may explain that conduct and, if he so wishes, apologize; and

(v) that the respondent may take legal advice; and

(b) give the respondent an opportunity to explain and apologize.

(2) Unless the Court accepts any explanation or apology offered by the respondent, the Court may postpone its enquiry into that conduct and instead exercise its power to enquire into that conduct as soon as possible.

Procedure on
immediate
temporary
detention

14.—(1) This rule applies in a case in which the Court has ordered the respondent's immediate temporary detention.

(2) The Court shall review the case no later than the next business day.

(3) On the review, the Court shall—

(a) unless the respondent is absent, repeat the explanation required by rule 13 (1) (a); and

(b) give the respondent an opportunity to explain himself and apologize to the Court.

(4) Unless the Court accepts any explanation or apology offered by the respondent, the Court may—

(c) further postpone its enquiry into the respondent's conduct; and

(d) order the respondent's release from detention in the meantime and enquire into that conduct as soon as possible.

Procedure on
postponement
of enquiry

15.—(1) This rule applies where the Court postpones its enquiry—

(a) under rule 13, if the Court does not order the respondent's immediate detention; or

(b) under rule 14.

(2) The Court shall arrange for the preparation of a written statement—

(a) containing such particulars of the conduct that appears to constitute contempt of court as to make clear what the respondent appears to have done; and

(b) including a notice that—

(i) reminds the respondent that the Court can impose imprisonment, or a fine, or both, for contempt of court; and

(ii) warns the respondent that the Court may pursue the enquiry in the respondent's absence, if the respondent does not attend.

(3) The Court shall serve on the respondent that written statement and notice of the date and time when the postponed enquiry will take place.

Procedure at
enquiry

16.—(1) At an enquiry, the Court shall—

(a) explain again, in terms the respondent can understand, with help, if necessary, the conduct that is in question, if the enquiry has been postponed from a previous occasion;

- (b) explain what the procedure at the enquiry shall be; and
- (c) ask whether the respondent admits the conduct.

(2) Where the respondent admits the conduct, the Court need not receive evidence.

(3) Where the respondent does not admit the conduct, the Court shall receive—

- (a) the statement prepared under rule 15;
- (b) any other evidence of the conduct;
- (c) any evidence introduced by the respondent; and
- (d) any representation by the respondent about the conduct.

(4) Where the respondent admits the conduct, or the Court finds it proved, the Court shall—

(a) before imposing any punishment for contempt of court, give the respondent an opportunity to make any representation relevant to punishment; and

(b) give sufficient reasons to explain its decision, including its findings of fact.

(5) The Court that conducts a postponed enquiry need not include the same member or members as the Court that postponed it but may do so, unless that would be unfair to the respondent.

17.—(1) This rule applies where the Court, on its own initiative, enquires into what appears to be disobedience of its order, or a person wants to introduce in evidence the written statement of a witness, or other hearsay.

Procedure on
Court
initiated
enquiry

(2) Unless the Court directs otherwise, such a person shall, as soon as it is reasonably practicable, serve a copy of the statement, or notice of other hearsay, on—

- (a) the Court; and
- (b) the respondent, if that person is not the respondent.

(3) Such service is notice of that person's intention to introduce in evidence that written witness statement, or other hearsay, unless that person otherwise indicates when effecting service.

(4) A respondent entitled to receive such notice may waive that entitlement by so informing the Court and the person who would have given the notice.

(5) Rules 7 to 11 apply as if that statement, or other hearsay, had been served under rule 6, but with such time limits as the Court directs instead of the time limits in those rules.

18. Where the Court finds a party or other person guilty of contempt of court, the Court may—

Consequences
on a finding
of guilt

- (a) impose a fine against the party or the person;

(b) commit the party or the person to prison for a period not exceeding 2 years;

(c) in the case of a body corporate—

(i) impose a fine, or

(ii) order the seizure of its property; or

(d) release the person with conditions or not.

Vacation or
variation of
order

19. The Court may, on application, vacate or revoke an order of a fine or committal made in the absence of a party or other person, with respect to contempt of court.

ORDER 31

COSTS

General rules
on costs

1.—(1) This Order provides the general rules about costs, entitlement to costs and orders in respect of *pro bono* representation.

(2) A party to a proceeding shall not be entitled to recover costs of the proceeding from any other party to the proceeding except under an order of the Court.

(3) The Court shall make an order, as it deems fit, regarding costs in a *pro bono* representation.

Notification of
costs

2. Where the Court makes an order for costs against a party with legal representation and the party is not present when the order is made, the party's legal practitioner shall notify his client in writing of the order for costs not later than 7 days after the legal practitioner receives notice of the order.

Courts'
discretion on
costs

3.—(1) The Court has discretion as to—

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(2) Where the Court decides to make an order about costs, the unsuccessful party shall be ordered to pay the costs of the successful party.

(3) Notwithstanding sub rule (2), the Court may make a different order about costs and the general rule shall not apply to a judgment, direction, decision or order given or made in probate or family proceedings.

(4) In deciding what order, if any, to make about costs, the Court shall have regard to all the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(c) any payment into Court or admissible offer to settle made by a party which is drawn to the Court's attention.

(5) The conduct of the parties includes—

(a) conduct before, as well as during, the proceeding and, in particular, the extent to which the parties conducted themselves during mandatory mediation, scheduling and pre-trial conferences;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended his case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim.

(6) The orders which the Court may make under this Order include an order that a party shall pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before the proceeding has begun;

(e) costs relating to particular steps taken in the proceeding;

(f) costs relating only to a distinct part of the proceeding; and

(g) interest on costs from or until a certain date, including a date before judgment.

(7) Where the Court would otherwise consider making an order under sub rule (6) (f), the Court shall instead, where practicable, make an order under sub rule (6) (a) or (c).

(8) Where the Court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

(9) Where a party entitled to costs is also liable to pay costs, the Court may assess the costs which that party is liable to pay and either—

(a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or

(b) delay the issue of a certificate for the costs to which the party is entitled until he has paid the amount which he is liable to pay.

4.—(1) Where the Court is to assess the amount of costs, whether by summary or detailed assessment, those costs shall be assessed on the standard basis or the indemnity basis, but the Court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. Assessment of costs

(2) Where the amount of costs is to be assessed on the standard basis, the Court shall—

(a) only allow costs which are proportionate to the matters in issue; and

(b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

(3) Where the amount of costs is to be assessed on the indemnity basis, the Court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where the Court makes an order about costs without indicating the basis on which the costs are to be assessed or the Court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis.

Consideration
of
circumstances
on assessment

5.—(1) The Court shall have regard to all the circumstances in deciding whether costs were—

- (a) if it is assessing costs on the standard basis—
 - (i) proportionately and reasonably incurred; or
 - (ii) were proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.

(2) In particular, the Court shall give effect to any orders which have already been made.

(3) The Court shall also have regard to—

- (a) the conduct of all the parties, including in particular—
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialized knowledge and responsibility involved;
- (f) the time spent on the case; and
- (g) the place where and the circumstances in which work or any part of it was done.

Costs other
than fixed
costs

6. Where the Court orders a party to pay costs to another party, other than fixed costs, the Court may either—

- (a) make a summary assessment of the costs; or
 - (b) order detailed assessment of the costs by a costs officer,
- unless any rule, practice direction or other enactment provides otherwise.

Compliance
with order of
costs

7. A party must comply with an order for the payment of costs within 14 days of—

- (a) the date of the judgment or order if it states the amount of those costs;

(b) where the amount of those costs or part of the costs is decided under a certificate, the date of the certificate which states the amount; or

(c) such later date as the Court may specify.

8.—(1) This rule sets out a procedure which may be followed where the parties to a dispute have reached an agreement on all issues, including which party is to pay the costs, which is made or confirmed in writing, but they have failed to agree the amount of those costs and no proceeding has been started.

Procedure where parties fail to agree on amount of costs

(2) Either party to the agreement may start a proceeding under this rule.

(3) In a proceeding to which this rule applies, the Court may make an order for costs to be determined by detailed assessment or dismiss the claim and shall dismiss the claim where the other party opposes the assessment.

9.—(1) The Court may make an order under this rule where—

Failure to comply with Court order and improper conduct

(a) a party or his legal practitioner, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or Court order; or

(b) it appears to the Court that the conduct of a party or his legal practitioner, before or during the proceeding which gave rise to the assessment hearing, was unreasonable or improper.

(2) Where sub rule (1) applies, the Court may—

(a) disallow all or part of the costs which are being assessed; or

(b) order the party at fault or, his legal practitioner personally, to pay costs which he has caused any other party to incur, particularly where the claim had no prospects of success, or it was frivolous, vexatious or an abuse of the court process.

(3) Where the Court makes an order under sub rule (2) against a legally represented party and the party is not present when the order is made, the party's legal practitioner shall notify his client in writing of the order not later than 7 days after the legal practitioner receives notice of the order.

(4) Where the Court makes an order under sub rule (2) against the legal practitioner to pay all or part of a party's costs if the costs are incurred because of the legal practitioner's conduct, the Court shall inform the legal practitioner's party of the order.

10.—(1) A legal practitioner or his law firm shall be entitled to an instruction fee and not a brief fee where he or his firm have had instructions to act for a party from the commencement of a proceeding to trial.

Legal practitioners' fees

(2) The Court may allow a legal practitioner or his law firm to be entitled to a single fee.

(3) A legal practitioner or his law firm shall be entitled to a brief fee where he or his firm have instructions from another legal practitioner or firm to appear on behalf of that legal practitioner or firm at trial.

11.—(1) The Court shall determine the use or appearance of a Senior Counsel in a proceeding.

Use or appearance of Senior Counsel

(2) The Court shall allow Senior Counsel's fees where his use or appearance has been determined under sub rule (1).

(3) The Court may disallow Senior Counsel's fees where his use or appearance as Senior Counsel in a proceeding has been determined inappropriate under sub rule (1) and may allow ordinary legal practitioners' fees.

Filing of bill
of costs

12.—(1) A bill of costs shall be filed with the Court for assessment within 3 months from the date of the costs order and the bill shall be filed at the conclusion of the whole proceeding unless the Court orders otherwise.

(2) A party may apply to the Court to file a bill of costs before the conclusion of a proceeding or for an extension of time for filing of the bill under sub rule (1).

(3) A bill of costs shall be accompanied by an assessment bundle which shall contain all documents, excluding those on the Court file, that a party shall rely on at the assessment hearing.

Duty to notify
client of fee

13.—(1) A legal practitioner has a duty to notify, in writing, his client or other person liable to pay his fees, the legal practitioner's hourly fee and a reasonable estimate of his total fees for acting in a proceeding or application.

(2) The legal practitioner's estimate under sub rule (1) shall take into account Part III of the Legal Practitioners (Scale and Minimum Charges) Rules under the Legal Education and Legal Practitioners Act.

Cap 3:04
Sub leg. P. 28

(3) Where the legal practitioner complies with sub rule (1), the Court shall assess his costs on an indemnity basis.

(4) Where the legal practitioner fails to comply with sub rule (1), the Court shall assess his costs on a standard basis.

Fixed costs
Cap. 3:04

14. A party may recover the fixed costs under the Legal Education and Legal Practitioners Act.

Costs where
party acting in
person

15.—(1) A party acting in person is entitled to recover disbursements if he succeeds in a proceeding and costs at a sum not exceeding two-thirds of the sum which in the opinion of the Court would have been allowed in respect of each item if the party was represented by a legal practitioner.

(2) This rule shall not apply to a party who is a legal practitioner and is acting in person in a proceeding.

Agreement on
costs

16. Where parties agree costs in a proceeding, they may not file a statement of costs.

Review of
decision on
costs

17.—(1) A party to assessment of costs who is dissatisfied with any decision of the Court may, within 21 days after that decision, apply to the Court to review its decision.

(2) An application under sub rule (1) shall specify, in writing, the nature and grounds of the objections.

(3) The objections under sub rule (2) shall be served on every other party to the proceeding, and the other party shall, within 21 days from the date of

service, deliver answers to the Court, the applicant or other party to the proceeding.

(4) The Court may receive further evidence at the hearing of an application under sub rule (1) and may order costs as it shall deem appropriate in the circumstances.

ORDER 32

SECURITY FOR COSTS

1.—(1) Where, on an application of a defendant to a proceeding, it appears to the Court— Security for costs

(a) that the claimant is ordinarily resident out of the jurisdiction;

(b) that the claimant, not being a claimant suing in a representative capacity, is a nominal claimant who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(c) the claimant may be unable to pay the defendant's costs if ordered to do so;

(d) subject to sub rule (2), that the claimant's address is not stated in the claim, or is incorrectly stated;

(e) that the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or

(f) that the claimant is about to leave the jurisdiction and there is reason to believe that he has insufficient property available within the jurisdiction for enforcement to pay the defendant's costs, then where, having regard to all circumstances of the case,

the Court considers it is in the interests of justice to do so, order the claimant to give such security for the defendant's costs of the proceeding.

(2) The Court shall not require a claimant to give security by reason only of sub rule (1) (d) if he satisfies the Court that the failure to state his address was an innocent misstatement and was not made with the intention to deceive.

2. In deciding whether to make an order for security for costs, the Court may have regard to any of the following matters— Considerations on order for security for costs

(a) the prospects of success of the proceeding;

(b) whether the claimant's lack of means is because of the defendant's conduct;

(c) whether the order would be oppressive or would stifle the proceeding;

(d) whether the proceeding involves a matter of public interest;

(e) whether the claimant's delay in commencing the proceeding has prejudiced the defendant; or

(f) the costs of the proceeding.

Manner of giving security	3. Where an order is made requiring a party to give security for costs, the security shall be given in such manner, at such time, and on such terms as the Court may direct.
Notice on manner of giving security	4. The claimant shall, as soon as practicable after the security is given, give the defendant a notice in writing specifying the date and manner of giving the security.
Suspension pending security.	5. Where the Court orders the claimant to give security, the proceeding shall be suspended until security is given.
Non-compliance by claimant	6. Where the claimant does not give security, the defendant may apply to have the proceeding dismissed.
Variation	7. The Court may set aside or vary an order for security for costs where the Court is satisfied that the security is no longer necessary or there are other special circumstances.
Discharge of security	8. The security shall be discharged— (a) once the costs have been paid; (b) where the party who gave the security is not required to pay costs under a judgment; (c) where the Court so orders; or (d) where a party entitled to the benefit of the security so consents.

ORDER 33

CHANGE OF LEGAL PRACTITIONER

Change of legal practitioner	1.—(1) A party who is represented by a legal practitioner in a proceeding may change his legal practitioner without an order of the Court. (2) The party or his legal practitioner shall file with the Court a notice of the change and shall serve the notice on each party to the proceeding. (3) The party or his legal practitioner shall file with the Court a notice of appointment without an order of the Court and shall serve the notice on each party to the proceeding and on his former legal practitioner, if any. (4) The notices under sub rules (2) and (3) shall state the party's new address for service.
Continuation of responsibility	2. Where the address for service of a party is the business address of his legal practitioner, the legal practitioner shall be considered to be acting for that party until this Order has been complied with.
Cessation of responsibility by legal practitioner	3.—(1) A legal practitioner may apply for an order declaring that he has ceased to be the legal practitioner acting on behalf of a party. (2) Where an application is made under this rule— (a) notice of the application shall be given to the party for whom the legal practitioner is acting for, unless the Court directs otherwise; and

(b) the application shall be supported by a sworn statement.

(3) Where the Court makes an order that a legal practitioner has ceased to act—

(a) a copy of the order shall be served on each party to the proceeding; and

(b) where the order is served by a party or the legal practitioner, the party or the legal practitioner, as the case may be, shall file a certificate of service.

4.—(1) Where—

(a) a legal practitioner who has acted for a party—

- (i) has died;
- (ii) has become bankrupt;
- (iii) has ceased to practise; or
- (iv) cannot be found; and

(b) the party has not given notice of a change of a legal practitioner or notice of intention to act in person,

any other party may apply for an order declaring that the legal practitioner has ceased to be the legal practitioner acting for the other party in the proceeding.

(2) Where an application is made under this Order, notice of the application shall be given to the party to whose legal practitioner the application relates unless the Court directs otherwise.

(3) Where the Court makes an order under this rule—

(a) a copy of the order shall be served on every other party to the proceeding; and

(b) where it is served by a party, that party shall file a certificate of service.

5. Where a party intends to act in person, he shall file with the Court the notice of change and shall serve the notice on every other party and provide his address for service.

Death,
bankruptcy,
etc of legal
practitioner

Party acting
in person

ORDER 34

PROCEEDINGS AGAINST THE STATE

1. Subject to the Civil Procedure (Suits by or against the Government or Public Officers) Act, these Rules apply to civil proceedings by or against the State or a public officer.

Application
of Rules
Cap 6:01

2. Where by reason of these Rules or Court order the State is permitted or required to—

Responsi-
bility of the
Attorney
General

- (a) make a witness statement;
- (b) make a sworn statement;
- (c) verify a document by a sworn statement;
- (d) make a sworn statement under notice to disclose; or

(e) to discharge any other procedural obligation, that function shall be performed by the Attorney General.

Prohibition of
set-off

3.—(1) In a claim by the State for taxes, duties or penalties, the defendant shall not make a counterclaim or raise a defence of set-off.

(2) In any other claim by the State, the defendant shall not make a counterclaim or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.

Exemptions

4.—(1) The following orders under Order 28 shall not apply to any order against the State—

- (a) a money order;
- (b) a seizure and sale order;
- (c) third party debt order;
- (d) charging order; or
- (e) an appointment of a receiver.

(2) In sub rule (1), “order against the State” means any judgment or order against the State, a government department, public institution or public officer as such, made—

- (a) in civil proceedings by or against the State;
- (b) in proceedings in a tribunal;
- (c) in connection with an arbitration to which the State is a party; or
- (d) in other proceedings to which the State is a party.

ORDER 35

TRANSITIONAL PROVISIONS

Application of
this Order

1. Under this Order—

“commencement date” means the date of coming into force of these Rules;—

“existing proceeding” means a proceeding commenced before the commencement date.

2. This Order deals with the application of these Rules to an existing proceeding before the commencement date.

Continuation
of Forms,
documents,
procedures, etc.
Cap 3:02

3.—(1) Where a step in compliance with the practice and procedure under section 29 of the Act (the “existing procedure rules”) has been taken in an existing proceeding, before the commencement date, in particular one that uses Forms or other documentation required by the existing procedure rules, the procedure shall proceed in the manner specified under the existing procedure rules.

(2) Any step which a party is required to take in response to something done by another party in accordance with the existing procedure rules shall be in accordance with those Rules.

(3) A party who is served with a mode of commencement under the existing procedure rules on or after the commencement date shall respond in accordance with those Rules and the instructions on any forms received with the mode of commencement.

(4) Where a proceeding has been begun by a mode of commencement under the existing procedure rules, whether served before or after the commencement date, filing and service of the statements of case, previously known as "pleadings", shall be done according to those Rules.

4. Where a party wishes a judgment in default to be entered in an existing proceeding, he shall do so in accordance with the existing procedure rules.

Default judgments

5. Where a Court order has been made before the commencement date that order shall still be complied with on or after the commencement date.

Court orders made before the commencement date

6.—(1) Where a party has taken any step in a proceeding in accordance with the existing procedure rules that step shall remain valid on or after the commencement date.

Validity of processes begun before the commencement date

(2) A party shall not ordinarily be required to take any action that would amount to taking that step again under these Rules.

(3) Where a new step is to be taken in an existing proceeding on or after the commencement date, it shall comply with these Rules.

7. Order 1 rule 5 shall apply to all existing proceedings from the commencement date onwards.

Application of Order 1 Rule 5

8.—(1) The Forms under these Rules shall be issued by the Court on or after the commencement date.

Post-commencement date Forms

(2) Where a party files with the Court a mode of commencement under the existing procedure rules on or after the commencement date it shall be returned unissued.

(3) The Court may, on an application made on or after the commencement date, extend the validity of a mode of commencement issued before the commencement date in accordance with these Rules or the existing procedure rules.

9. Any application to the Court made on or after the commencement date shall be made in accordance with these Rules.

Post-commencement date applications

10. Notwithstanding this Order, where a proceeding comes before the Court for the first time on or after the commencement date, the Court may direct how these Rules are to apply to the proceeding and may not apply certain provisions of these Rules.

Exemptions during transition

Hearing of application made before the commencement date the

11. Where an application has been issued before the commencement date and the hearing of the application has been set for a date on or after the commencement date, the application shall be decided having regard to these Rules.

Hearing of an existing proceeding on or after the commencement date

12. When the first occasion on which an existing proceeding is before the Court on or after the commencement date is a trial or hearing of a substantive issue, the trial or hearing shall be conducted having regard to these Rules.

Pleadings closed on or after the commencement date

13.—(1) This Rule applies to an existing proceeding where statements of case, previously known as “pleadings”, are deemed to close on or after the commencement date.

(2) Orders 12, 13, and 14 shall apply to an existing proceeding referred to in sub rule (1) as part of case management envisaged under Order 1 rule 5.

Assessment of costs on or after the commencement date

14.—(1) Any assessment of costs that takes place on or after the commencement date shall be in accordance with Order 31.

(2) No costs for work done before the commencement date shall be disallowed if those costs would have been allowed in an assessment of costs before that date.

(3) The decision as to whether to allow costs for work undertaken on or after the commencement date will generally be taken in accordance with Order 31.

Proceedings not before Court between the commencement date and a period of six months

15.—(1) Where an existing proceeding has not come before the Court between the commencement date and a period of 6 months from the commencement date, the proceeding shall be stayed.

(2) Any party to the proceeding may apply for the stay to be vacated.

(3) Proceedings of the following types will not be stayed as a result of this provision—

(a) where the case has been given a fixed trial date which is after a period of 6 months from the commencement date.

(b) personal injury cases where there is no issue on liability but the proceeding has been adjourned by court order to determine the prognosis of the claimant;

(c) where the Court is dealing with the continuing administration of an estate or a trust or a receivership; or

(d) applications relating to funds in Court.

(4) For the purposes of this rule, a proceeding shall not be an “existing proceeding” once the final judgment has been given.

Revocations
Cap 3:02
sub.leg. p. 289
Cap 3:02
sub.leg. p. 103

16. The following Rules are revoked—

(a) High Court (Exercise of Jurisdiction of Registrar) Rules;

(b) Rules of the High Court;	Cap 3:02 sub. leg. p. 103
(c) Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witnesses Rules;	Cap 3:02 sub. leg. p. 116
(d) Courts (Mandatory Mediation) Rules;	Cap 3:02 sub. leg. p. 133
(e) High Court (Commercial Division) Rules ;	Cap 3:02 sub. leg. p. 146
(f) High Court (Commercial Division) (Mandatory Mediation) Rules; and	Cap 3:02 sub. leg. p. 203
(g) Courts (High Court) (Procedure on the Interpretation or Application of the Constitution) Rules.	Cap 3:02 sub. leg. p. 209

ORDER 36

REVIEW OF THE RULES

(1) Subject to sub-rule (2), the Chief Justice may review these Rules within 2 years from the date that the Rules are published in the *Gazette* and thereafter every other two years. Chief Justice to Review Rules

(2) Nothing in sub-rule (1) shall prevent the Chief Justice from reviewing these Rules at any time he considers appropriate.

FIRST SCHEDULE

O.24

FORM 1

(O. 5, r. 1)

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

SUMMONS

(SPECIALLY ENDORSED)

TO: THE DEFENDANT [name] of
[address]

THIS SUMMONS has been issued against you by the above-named claimant in respect of the claim set out on the back.

WE COMMAND YOU within 28 days after the service of this Summons on you, inclusive of the day of service, you must either satisfy the claim or file with this Court a defence and list of documents. If you do not intend to contest the proceedings you must within 14 days after service of this Summons on you inclusive of the day of service return the accompanying Response stating therein that you do not intend to contest the proceedings but desire a stay of enforcement of judgment, if any?

TAKE NOTICE that if you fail to satisfy the claim or to file a Defence and list of documents or to return the Response within the time stated, or if you return the Response without stating an intention to contest the proceedings, the claimant may proceed with the claim and judgment may be entered against you without further notice.

WITNESS The Honourable Chief Justice of the High Court of Malawi,
this day of, 20...

Registrar
(Seal of court)

NOTE: This Summons is to be served within 4 calendar months (or, permission is required to effect service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

RELIEF

Dated this day of, 20....

(Signed) _____
[Claimant/Legal Practitioner for the Claimant]

If, within the time for returning the Response, the defendant pays the amount claimed and K..... for costs and, if the claimant obtains an order for substituted service, the additional sum of K further proceedings will be stayed.

The money must be paid to the claimant, his legal practitioner or agent.

THIS SUMMONS was issued by
of legal practitioner for the said claimant
whose address for service is

or

THIS SUMMONS was issued by the claimant who resides at
and is (state occupation) and
(if the claimant does not reside within the jurisdiction) whose address for service is
.....

LIST OF DOCUMENTS

The following is a list of the documents relating the claim which are or have been in the possession, custody or power of the claimant [or defendant] [name] and which is served in compliance with Order 5 Rule 8 [or Order 5 Rule 9].

1. The claimant [or defendant] has in his possession, custody or power the documents relating to the claim enumerated in Schedule 1.
2. The claimant [or defendant] objects to produce the documents enumerated in Part 2 of Schedule 1 on the ground that [stating the ground of objection].
3. The claimant [or defendant] has had, but has not now, in his possession, custody or power the documents relating to the claim enumerated in Schedule 2.
4. Of the documents in the said Schedule 2, those numbered in that Schedule were last in the claimant's [or defendant's] possession, custody or power on [stating when] and the remainder on [stating when].

[Here state what has become of the said documents and in whose possession they now are].

5. Neither the claimant [or defendant], nor his legal practitioner nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to the claim, other than the documents enumerated in Schedules 1 and 2.

SCHEDULE 1

PART 1

Use black ink and capital letters

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.]

PART 2

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.]

SCHEDULE 2

[Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.]

Dated this day of , 20...

NOTICE TO INSPECT

TAKE NOTICE that the documents in the above list, other than those listed in Part 2 of Schedule 1 [and Schedule 2], may be inspected at [the office of the legal practitioner of the above-named [claimant] [defendant] (insert address) or as the case may be] on the day of 20.., between the hours of and

TO: the defendant [or claimant] [name] and his legal practitioner.

Served the day of 20..., by
of legal practitioner for [claimant] [defendant].

FORM 2

(O. 5, r. 7)

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

RESPONSE

PART 1

(Your) (defendant's) full name

PART 2

(Do you) (Does the defendant) intend to contest:

The whole of the claim? Part of the claim? None of the claim? (Tick as appropriate)

NOTE: If you the defendant intends to contest this claim or any part of the claim you must within 28 days file and serve a Defence and list of documents. Failure to do this may result in a default judgment being entered.

PART 3

If you have said that you do not intend to contest the whole, or part, of the claim will you (the defendant) be asking the Court for a stay of enforcement or judgment, if any?

Yes: No:

NOTE: If you tick yes there shall be an automatic stay of enforcement of judgement for a period of 7 days.

PART 4

I acknowledge that (I have) (the defendant has) been served with a copy of the:
Summons.

Signed Date
defendant (legal practitioner for the defendant) (authorized officer)

Address to which documents about this case should be sent:

Legal Practitioner's reference

Telephone No.

Fax No.

When completed, this form should be returned to the registry which issued the Summons.

Use black ink and capital letters

FORM 3

(O. 10, r. 1)

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

INITIAL DIRECTION

Under Order 5 rule 20 of the (Courts) High Court (Civil Procedure) Rules it is ordered as follows:

1. Effective this date, this case is assigned to Honourable Justice
..... and to the individual calendar designated below.

2. All future documents filed in this case shall bear the Judge's name beneath the case number in the caption. On filing any chamber application or document, one copy for the Judge must be delivered to clerk of the Court along with the original.
3. Within 14 days of service, the claimant shall file proof of service of the summons with the list of documents, this Initial Direction and any other Order issued by the Judge.
4. If the defendant is not contesting the proceedings but desires to apply for a stay of execution, the defendant shall file Response within 14 days of service indicating his intention not to contest the proceedings and his intention to apply for a stay of execution.
5. If the defendant intends to contest the proceedings, the defendant shall file and serve a defence and a list of documents within 28 days from the date of service of the Summons.
6. Statements of case shall be deemed to be closed on the expiry of 7 days from the date of defence is served or, where subsequent statements of case are served, 7 days from the date of service of the last statement of case.
7. Within 7 days from the closure of statements of case the proceeding shall proceed to mandatory mediation and all parties to this action shall lodge statements as provided for by Order 13 rule 3 of the Courts (High Court) (Civil Procedure) Rules.

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

.....
Judge

FORM 4

(O. 10, r. 1)

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

(Before Honourable Justice)

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

APPLICATION IN PROCEEDING

LET ALL PARTIES attend before Honourable Justice in Chambers on day, the day of 20... at o'clock in the noon on the hearing of an application by [claimant] [defendant] for [state the relief sought] against the [claimant][defendant].

TAKE NOTICE that the sworn statement of shall be read in support of the application.

ANY sworn statement in opposition must be filed and served at least [.....] days before the above-mentioned return date.

Dated this day of , 20...

.....
Honourable Justice

TO: The [claimant][defendant][claimant's/defendant's] legal practitioners.

Dated this day of , 20...

.....
Judge

Use black ink and capital letters

FORM 5

(O. 12, r. 32(3))

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

JUDGMENT ON ADMISSION

LET ALL PARTIES attend the Judge in Chambers on the day of 20.... at o'clock in the noon on the hearing of an application by the claimant to enter judgment on admission.

The sworn statement of [NAME] shall be used in support of the application.

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [defendant] [defendant's legal practitioner]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION OF PART OF CLAIM

I, [defendant] admit that out of the total claim in the sum of [STATE AMOUNT] made by the Claimant, I owe the Claimant the sum of [STATE AMOUNT] only.

Dated the day of 20...

.....
[defendant][defendant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION

I, [defendant] admit the claim in this proceeding in full.

Dated the day of 20...

.....
[defendant][defendant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

DEFENDANT'S ADMISSION

I, [DEFENDANT] admit the claim in this proceeding in full.

Dated the day of 20...

.....
[defendant][defendant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT

I [claimant] accept the amount admitted by the Defendant and I now request the Court to enter judgment for the sum of [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

CLAIMANT'S REQUEST FOR JUDGMENT UPON REJECTION OF
DEFENDANT'S PROPOSAL

I [claimant] reject the Defendant's proposal to pay [STATE AMOUNT] and request that judgment be entered against the Defendant for [STATE AMOUNT].

Dated the day of 20...

.....
[claimant][claimant's legal practitioner]

To: [JUDGE]

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

STATEMENT OF ISSUES

(To be provided to Judge and parties at least seven (7) days from the time pleadings are deemed to be closed)

1. Factual and legal issues in dispute

The claimant (or defendant) states that the following factual and legal issues are in dispute and remain to be resolved:

(Issues should be stated briefly and numbered consecutively)

2. Part's position and interest (What the party hopes to achieve) (Brief summary)

3. Attached materials

Attached to this form are the following materials that the claimant (or defendant) considers of central importance in the matter: (list)

Dated this day of, 20...

.....
Party's signature or Party's Legal Practitioner's Signature

(Name, address, telephone number, fax number and E-mail address of the party or Legal Practitioner of the party filing statement of issues).
.....
.....

NOTE A: All communications at a mediation session and the Judge's notes and records shall be deemed to be confidential.

NOTE B: Consequences of noncompliance: Failure to submit a statement of issues may lead to—

- (1) dismissal of action, if the non-complying party is a claimant; or striking out of defence, if the non-complying part is a defendant;
- (2) an order that a party pays costs; or
- (3) any other order that the Court deems fit.

Dated this day of, 20...

FORM 16

(O. 13, r. 3 (2))

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

NOTICE OF MEDIATION

TAKE NOTICE that the statements of case having been closed the matter is set down for mediation on day of, 20... at o' Clock in the..... noon before Honourable Justice in Chambers.

Dated this day of, 20...

.....
JUDGE

TO: The claimant and his legal practitioners.

: The defendant and his legal practitioner.

Use black ink and capital letters

FORM 17

(O. 14, r. 2 (3))

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

TRIAL CHECK-LIST

1. Indicate the issues that shall proceed to trial.
2. Do you want to amend any of your statements of the case?
Yes: ☐ No: ☐
3. If so please attach hereto a copy of the intended amended statement of the case duly titled as an "amended" document with the amendments underlined in red ink.
4. Do you intend to seek further and better particulars of any of the opposite party's statement of the case?
Yes: ☐ No: ☐
5. If so, please identify the particular paragraph(s) in a particular statement of the case over which you seek further and better particulars. Further, please attach hereto a separate sheet indicating the particulars that you seek to be provided.
6. Do you want to raise any challenge to any of the opposite parties' statement of the case?
Yes: ☐ No: ☐
7. If so, please indicate the challenge on a separate sheet of paper and provide a sworn statement justifying the challenge together with your skeleton arguments in support of the challenge.
8. Are there matters in all the statements of the case that you perceive to be agreed facts between all the parties to case?
Yes: ☐ No: ☐

9. If so, please attach hereto a sheet of paper indicating the facts or matters that you perceive to be agreed facts.
10. Do you want to apply that any party should be added or removed from the proceeding?
Yes: ☐ No: ☐
11. If so, on a separate sheet of paper identify the party to be added or removed, specifying the reasons for your application and the skeleton arguments in support of the application.
12. Do you intend to apply for security for costs against any of the opposite parties?
Yes: ☐ No: ☐
13. If so, please provide the grounds for the application and a sworn statement justifying the same together with your skeleton arguments in support of the application.
14. Have all documents disclosed on the opposite parties list of documents been provided to you?
Yes: ☐ No: ☐
15. If not, please specify which documents you have not been provided with.
16. Are there some documents that you think are relevant to the effective disposal of this case and are in the custody, control or possession of the other side but which they have not been disclosed in their list of documents?
Yes: ☐ No: ☐
17. If so, on a separate sheet, please identify the documents, specifying, by way of a sworn statement, the grounds for your belief that the opposite party is in possession, custody or control of the named documents and why you think the same are relevant to the effective disposal of this case.
18. Do you want to ask the other side some questions which they must answer on oath before trial and whose answers you believe are necessary to speed up the effective and just disposal of the case?
Yes: ☐ No: ☐
19. If so, please outline the questions on a separate sheet of paper, indicating the person who must answer the identified questions.
20. Are there any facts that you would want the other side to admit on oath before trial so as to speed up the disposal of the case?
Yes: ☐ No: ☐
21. If so, on a separate sheet of paper, please outline the facts which the other side must admit on oath before trial.
22. Please specify how you will lead evidence to prove your case at trial.
23. If the evidence will not be adduced by oral testimony, on a separate sheet of paper, please provide the reasons for the other preferred mode of giving evidence.
24. If the agreed mode of giving evidence is by sworn statement, please state whether you intend to cross-examine any of the witnesses of the other party at trial and

identify the witnesses you intend to cross-examine.

25. Please provide the names of witnesses that you intend to call at trial.

26. Please indicate if any of the witnesses are experts in any field, providing the name of the witnesses and his or her field of expertise.

Dated this day of , 20...

Signed:

Legal practitioner for the claimant/defendant

of for the above-named

claimant/defendant whose address is

.....

FORM 18

(O. 17, r. 8)

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

WITNESS STATEMENT

OF

[NAME]

ON BEHALF OF

[CLAIMANT'S NAME] [DEFENDANT'S NAME]

BEING WITNESS STATEMENT NO. ...

MADE

....day of 20...

NOTE: The witness statement must, if practicable be in the intended witness's own words. The statement should be expressed in the first person. The following is a guide to the content of statement.

4. The full name of the witness.

5. The witness's place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer.
6. The witness's occupation, or if he has none, his description.
7. Whether he is a party to the proceedings or is the employee of such a party if it be the case.
8. Which of the statements in it are made from the witness's own knowledge.
9. Which of the statements are matters of information or belief, and the source for any matters of information or belief.
10. Any exhibit used in conjunction with a witness statement as follows:

"I refer to the (*description of exhibit*) marked '...' "

Any exhibit should be verified and identified by the witness and remain separate from the witness statement.

11. Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.
12. A witness statement should:
 - (a) be produced on durable quality A4 paper with a 3.5cm margin;
 - (b) be fully legible and should normally be typed on one side of the paper only;
 - (c) where possible, be bound securely in a manner which would not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness;
 - (d) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file);
 - (e) be divided into numbered paragraphs;
 - (f) have all numbers, including dates, expressed in figures; and
 - (g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.
13. It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with, each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.
14. A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness that he believes the facts in it are true.
15. To verify a witness statement, the witness must state as follows:

"I believe that the facts stated in this witness statement are true"

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

Signed:

Legal practitioner for the claimant/defendant
of for the above-named
claimant/defendant whose address is
.....

FORM 19

(O. 19, r. 2)

CERTIFICATION BY THE CHIEF JUSTICE
(under s. 9 (3) of the Act)

*Presidential Referral Number of 20...

*Reference Number of 20... being Civil/Criminal Case Number of 20...
before His/Her Worship/Honourable Justice
sitting at

*The proceedings registered as Civil/Criminal Cause Number of 20... are hereby
certified as having complied with section 9 (3) of the Act.

Dated this day of, 20...

.....
Chief Justice

FORM 20

(O. 19, r. 3 and 7)

REFERRAL BY A COURT

Reference Number of 20... being Civil/Criminal Case Number of 20...
before His/Her Worship/Honourable Justice
sitting at

The original court being of the opinion that a matter on the interpretation or
application of the Constitution has arisen in the above proceeding in respect of the
following question or issue—

- (a).....
(b).....
(c).....

submits this Referral for the certification of the Honourable the Chief Justice under section
9 (3) of the Act.

Dated this day of, 20...

.....
Magistrate/Judge

IN THE HIGH COURT OF MALAWI

.....Registry

.....Case No. of 20...

(Before Honourable Justice)

BETWEEN

..... CLAIMANT

AND

..... DEFENDANT

AND

..... THIRD PARTY

APPLICATION FOR THIRD PARTY DEBT ORDER

The [claimant] [defendant] ('the judgment creditor') applies for an order that the third party pay to the judgment creditor the debt which the third party owes to the [defendant] [claimant] ('the judgement debtor') (or so much of it as is necessary to discharge the amount owing under the judgment or order given on 20... [by the] and the costs of this application).

1. Judgement debtor

The judgment debtor is
 whose address is

2. Judgment debt

The judgement or order required the judgement debtor to pay K..... (including any costs and interest). The amount now due is K..... [which includes further interest].

K of the instalments due under the judgment or order has fallen due and remains unpaid.

The judgment or order did not provide for payment by instalments.

3. Third party

The third party is within Malawi and owes money to (or holds money to the credit of) the judgment debtor.

The third party is a [bank or building society]

Its name is

Its head office address in Malawi is:

The branch at which the account is held is[not known]
 whose address is:

The account number is [not known]

Made this day of, 20...

.....
 [Judgment Creditor]

SECOND SCHEDULE

(O. 26)

PART 1

FEES PAYABLE IN DIVISIONS OTHER THAN THE COMMERCIAL DIVISION

<i>Description of fee</i>	<i>Fee payable</i>	
	K	t
Summons	5,000	00
Proceedings under Order 19	10,000	00
Application in a proceeding	5,000	00
Sworn statement	2,000	00
Order	2,000	00
Judgment	2,000	00
Notice	2,000	00
Notice of Adjournment	5,000	00
Notice on assessment of costs	5,000	00
Enforcement order	5,000	00
Certificate	2,000	00
Application	1,000	00
Trial fee per day (payable by claimant)	5,000	00
Sheriff's fees payable on execution of an enforcement order	Reasonable actual costs of execution, including travel, accommodation, sustenance, advertising, storage, auction, transport and all other associated disbursements plus 5% of the net amount recovered after deduction of costs of execution	

*Description of fee**Fee payable*
K t

Service by the Sheriff within 50km radius from Court	5,000 00
Service by the Sheriff in any other place plus cost of travel and subsistence	5,000 00
Typing—first page	1,000 00
Typing—second and later pages	500 00
Certification of any copy document	500 00
(in addition to typing or copy fees)	
Copying—by photocopy or other means, per page	100 00

PART 2

FEES PAYABLE IN THE COMMERCIAL DIVISION

A. SERVICE

Fee Payable
K t

1. For service by an officer of the court of summons, petition, answer, motion paper, notice, warrant, decree, order or other document on a party, or witness.	4,000 00
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B. FILING OF DOCUMENTS

1. On filing Summons—	1.5% of the claim of value of the subject matter in dispute with a maximum of K150,000.00 (for K10,000, 000.00 claim)
3. On filing an application in a proceeding	5,000 00
4. On filing any sworn statement other than a sworn statement in support of service	2,000 00
5. On filing every sworn statement in support of service	1,000 00
6. On filing an order	2,000 00
8. On filing a notice of adjournment of a hearing rendered necessary by default of either party.	5,000 00
9. On filing a mode of enforcement of judgement	5,000 00

C. APPEALS TO THE DIVISION

10. On lodging notice of appeal	5,000 00
11. On filing an application for permission to appeal	2,000 00

12. On filing application for security	2,000 00
13. On filing an order for permission to appeal	2,000 00
14. On the hearing of an appeal where judicial relief or assistance is sought, but not the recovery of money	5,000 00
15. On the hearing of an appeal in matters other than those specified in item 14	1% per cent of the amount involved but in no case less than K2,500
16. On every application, order or rule not particularly charged	3,000 00
D. APPEAL FROM A DIVISION TO THE SUPREME COURT OF APPEAL	
17. On an application for permission to appeal	10,000 00
18. On filing an application for security	10,000 00
19. On filing an order for permission to appeal	5,000 00
20. On filing Notice of Appeal	10,000 00
21. On application for an order to amend Notice of Appeal	5,000 00
22. On every application, order or rule not particularly charged	2,000 00

PART 3

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICER

1. No fees shall be payable by the Government in respect of suits instituted by or against the Government.
2. No fees shall be payable by the of Legal Aid Bureau in respect of a suit instituted by or against a person who has been granted legal aid under the Legal Aid Act.

Made this 20th day of June, 2017

(FILE NO. HC/CJ/071)

ANDREW K.C. NYIRENDA
Chief Justice