

**SALE OF IMMOVABLE PROPERTY ACT**

Cap 202 – 2 November 1868

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## SALE OF IMMOVABLE PROPERTY ACT

### 1. Short title

This Act may be cited as the Sale of Immovable Property Act.

### PART I – SEIZURE OF IMMOVABLE PROPERTY

#### 2. Seizure preceded by *commandement*

(1) Every seizure of immovable property shall be preceded by a *commandement* to be served on the debtor in person.

(2) The creditor shall, in the *commandement*, elect a domicile at the office of the attorney retained by him, and all acts relative to or in connection with the proceedings, or the claims to be enforced under them, shall be served on him at that domicile.

(3) The creditor shall notify his debtor that, if he fails to pay the amount claimed, a seizure will be effected on his immovable property.

(4) (a) It shall not be necessary to copy or to specify in *extenso* in the *commandement* the title (*titre*) by virtue of which the seizure is to be made.

- (b) It shall be sufficient to mention and describe the title by stating—
- (i) the date of the title;
  - (ii) where the title is a notarial deed, the name of the notary;
  - (iii) the amount of the sum due; and
  - (iv) the nature of the claim.

(5) Where the title is a notarial deed, it shall not be necessary, notwithstanding article 2213 of the Code Civil Mauricien, to take a copy in executory form (*grosse exécutoire*) either for the purpose of the *commandement* or of the seizure.

(6) The usher serving the *commandement* need not be accompanied by witnesses but shall, within 48 hours after service, obtain on the original, the visa of the Chief Court Usher of the Supreme Court.

[S. 2 amended by s. 10 (a) of Act 3 of 2018 w.e.f. 27 June 2018.]

### 3. Periods of seizure

(1) The seizure of immovable property shall not be effected until after 10 days from the date of service of the *commandement*.

(2) Where the creditor allows more than 90 days to elapse after service, without having effected the seizure, he shall serve a fresh *commandement* subject to the same formalities and with the same time limits as specified in section 2.

### 4. Authority to seize

(1) The usher effecting the seizure shall have a special authority in writing from the execution creditor.

(2) The authority shall be annexed by the usher to his memorandum of seizure, and shall be registered with it.

### 5. Memorandum of seizure

The memorandum of seizure (*procès-verbal de saisie*), in addition to the formalities common to all ushers' process, shall contain—

- (a) a description of the title by virtue of which the seizure is effected containing—
  - (i) the date of the title;
  - (ii) where the act is notarial, the name of the notary;
  - (iii) the amount of the debt; and
  - (iv) where the title has been transcribed, a reference to the transcription;
- (b) a mention of the presence of the usher on the property at the time of effecting the seizure;
- (c) a description of the property seized by reference to a memorandum of survey and a plan drawn up in accordance with the Cadastral Survey Act and annexed to the memorandum of seizure—
  - (i) in the case of urban property, the district, street, and street number of the property, and where there is no number, at least 2 of the metes and bounds (*tenants et aboutissants*) of the property; and
  - (ii) in the case of rural property, the district, boundaries and approximate area of the land, a description of the buildings, machinery, and plantations on the land, and the enumeration of the carts and animals seized;
- (d) the apparent value of the property as assessed by the usher; and

- (e) the constitution of an attorney whose office shall be taken to be the domicile of the execution creditor at which all acts connected with the seizure shall be served.

[S. 5 amended by s.22 (6) of Act 22 of 2011 w.e.f. 1 July 2013.]

#### **6. Notification of seizure**

(1) Where the execution debtor is domiciled in the district where the property seized is situated, the usher shall, at the time of the seizure, leave a copy of his memorandum of seizure with the debtor either in person or at his domicile.

(2) Where the execution debtor is domiciled in another district, or resides at a distance of more than 6 miles from the property seized, the usher shall, within 8 days after the registration of the seizure, serve a copy of his memorandum of seizure on the debtor, either in person or at his domicile.

(3) Where the seizure is made on the heirs of the original debtor, it shall be sufficient notification, to serve one copy on the heirs collectively at the elected or at the last known domicile of the deceased.

#### **7. Transcription of seizure**

(1) The memorandum of seizure shall be transcribed at the Mortgage Office within 15 days after its notification, and at the same time mention of the notification and of the mode in which it has been made shall be inserted in the margin of the transcription.

(2) The memorandum of seizure shall be accompanied by the appropriate summary specified in the Sixth Schedule to the Transcription and Mortgage Act, duly filled in.

[S. 7 amended by s. 25 of Act 4 of 2017 w.e.f. 20 May 2017.]

#### **8. Concurrent seizures**

(1) Where the Conservator of Mortgages is unable to transcribe the seizure immediately after it has been presented to him, he shall make a note on the original left with him of the hour, day, month and year, when it comes into his possession.

(2) Where there are concurrent seizures, the seizure first presented to him shall be transcribed.

#### **9. Previous seizure**

Where there has been an earlier seizure, the Conservator shall note—

- (a) his refusal in the margin of the second seizure;
- (b) the date of the earlier seizure;
- (c) the name, residence and calling of the execution creditor and of the execution debtor;
- (d) the name of the attorney of the execution creditor; and
- (e) the date of the transcription of the seizure.

#### 10. Judicial sequestrator

Where the property seized is not let or leased, the execution debtor shall, unless otherwise required under sections 129 to 137, continue in possession of the property as judicial sequestrator.

#### 11. Sale of crop

(1) While the execution debtor remains in possession of the property seized as judicial sequestrator, any creditor may obtain an order for the sale of the crop of that property.

(2) An application for the order shall be made in accordance with sections 129 to 137 and the net proceeds of the sale shall be deposited with the Master.

#### 12. Produce of land withheld

The natural and industrial produce of the property seized, or the proceeds of the sale of the property, shall, after transcription, be withheld and distributed together with the sale price of the property, according to the rank of claims on the property.

#### 13. Deterioration of property seized

(1) The execution debtor shall not cut down timber or in any way diminish the value of the property seized.

(2) Any execution debtor who contravenes subsection (1) shall, without prejudice to any criminal prosecution to which he may render himself liable, be liable to an action in damages.

#### 14. Voidable leases

(1) Any lease made subsequently to the transcription of the seizure shall be null, without the necessity of taking proceedings for its annulment.

(2) Where a lease is made between the date of service of the *commandement* and the date of the transcription, it may be annulled at the instance of a creditor or of the adjudicatee.

(3) No lease shall be valid, unless it has been inserted in, and made one of the conditions of, the memorandum of charges (*cahier des charges*).

(4) A creditor inscribed before the transcription of a lease may prevent the insertion of the lease in the memorandum of charges.

#### 15. Withholding of rent

(1) The rents and profits of the property shall be withheld from the date of the transcription of the seizure, and distributed with the sale price of the property according to the ranking of claims.

(2) (a) A simple opposition without further formality, at the instance of the execution or any other creditor, shall operate as an attachment in the hands of the lessee who shall from then deposit with the Master all rent due by him, when it falls due.

(b) Where there is no opposition, any payment made to the debtor shall operate *pro tanto* as a valid discharge to the lessee, and the execution debtor shall be accountable as judicial sequestrator of the property for the amount paid to him.

#### **16. Execution debtor not to alienate**

(1) The execution debtor, as from the date when the seizure is transcribed, shall have no right to alienate or mortgage the property under seizure.

(2) An alienation or mortgage made in contravention of subsection (1) shall be null, without the necessity of proceedings being taken to have the nullity declared.

#### **17. Where sale is validated**

Notwithstanding section 16 (2), an alienation shall become valid and effectual where, before the date fixed for the adjudication of the property, the purchaser—

- (a) deposits with the Master a sum sufficient to cover in principal, interest and costs, the amount due to the inscribed creditors requiring payment and to the execution creditor; and
- (b) notifies the inscribed creditors and the execution creditor that the deposit under paragraph (a) has been made.

#### **18. Ranking of borrowed money**

Where the money deposited under section 17 has been borrowed, the lender may only acquire a mortgage taking rank subsequent to the creditors inscribed at the date of the sale.

#### **19. Deposit of money**

Where no deposit has been made under section 17, no further period for making the deposit shall be granted.

#### **20. Deposit of memorandum of charges**

(1) Within 30 days of the transcription of the memorandum of seizure, the execution creditor shall deposit at the Master's Office the memorandum of charges (*cahier des charges*), which shall contain—

- (a) a reference to—
  - (i) the title by virtue of which the seizure has been made;
  - (ii) the usher's memorandum of seizure, including the return of services; and



- (iii) any procedure, judgment or order which may have been rendered or made in the course of the proceedings;
- (b) the description of the property as specified in the memorandum of seizure;
- (c) the conditions under which the property is to be sold;
- (d) a *mise à prix* on the part of the seizing creditor; and
- (e) the transcription reference, and the date of the title deed in respect of the execution debtor.

(2) The Master shall, at the foot of the memorandum of charges, fix the day for the reading of the memorandum, or for the sale of the property where the property seized is a small property and is to be sold under sections 51 and 52.

[S. 20 amended by Act 23 of 1992.]

### **21. Notice to execution debtor**

(1) Within 8 days of filing the memorandum of charges, notice shall be served on the execution debtor either in person or at his domicile.

(2) The notice shall—

- (a) call upon the execution debtor to—
  - (i) examine the memorandum of charges and make on it such observations as he thinks fit; and
  - (ii) be present at the time of the reading of the memorandum of charges when a day shall be fixed for the final adjudication; and
- (b) specify the day, hour and place appointed for the reading.

### **22. Notice to inscribed creditor**

(1) A similar notice shall be served, within the period specified in section 21, on all inscribed creditors who have taken their inscriptions before the date of the deposit of the memorandum of charges, at the respective domiciles elected by them in their inscriptions.

(2) One notice shall suffice for each creditor irrespective of the number of inscriptions taken by him.

### **23. Notice to unpaid vendor**

(1) Where, among the inscribed creditors, there is a creditor who holds a vendor's privilege duly inscribed, a similar notice shall be served on him at the domicile elected by him in his inscription.

(2) The notice shall inform the creditor that, unless he commences his action in cancellation of sale, and makes a declaration of having done so at the foot of the memorandum of charges before the day fixed for the adjudication, he shall be definitely foreclosed, *qua* the adjudicatee, from having the cancellation decreed.

(3) Where no election of domicile has been made on behalf of the creditor, the notice shall be served on him either in person or at his actual or last known domicile in Mauritius.

(4) Every vendor shall be entitled to commence his action in cancellation whether his claim is due or not.

#### **24. Stay of sale**

(1) Where the declaration under section 23 has been filed in due time, the sale shall be stayed, and the Court or Judge shall, on the application of the execution creditor or of any other inscribed or judgment creditor, fix a period within which the plaintiff shall bring his action to trial.

(2) The execution creditor or an inscribed or judgment creditor may intervene in the action.

(3) The action may, at any time, be entered on the cause list, and shall then be heard and determined as an urgent case, with precedence over all other cases on the cause list, for the hearing of which no special day has already been appointed.

#### **25. Sale and adjudication of property**

Where the action in cancellation has not been heard and determined, within the period fixed by section 24, the sale and adjudication of the property shall take place, notwithstanding that the action is pending, unless the Court or Judge, on good and sufficient cause shown, has extended the period previously fixed for the hearing and determination of the action.

#### **26. —**

#### **27. Entry of notices**

(1) Within 8 days after service of the last of the notices specified in sections 21 to 23, an entry shall be made in the margin of the transcription of the seizure to the effect that the notices have been served.

(2) From the day when the entry under subsection (1) has been made, the seizure may no longer be erased, except by consent of—

- (a) a seizing creditor or sequestrator; and
- (b) such of the inscribed creditors as have lodged opposition in the hands of the Conservator of Mortgages against the erasure of the seizure.

#### **28. Filing of documents**

The originals of the notices specified in sections 21 to 23, shall, within 15 days from the date of entry specified in section 27, be filed in the Master's Office and annexed to the memorandum of charges.

### **29. Reading of memorandum of charges**

(1) The reading of the memorandum of charges shall take place before the Master at a public sitting to be held on a day which is not less than 10 nor more than 30 days after the filing of the memorandum of charges.

(2) The day for the sale and adjudication shall be fixed by the Master immediately after the reading of the memorandum of charges, to a date not less than 6 weeks after the day of the reading.

### **30. Change in conditions of sale**

(1) Where an inscribed creditor or the execution debtor desires that the memorandum of charges, as drawn up by the attorney who has the carriage of the proceedings, be amended in any way, he may apply, by petition, to the Master not less than 21 days (unless cause is shown to the satisfaction of the Master for entertaining an application made after that period of 21 days) before the day fixed for the sale, to appoint a day for the appearance of the parties before him.

(2) The execution creditor shall be made a party to the proceedings under subsection (1), together with the execution debtor (unless the application is made by him) and any other party the Master thinks proper to join.

(3) The petition with the Master's order shall be—

- (a) served on the parties named in it 5 days before the day fixed for hearing; and
- (b) made known to the creditors by an advertisement in 3 daily newspapers, specifying the desired amendment and informing them that they have the right, if they think fit, to appear before the Master, on the day appointed by him, for the purpose of opposing the amendment.

(4) A creditor who appears shall do so at his own cost, unless the Master, on dismissing the application, orders the applicant to pay the costs of that creditor.

(5) The costs of the application shall, unless ordered otherwise, be borne by the unsuccessful party, and shall not be considered as costs of sale.

### **31. Notice of date of sale**

(1) Within 14 days, after the reading of the memorandum of charges, the attorney in charge of the sale shall publish, in the Gazette and in 3 daily newspapers, a notice in the form of the First Schedule—

- (a) announcing the day when the property shall be put up for sale and adjudication; and
- (b) calling on all parties who have a right to take inscription of legal mortgage on the property to exercise their right before the transcription of the title deed of the adjudicatee.

(1A) Notwithstanding subsection (1), this section shall, at the request of the debtor, not apply for a period of 2 years from the date of the reading of

the memorandum of charges where the mortgaged immovable property is the sole residence of the debtor and the said debtor has been made redundant on economic grounds.

(2) Similar notices shall be again published, in the Gazette and in 3 daily newspapers, not less than 12 days before the day fixed for the sale and adjudication of the property.

[S. 31 amended by s. 48 (a) of Act 10 of 2017 w.e.f. 24 July 2017.]

### **32. Taxation of costs of sale**

(1) All costs of sale, due at the time of the sale, shall be taxed by the Master before the adjudication.

(2) The bill for the costs duly taxed shall be filed in the Master's Office 24 hours before the sale.

### **33. Costs of sale**

(1) No judgment by consent relative to the payment of any costs, as costs of sale, shall be binding on the creditors who have not been parties to it.

(2) The execution creditor shall have no power to bind any other creditor by his consent to the judgment.

### **34. Announcement of costs of sale**

(1) The amount of the taxed costs of sale shall be—

(a) announced publicly on the day of adjudication before the opening of the biddings; and

(b) specified in the judgment of the adjudication.

(2) No sum, other than the amount of the taxed costs of sale, shall be claimable or allowed.

### **35. Proceedings on day of sale**

On the day fixed for the adjudication, the biddings shall be opened by the execution creditor or by an inscribed or judgment creditor.

### **36. Postponement of sale**

(1) Where the execution creditor, an inscribed or judgment creditor, or the execution debtor satisfies the Master, on strong grounds of necessity or expediency, that the sale should be postponed, the Master may postpone it either indefinitely or to a specified date.

(2) The decision of the Master postponing the sale shall be final and without appeal.

### **37. Publication after postponement**

Where the sale has been postponed under section 36, fresh publications, as specified in section 31 and in the form of the First Schedule, shall be published in 3 daily newspapers.

### 38. Biddings

(1) The biddings shall be made before the Master in open Court, either by the bidders in person or by their authorised agent.

(2) Where a bid has been covered by a higher bid, the first bid shall cease to be binding even though the higher bid may be declared void.

### 39. Where *mise à prix* not covered

(1) Where there is no higher bid than the *mise à prix* of the execution creditor, the property shall be adjudicated to him.

(1A) The *mise à prix* referred to in subsection (1) shall not be less than half of the open market value of the seized property mortgaged determined at the time of the transcription of the memorandum of seizure by an independent valuer appointed by the creditor.

(1B) The cost of valuation of the mortgaged property shall be borne by the creditor.

(2) Where the execution debtor or an inscribed or judgment creditor proves to the satisfaction of the Master that—

- (a) the bid, or the highest covering bid, is much below the value of the property; or
- (b) there is a reasonable prospect that, if the sale is postponed to a future day, a higher price will then be bid,

the Master may postpone the sale.

[S. 39 amended by s. 48 (b) of Act 10 of 2017 w.e.f. 24 July 2017.]

### 40. Election of domicile by purchaser

Where the highest bidder has purchased on his own account, he shall, at the time of adjudication, elect a domicile in Port Louis, and all documents connected with the proceedings up to the closing of the *ordre* shall be served on him at that domicile.

### 41. —

### 42. Persons incapable of purchase

(1) No purchase of immovable property at a sale by the Master shall, either personally or through a third party, be made by—

- (a) the Master, or any officer or clerk of his office, unless specially authorised to do so by the Attorney-General;
- (b) the execution debtor;
- (c) the guardian or curator of the execution debtor;
- (d) the attorney who has the carriage of the sale; or
- (e) a person known to be insolvent.

(2) A bidding, outbidding or purchase made by or on behalf of a person specified in subsection (1) shall—

- (a) be null and void; and

- (b) render the party making the bidding and any third party on whose behalf the bidding has been made, liable to an action in damages, at the suit of an interested party.

#### **43. Title of adjudicatee**

The title deed of the adjudicatee shall consist of—

- (a) the memorandum of charges drawn up in the manner specified in section 20, and any amendment which has been ordered to be made to it; and
- (b) the memorandum of adjudication.

#### **44. Delivery of title deed**

The Master shall not deliver the title deed of the adjudicatee until the purchaser has—

- (a) deposited with him the costs claimable by him and the amount payable by way of duty on the registration and transcription of the title deed; and
- (b) proved to the satisfaction of the Master that he has—
  - (i) fulfilled all the conditions of the memorandum of charges incumbent on him; and
  - (ii) paid all the taxed costs of sale and produced the receipts.

#### **45. Where purchaser liable to *folle-enchère***

Where the purchaser fails to deposit the sums and to make proof under section 44, within 20 days after the adjudication, he shall, without prejudice to any other legal remedy against him, become liable to be sued by way of *folle-enchère*.

#### **46. Judgment of adjudication**

(1) It shall not be necessary to notify the judgment of adjudication to any party.

(2) The title deed of the adjudicatee shall be sufficient authority for him to take possession.

(3) Where a person who is in actual possession of the property puts up an opposition, the adjudicatee shall cause himself to be put into possession by all legal ways and means.

#### **47. Formalities and periods**

The formalities and time limits specified in sections 2 to 7, 20 to 23, 27 to 29, 31 and 37 shall be observed under pain of nullity in accordance with sections 68, 69 and 209.

#### **48. Misdescription of property**

Where several immovable properties, not united as one property, are included in the same seizure, any misdescription or imperfect description of one of the properties shall not vitiate the proceedings as regards the rest.

#### 49. Rights vested in purchaser

(1) The judgment of adjudication shall transmit to the adjudicatee no right over the property sold, other than that belonging to the execution debtor.

(2) The rights of ownership of the purchaser shall not be impaired by any action in cancellation of sale grounded on the non-payment of any former sale price of the property, unless the action has been declared and proceeded with under sections 23 to 25.

#### 50. Remedy after sale of property

(1) Where—

- (a) the sale and adjudication of the property has taken place under section 25 before the action in cancellation has been heard and determined; or
- (b) a holder of a vendor's privilege, on being duly served with the notice specified in section 23, has neglected to exercise his resolatory right prior to the adjudication of the property,

the adjudicatee shall not be affected by any resolutely action in respect of the vendor's right.

(2) Where the holder of a vendor's privilege has neglected to exercise his resolatory right, he shall be debarred from any remedy as regards the adjudicatee, except that he may produce his claim for collocation at the distribution by way of *ordre* of the sale price of the property.

#### 51. Sale of small property

(1) Where immovable property, not exceeding 6,000 rupees in value has been seized, and is to be sold by way of forcible ejectment, it shall not be necessary to—

- (a) give notice of the filing of the memorandum of charges to any party, other than a creditor by way of conventional mortgage, an inscribed vendor under section 23, and the execution debtor; or
- (b) read the conditions of sale.

(2) The day of sale and the value of the property shall be fixed by the Master, in writing, at the foot of the memorandum of charges when it is filed, and the sale shall take place not less than 6 weeks after the date of filing.

(3) Within 14 days after the filing of the memorandum of charges, and not less than 12 days before the date fixed for the sale, the notices under section 31 shall be published in 2 daily newspapers.

#### 52. How value is ascertained

The value of an immovable property shall, for the purpose of section 51, be determined by the Master according to—

- (a) the sale price or the estimated value of the property at its previous transfer;

- (b) the estimated value of the property for the payment of any tax; and
- (c) the assessment of the usher as declared in the memorandum of seizure.

## **PART II – INCIDENTAL APPLICATION AFTER SEIZURE OF PROPERTY**

### **53. Form of application**

(1) Every application to the Master, incidental to the seizure or sale of immovable property, shall be made by petition specifying, in a summary manner, the—

- (a) grounds on which the application is made; and
- (b) parties against whom it is made.

(2) The Master shall, at the foot of the petition, make an order fixing the day for hearing the petition, and may join, as a party, any person whose rights, he thinks, may be affected by the application.

### **54. Service**

(1) A copy of the petition with the Master's order shall be served on the respective attorneys of the parties named in it, or ordered to be joined by the Master, not less than 5 days before the date of hearing.

(2) Where a party has not constituted an attorney for the purposes of the seizure, service shall be made on that party, either in person or at his usual place of residence, at least 8 days before the day of hearing.

### **55. Consolidation of seizures**

(1) Where—

- (a) 2 levying creditors have caused to be transcribed seizures of different immovable properties seized on the same debtor; and
- (b) the properties have been united into one and have been cultivated or occupied as one property by the execution debtor,

the seizures shall, on the application of the execution creditor, the inscribed creditors, or the execution debtor, be consolidated *ex officio* by the Master, and the proceedings shall then be carried on by the party whose seizure was earliest in date.

(2) (a) The consolidation shall be ordered before the filing of the memorandum of charges.

(b) Where the consolidation is not so ordered, it shall not, except by consent of the parties, take place.



#### 56. Carriage of sale

(1) Where 2 seizures are of the same date, the carriage of the sale shall devolve on the attorney whose executory title is older.

(2) Where both titles are of the same date, the carriage of the sale shall devolve on the attorney senior in standing.

#### 57. Where second seizure more extensive

(1) Where a second seizure, on being presented for transcription, is found to be more extensive than the first seizure, the second seizure shall be transcribed with regard to any property not included in the first seizure, and the second execution creditor shall give notice of his seizure to the first execution creditor.

(2) The first execution creditor shall, where the 2 seizures are—

- (a) at the same stage, consolidate and carry them on as one;
- (b) not at the same stage, stay proceedings on the first seizure and carry on the second up to the stage attained by the first and then consolidate the 2 seizures.

#### 58. Subrogation

Where the first execution creditor does not take any step to carry on the second seizure within 8 days after the seizure has been notified to him under section 57, the second execution creditor may ask for subrogation in the proceedings.

#### 59. Collusion, fraud and negligence

(1) An inscribed or judgment creditor may also ask for subrogation in the proceedings where there has been collusion, fraud or negligence on the part of—

- (a) the creditor; or
- (b) any financial institution, legal adviser and their agents,

carrying on the proceedings, without prejudice to the right of a party aggrieved by the collusion, fraud, or negligence, as the case may be, to sue any person responsible for damages to the inscribed or judgment creditor.

(2) In this section—

“negligence” means—

- (a) the non-fulfilment of any prescribed formality;
- (b) the fulfilment of any prescribed formality after the prescribed time; or
- (c) the non-exercise of due diligence in bringing the property under seizure to adjudication.

[S. 59 amended by s. 48 (c) of Act 10 of 2017 w.e.f. 24 July 2017.]

#### 60. —

### **61. Decision of Master**

(1) The decision of the Master, on any demand in subrogation, shall, except where subrogation is requested on the ground of fraud or collusion, be final and without appeal.

(2) The costs of the proceedings shall, in all cases, be borne by the unsuccessful party, in accordance with articles 130 and 131 of the Code de Procédure Civile, and shall not be considered as costs of sale.

### **62. Proceedings on subrogation**

Where subrogation has been granted against a party who has the carriage of the sale, that party—

- (a) shall deliver forthwith, to the party subrogated, all documents relating to the seizure on being given a simple receipt for them; and
- (b) may, after the judgment of adjudication, claim payment of his disbursements only as part of the costs of sale.

### **63. Continuance of proceedings**

(1) Where a seizure has been erased and where, subsequent to its transcription and prior to the erasure, other creditors have presented seizures for transcription, the proceedings shall be continued by the creditor who has applied for the erasure.

(2) Where the creditor takes no steps, within 3 days, to have his seizure transcribed, the proceedings may be continued by the most diligent creditor.

### **64. Demand of distraction**

(1) The demand of distraction of the property seized shall be instituted against both the execution creditor and the execution debtor.

(2) The first inscribed creditor shall also be joined, and service of the demand shall be made on him at the domicile elected by him in his inscription.

### **65. Form of demand**

(1) The demand of distraction shall mention any titles (*titres justificatifs*) relied on in support of it, and the title shall be filed together with the original of the demand, at the Master's Office, after service of the demand.

(2) Notice of the demand shall be published in 3 daily newspapers and an inscribed or judgment creditor may intervene at his own cost.

### **66. Demand as to portion of seizure**

(1) Where the demand of distraction applies only to a portion of the property seized, the proceedings for the sale and adjudication of the residue shall be continued.

(2) (a) The Master may, if he thinks fit, on application made to him by an interested party, order a stay of proceedings as regards the whole of the property seized.

(b) Where a distraction of a part is ordered, the execution creditor may reduce his *mise à prix* in the memorandum of charges.

*continued on page S3 – 19*



**67. Seizure of part of property**

Where several portions of land have been united into one property, and are cultivated or occupied as such by the execution debtor, the execution debtor or an inscribed or judgment creditor may, if a portion only of the property has been seized, ask that the whole property be included in the same sale and adjudication.

**68. Nullity before reading**

(1) Where nullity, which is alleged to have existed in the proceedings before the reading of the memorandum of charges, is not taken up before the Master at least 3 days before the reading, it shall be deemed to have been waived.

(2) Where the objection is held valid, the proceedings shall be resumed from the last valid step, and the time for the fulfilment of the subsequent steps in the proceedings shall begin to run from the date of the judgment pronouncing the nullity.

**69. Nullity subsequent to reading**

(1) A nullity, which is alleged to exist in the proceedings after the reading of the memorandum of charges and all matters incidental to, or connected with, the sale and adjudication of the property in question, shall be taken up before the Master at least 8 days before the day appointed for the sale and adjudication.

(2) Where the objection is held valid, the Master shall set aside all proceedings subsequent to the reading of the memorandum of charges and appoint another day for the sale and adjudication.

**70. Notice for hearing objections**

Five days' previous notice, with summons, of the day appointed by the Master for having the nullity taken up before him, or for having such other matters dealt with by him, shall be given to the interested parties.

**71. Nullity in case of small property**

(1) In the case of a property not exceeding 6,000 rupees in value, any nullity alleged to exist in the proceedings shall be objected to by a simple declaration made and signed by the party objecting, or his attorney, at the foot of the memorandum of charges, at least 6 days before the day of the sale.

(2) (a) The declaration shall specify, in a summary manner, the grounds of objection.

(b) The mere fact of making the declaration at the foot of the memorandum of charges shall be sufficient notice to all interested parties.

(3) The Master shall hear the objection on the day of sale, and his decision shall be final and without appeal.

(4) Where the objection is held valid, the proceedings shall be resumed from the last valid step, and the time for the fulfilment of the subsequent steps shall begin to run from the date of the Master's judgment pronouncing the nullity.

#### **72. Costs of objection**

The costs of objection, and of other incidentals of any of the proceedings, shall be borne by the unsuccessful party, in accordance with articles 130 and 131 of the Code de Procédure Civile, and shall not be considered as part of the costs of sale.

#### **73. Costs of disbursements**

(1) The attorney prosecuting the sale shall be entitled to claim from the adjudicatee, at the time of sale, his costs of disbursements as taxed by the Master.

(2) No additional sum, beyond the costs of disbursement and of the proceedings towards the seizure and sale of the property, shall be claimable as against the execution debtor or the adjudicatee, as the case may be.

#### **74. Fees of sale**

(1) Subject to section 75, the attorney prosecuting the sale shall, over and above the costs of disbursement, be entitled, on any distribution of the sale price of an immovable property, to claim as fees of sale a percentage of the sale price to be determined in accordance with the Legal Costs and Fees Regulations 2000.

(2) Any costs under this section due to the attorney prosecuting the sale, together with interest, shall be claimable by him at the time of the *ordre*, and shall, with regard to privilege, rank as judicial costs.

#### **75. Costs claimable if client collocated**

The right of an attorney to claim a percentage or a share of the percentage of the sale price shall be contingent on the party, for whom the attorney acts, being collocated, at the *ordre*, for some portion of his claim in respect of which the seizure has been made or the subrogation has been obtained.

#### **76. Costs when claim settled**

(1) Where the claim of the execution creditor is settled and the proceedings towards the sale of the property seized are discontinued, the attorney prosecuting in respect of that claim shall, notwithstanding section 74, be entitled to claim payment of his full costs of proceedings up to the time of payment or settlement.

(2) The costs shall be taxed according to the tariff in force.

**76A. Parts I and II not applicable to credit agreements**

Parts I and II of this Act shall not apply to a credit agreement under the Borrower Protection Act.

[S. 76A inserted by s. 24 (4) of Act 2 of 2007 w.e.f. 7 March 2007.]

**PART III – PROPERTY OF MINORS**

**77. Sale of immovable property of minors**

(1) Notwithstanding article 433 of the Code Civil Mauricien, a Judge in Chambers may, subject to sections 78 and 79, authorise the sale of immovable property belonging to a minor, if it is shown to his satisfaction that there is a manifest advantage or an absolute necessity for the sale.

(2) Where the sale of an immovable property in the joint ownership of a minor and of a person of age is prosecuted at the instance of the latter, the sale shall be prosecuted in accordance with sections 97 to 118.

**78. Fixing price and conditions**

(1) Where a Judge in Chambers authorises a sale of immovable property belonging to a minor, he shall, in the order authorising the sale, specify the conditions of the sale and shall fix a *mise à prix* based on—

- (a) an examination of the title deeds of the property;
- (b) any existing lease of the property;
- (c) the rental value of the property; and
- (d) the estimated value of the property for the purposes of assessment for the payment of any tax or rate.

(2) Where the Judge is unable to satisfy himself as the value of the property in accordance with subsection (1), he shall, instead of fixing the *mise à prix*, direct by order that the *mise à prix* be determined by an appraiser.

(3) Where an order is made under subsection (2), the appraiser shall, within a period to be fixed by the Judge in the order, make his report which shall, in a summary manner, give a description of the property and of the basis on which he has made his estimate.

**79. Memorandum of charges**

A sale under section 77 (1) shall take place pursuant to a memorandum of charges which shall—

- (a) be filed in the Master's Office by the attorney prosecuting the sale; and
- (b) contain—
  - (i) a reference to the title deeds of the property;

- (ii) a description of the property, in substantially the same terms as provided in section 5 (c); and
- (iii) the *mise à prix*, and the conditions of the sale.

**80.** —

**81. Day of sale**

The day of sale shall be fixed by the Master, in writing, at the foot of the memorandum of charges, at the time of its filing.

**82. Notice of filing of memorandum**

(1) Notice of the filing of the memorandum of charges and of the day for the sale shall, at least 30 days before the day of sale, be served on all inscribed creditors who have taken their inscription before the deposit of the memorandum of charges, at the domiciles elected by them in their inscription.

(2) One notice shall suffice for each creditor, whatever may be the number of inscriptions taken by him.

**83. Notice to unpaid vendor**

Where, among the inscribed creditors, there is anyone holding a duly inscribed vendor's privilege, a notice similar to that specified in section 23 shall be served on him in the manner specified in that section.

**84. Notice to subguardian**

In addition to the notices under sections 82 and 83, notice of the filing of the memorandum of charges, and of the day fixed for the sale, shall, at least 30 days before the sale, be served on the subguardian in person, and the subguardian shall be summoned by that notice to be present at the sale, with the intimation that the sale shall take place at the time appointed, whether he is present or not.

**85. Notice of day of sale**

(1) Notice of the sale, in the form of the Second Schedule shall, at least 30 days before the sale, be published in the *Gazette* and in 3 daily newspapers.

(2) The notices shall, for all intents and purposes, be taken to be sufficient notice to any creditors by way of legal mortgage which is not inscribed.

(3) A similar notice shall be again published in 3 daily newspapers, not less than 12 days before the day of sale.

**86. Change in conditions of sale**

(1) A judgment or inscribed creditor may—

- (a) apply for an amendment of the memorandum of charges; or
- (b) demand that the proceedings be declared null.



(2) The application shall be made—

- (a) at least 10 days before the day of sale; and
- (b) by petition to the Master, specifying in a summary manner the nature and grounds of the application.

(3) The Master shall make his order on the petition appointing a day for hearing.

(4) The petition, with the Master's order, shall be—

- (a) served on the parties who, by the petition and order, are required to show cause, 5 days before the day of hearing; and
- (b) made known within the period under paragraph (a), to creditors by an advertisement in 3 daily newspapers—
  - (i) specifying in a summary manner the nature of the application or demand; and
  - (ii) informing them of their right to intervene, if they wish, before the Master on the day of hearing.

(5) A creditor who wishes to appear shall do so at his own cost, unless the Master, on dismissing the petition, orders the petitioner to pay the costs of that creditor.

#### **87. Costs of objection**

The costs of the application, together with all costs of any other incidental proceedings arising out of or in connection with the proceedings, towards the sale of the property, shall be borne by the unsuccessful party, in accordance with articles 130 and 131 of the Code de Procédure Civile, and shall not be considered as costs of the sale.

#### **88. Biddings not reaching upset price**

Where, on the day of sale, the biddings do not reach the upset price, the Master may, on application made by the party prosecuting the sale, or by any other interested party, order that the property be sold below the upset price, and shall fix a day, not less than 14 days before the date of his order, for the resale of the property.

#### **89. Publication of notice**

Notice of the date of the sale under section 88 shall be published in 3 daily newspapers, not less than 8 days before the date fixed.

#### **90. Apportionment of sale price**

(1) Where the property to be sold belongs to several minors, and their respective rights are liquidated and ascertained, it shall not be necessary to apportion the sale price by deed of partition.

(2) The apportionment may be made in and by the memorandum of charges, or the Master may, in case of need, distribute the sale price between the parties entitled to it.

**91. Costs of sale**

The costs of sale which the attorney prosecuting the sale may claim shall consist only of—

- (a) his disbursements as taxed by the Master; and
- (b) the costs authorised under the Legal Costs and Fees Regulations 2000.

**92. – 96. —**

**PART IV – SALE BY LICITATION**

**97. Demand in licitation**

(1) Where the sale by licitation of an immovable property can only take place under judicial authority (*en justice*), the demand in licitation shall be made, *ex parte*, by petition to the Master setting out—

- (a) a summary description of the property sought to be licitated; and
- (b) the respective names, places of abode, and callings of the parties against whom the licitation is to be prosecuted.

(2) The Master shall, on the presentation of the petition, note on it the day and hour when it has come into his possession.

**98. Where several demands are made**

(1) Where several demands for a licitation, or a division in kind of the same property, have been made, the carriage of the proceedings shall belong to the party whose petition has been presented first in order of time.

(2) Where 2 demands are presented simultaneously, the carriage shall devolve on the attorney who is senior in standing.

**99. Collective demand by co-licitants**

A demand for a licitation or for a division in kind may be made in the joint names of all the co-licitants, even where some of them are minors, or are entrusted to a guardian, provided that the demand is sanctioned by the Judge in Chambers.

**100. Commencement of proceedings**

(1) The party who has the carriage of the proceedings shall, within 15 days after the deposit of his demand, commence the proceedings by filing, in the Master's Office, the memorandum of charges under which he proposes to sell the property.

(2) The memorandum shall contain—

- (a) a reference to the title deed of the property;
- (b) a description of the property in substantially the same terms as provided by section 5 (c);
- (c) the *mise à prix* and the conditions of the sale;
- (d) the name, place of abode, and calling of the party prosecuting the sale;
- (e) the name and place of business of his attorney;
- (f) the respective names, places of abode, and callings of the several parties who have been made defendants in licitation; and
- (g) the election of domicile in Port Louis by the party prosecuting the sale.

#### **101. Notification of deposit of memorandum**

(1) Within 15 days of the date of the deposit of the memorandum of charges, notice shall be given to—

- (a) the parties who have been made defendants in the licitation, by service on them personally;
- (b) an inscribed creditor, by service on him at the domicile elected by him in his inscription, where he has taken his inscription before the deposit of the memorandum of charges; and
- (c) a creditor by way of legal mortgage which is not inscribed, by publication in the *Gazette* and in 3 daily newspapers in the form of the Second Schedule.

(2) Where an inscribed creditor specified in subsection (1) (b) is a person holding a vendor's privilege duly inscribed, the notice given to that person shall be similar to that specified in section 23, and shall be served in the manner specified in that section.

#### **102. Objection to licitation**

(1) Within 30 days after the expiry of the period specified in section 101, a defendant in the licitation or an inscribed or judgment creditor may object to—

- (a) the licitation;
- (b) any clause or condition of the memorandum of charges; or
- (c) any nullity in the proceedings.

(2) An objection under subsection (1) shall be made, heard and determined in accordance with sections 86 and 87.

#### **103. Master may fix date of sale**

After—

- (a) the expiry of the period specified in section 102 for making objections; or

(b) any objections have been heard and finally determined, the Master shall, at the foot of the memorandum of charges, make his order fixing the day of sale, which shall be not less than 4 weeks from the date of the order.

**104. Notice to be published of day of sale**

(1) Within 8 days of the date of the Master's order fixing the date of the sale, a notice in the form of the First Schedule shall be published in 3 daily newspapers and in the *Gazette*.

(2) The notice shall be repeated not less than 12 days before the day of the sale in 3 daily newspapers.

**105. Stay of licitation**

(1) A defendant in a licitation may, within the period specified in section 102, apply by petition to the Master for an order staying the proceedings in licitation, and substituting, in their place, proceedings for a division in kind (*partage en nature*) of the property sought to be licitated.

(2) A co-owner of an immovable property may also, by petition to the Master, ask that the property be divided in kind or, where such division is not possible, that it be sold by licitation.

**106. Master's order**

Where there is an application under section 105, the Master shall, at the foot of the petition, make an order fixing a date for the other co-owners and any other party whom he may order to be joined, to show cause before him.

**107. Service of order**

A copy of the petition and of the Master's order shall be served on the parties named in them not less than 10 days before the day of hearing.

**108. Election of domicile**

All parties appearing shall be required by the Master to elect domicile in Port Louis, and all acts relative to, or in connection with, the proceedings may be served on them at their domicile in Port Louis.

**109. Rejection of division in kind**

The Master may, after hearing the parties, and without previous appraisalment (*expertise*), refuse the application for a division in kind where—

- (a) the rights of the parties are not liquidated;
- (b) it appears to him that the property cannot be conveniently divided in kind; or
- (c) it is shown to his satisfaction that the costs of the proceedings for a division in kind, including any later and consequent proceedings of *mise en règle*, would be excessive, taking into consideration the value of the property.

### 110. Appraisement

(1) The Master may also, before deciding on the application, order an appraisement (*expertise*) by an appraiser to be appointed by him.

(2) (a) Where an appraiser is appointed under subsection (1), he shall, within a period to be fixed by the Master, make and file his report in the Master's Office.

(b) The report shall—

- (i) contain, in a summary manner a description of the property, its estimated value, and the basis on which the valuation is made; and
- (ii) state whether or not the property may conveniently be divided in kind and, if so divisible, specify the proposed lots in accordance with articles 439, 440 and 816 to 842 of the Code Civil Mauricien.

(3) It shall not be necessary to administer an oath to the appraiser.

(4) The parties to the division in kind shall be summoned, by a notice served on them in person or at the domicile elected by them under section 108, not less than 4 days before the day fixed for the appraisement, to attend at the time and place where the appraisement is to be made.

(5) Where the appraiser informs the Master that he cannot make and file his report within the period fixed under subsection (2) (a), due to his inability to obtain the necessary or relevant clearance, approval or permit from an administrative authority, the Master may make an order requiring the administrative authority to communicate its decision within such period as may be fixed by him.

(6) The attorney for the petitioner shall, within 5 days, give written notice of the order made by the Master under subsection (5) to the administrative authority and all interested parties.

[S. 110 amended by Act 15 of 2000.]

### 111. Formation of lots

Where the rights of the parties to the division (*co-partageants*) are liquidated but unequal, the Master may—

- (a) where he thinks that the drawing of lots would be attended with inconvenience or disadvantage, refuse to order the division in kind; or
- (b) in ordering an appraisement, direct the appraiser to form and allot the respective lots in proportion to the rights of the respective parties.

### 112. Order for licitation

(1) In every case where the Master refuses to order a division in kind, he shall order the applicant to pay all the costs of the application.

(2) In the case of a request for licitation under section 105 (2), the Master shall authorise the applicant to prosecute the sale of the property by licitation.

### **113. Confirmation of appraiser's report**

(1) Within 15 days of the filing of the report of the appraiser, the party who has the carriage of the sale shall apply to the Master to appoint a date so that parties may appear before him to show cause against the confirmation (*enterrinement*) of the report and, as the case may be, against the drawing of lots.

(2) Where the party who has the carriage of the sale does not apply to the Master within the period specified under subsection (1), an interested party may make the application to the Master.

### **114. Drawing of lots**

(1) Where the Master has made an order under section 111 (b), his order confirming the report of the appraiser shall operate as a definite allotment of shares.

(2) Where the Master, after taking cognisance of the appraiser's report under section 110 (2) (b) (ii), authorises the drawing of lots shall take place before him immediately after the confirmation of the report or at such future date as he may appoint.

### **115. Memorandum of proceedings**

The Master shall, in all cases, draw up a memorandum of proceedings and annex to it the report of the appraiser.

### **116. Partition à l'amiable**

Any persons who wish to make a partition of movable or immovable property, or both, among themselves, even though some of them are minors or absent or entrusted to a guardian, may, if they are legally represented, proceed, *à l'amiable*, to the operations of account, liquidation, and partition, without drawing lots or complying with the requirements of article 832 of the Code Civil Mauricien, subject to—

- (a) a valuation of all the movable or immovable property to be divided being made before the partition by an appraiser appointed by a Judge;
- (b) the partition being made by notarial deed before a notary chosen by all the parties or appointed by a Judge; and
- (c) the deed of partition, when drawn up, being, as regards the interests of any party to it who is a minor or person entrusted to a guardian, submitted for approval to and approved by a Judge in Chambers.

**117. Costs**

Sections 87 and 91 shall apply to sales by licitation.

118. —

**PART V – SPECIFIC SALES AND SEQUESTRATION**

**119. Petition for sale**

(1) Where an heir under benefit of inventory desires that an immovable property belonging to a succession be sold, he shall make a petition to the Master setting out a summary description of the property and praying that the sale be ordered.

(2) The petition shall be communicated to the *Ministère Public*, and, on his conclusions, the Master shall order the sale to take place and shall fix the *mise à prix* according to section 78.

(3) The formalities and periods specified in sections 77 to 91 shall apply to sales effected under this section.

(4) Where an heir under benefit of inventory sells an immovable property in contravention of section 119, he shall be deemed to be a simple heir (*héritier pur et simple*).

120. —

**121. Renunciation to a succession**

The renunciation of a succession opened shall be made at the office of the Master in the register mentioned in article 784 of the Code Civil Mauricien, and a copy of the renunciation shall be transcribed with the Conservator of Mortgages.

[S. 121 amended by Act 4 of 1999.]

122. – 123. —

124. —

[S. 124 repealed by s. 414 (4) of Act 3 of 2009 w.e.f. 1 June 2009.]

**125. Petition to Master**

(1) Where the Curator puts an immovable property up for sale, he shall apply, by petition, to the Master for an order for the sale to take place before him.

(2) The petition shall—

- (a) specify the circumstances under which the sale is to take place; and
- (b) bear the approval of the Attorney-General, and contain an assessment by a sworn valuer appointed by the Attorney-General and a memorandum of the charges and conditions of the sale.

**126. Memorandum of sale**

The memorandum of the charges and conditions of sale shall be signed by the Curator and shall contain—

- (a) the name of the deceased or absent owner of the property;
- (b) a reference to the title deed of the property;
- (c) a description of the property in substantially the same terms as provided in section 5 (c); and
- (d) the *mise à prix* and the conditions of sale.

**127. Order for sale**

The Master shall, at the foot of the memorandum of charges, make an order fixing the date for the sale to take place before him.

**128. Sales under section 125**

Sales under section 125 shall take place in accordance with Part III.

**129. Powers of Supreme Court**

(1) In any sale by the Master under this Act, the Supreme Court may, on the application of an interested party—

- (a) order the sequestration of an immovable property and provide for its management and administration; and
- (b) authorise the sequestrator to provide money for—
  - (i) the payment of the current wages and salary of the employees and manager of the property;
  - (ii) the purchase of provisions; and
  - (iii) maintaining the property in such condition as to prevent its deterioration in value during the sequestration.

(2) The Court may also order the payment of the arrears of wages or salary which may be due to the employees of the property under a judgment of the Industrial Court.

(3) The sequestration shall, in addition, be under such other conditions as the Court may determine.

**130. Application for sequestration order**

(1) The application may be made to a Judge returnable before the Supreme Court, in term time, or before a Judge, in vacation.



(2) Notice of the application and of the return day shall be published, in 3 daily newspapers, not less than 3 days before the return day.

(3) The notice shall be served personally on the first and last inscribed creditors, and the Judge may order that notice of the application be served on any party having an interest.

### **131. Inspection of property**

(1) The Judge before whom the application is made, or the Court, may appoint a competent person and order that the property be inspected by him.

(2) The person appointed under subsection (1) shall, after inspection of the property and examination of the books, make a report about—

- (a) the monthly amount of wages and salary according to the pay book;
- (b) the practical reductions that may be made without detriment to the property;
- (c) the weekly amount required for provisions; and
- (d) any other items of expenditure that may be necessary to prevent the property from deteriorating in value.

(3) The report shall be verified by affidavit of the person making it, and its costs shall be defrayed by the person applying for the sequestration, but shall be made costs of sequestration if a sequestration is ordered.

(4) The Judge or Court may call for and obtain information from such parties as the Judge or Court thinks fit.

### **132. Intervention**

(1) On the return day, an interested party may intervene and oppose the application for sequestration.

(2) The costs of the intervention shall, unless the Court or Judge orders otherwise, be borne by the intervening party.

### **133. Duration of sequestration**

(1) Where the sequestration is ordered, it shall, subject to subsection (2), be limited to such period, not exceeding 4 months, as may be necessary in order to bring the property to sale.

(2) The sequestration may be continued, on application made in accordance with section 130, and on good sufficient cause shown, for such further period as shall, together with the original period, not exceed 6 months.

(3) Notwithstanding subsections (1) and (2), the Court may, with the consent of the inscribed creditors, extend the sequestration of any property for such further period, beyond 6 months, as those creditors may consent to, and as the Court thinks necessary in the interest of all parties.

**134. Amount to be spent**

(1) The sequestration order shall specify the amount which the sequestrator shall be authorised to spend and the manner in which it is to be spent.

(2) The sequestrator shall not, without the special leave of the Court—

- (a) incur any unauthorised expenses; or
- (b) apply any money in breach of the sequestration order.

**135. Privilege of sequestration**

Any money which has been advanced by a sequestrator under section 134, shall be a privileged claim on the crop of the property and on its sale price, in case of insufficiency of the crop, and the privilege shall have priority over all other claims.

**136. Interest in supplies**

(1) The sequestrator shall have no direct or indirect interest in the provision of supplies to the property under his charge.

(2) Any item of his account which has been incurred, to the satisfaction of the Court, in breach of subsection (1), shall be disallowed.

**137. Sequestration accounts**

The sequestrator shall deposit in the Master's Office a copy of the accounts of his administration within—

- (a) the periods specified in the sequestration order; or
- (b) such other period as may be ordered by the Court or a Judge.

**138. Sale by public competition**

Sections 14 (3), 23 to 25, 32, 33 (1), 34, 36 to 38, 40 to 46, 49 and 50 shall, with such adaptations and modifications as the context requires, apply to a sale, by public auction, of immovable property.

**PART VI – OUTBIDDING AND FOLLE-ENCHERE**

**139. Amount of outbidding**

(1) Where a sale takes place before the Master, any person may, within 8 days from the adjudication, on good cause shown to the Master's satisfaction, make an outbidding provided it is not less than one sixth of the sale price, exclusive of all costs of sale.

(2) An outbidding shall, for the purposes of section 53, be deemed to be an application incidental to the sale of immovable property.

[S. 139 amended by Act 29 of 1990; Act 15 of 1994.]

#### 140. How outbidding is made

The outbidding shall be made at the Master's Office and, once made, shall not be withdrawn.

#### 141. Amount of deposit

Where the outbidding—

- (a) does not exceed 50,000 rupees, the full amount shall be deposited at the time when the outbidding is made; or
- (b) exceeds 50,000 rupees, the amount to be deposited shall be at the discretion of the Master, but, in such a case, the minimum shall be 50,000 rupees and the maximum 250,000 rupees.

[S. 141 amended by Act 15 of 1994.]

#### 142. Publication of outbidding

Where an outbidding is made, the outbidder's attorney shall *ex officio* cause to be published in 3 daily newspapers, not less than 10 days before the sale, a notice in the form of the Third Schedule stating that—

- (a) the property in question has been sold at a certain price;
- (b) an outbidding has been made upon the sale;
- (c) the property will again be put up for sale on the date fixed by the Master; and
- (d) all prospective buyers may attend and bid on the date specified in paragraph (c).

[S. 142 amended by Act 15 of 1994.]

#### 143. Costs of outbidding

The costs of making the outbidding shall be taxed as soon as the outbidding is made, and shall be included in the costs of sale.

#### 144. Biddings

(1) On the day fixed for the reopening of the biddings, a person may bid by himself or by an authorised agent.

(2) Where there are no bidders, the property shall be adjudicated to the outbidder.

#### 145. Forfeiture of deposit

(1) Where, on the day when the biddings are re-opened—

- (a) the outbidder does not appear; or
- (b) the outbidder appears, but does not fulfil the conditions of sale and the property remains finally adjudicated to the original adjudicatee for the original price,

the outbidder shall forfeit the amount of his deposit and, in addition, be liable, at the suit of an interested party, for the difference between the price of adjudication and the amount of his outbidding.

(2) The deposit forfeited under subsection (1) shall, after deducting from it the costs of the outbidding, be added to, and form part of, the sale price of the property.

**146. No outbidding on adjudication**

Where a property has been adjudicated on an outbidding, no additional outbidding shall be admissible on the adjudication.

**147. Outbidding on sale by *folle-enchère***

An outbidding may be made on a sale by *folle-enchère*.

**148. Sale by *folle-enchère***

When an adjudicatee fails to execute the conditions of sale incumbent on him, the property shall be resold by *folle-enchère*.

**149. Delivery of certificate**

(1) Where the *folle-enchère* is prosecuted before delivery of the title to the adjudicatee, as provided in section 44, the party prosecuting the *folle-enchère* shall cause to be delivered to him, by the Master, a certificate to the effect that the adjudicatee has not justified fulfilment of the conditions of the adjudication then incumbent on him.

(2) The certificate, together with a *commandement* to execute the conditions of sale, shall be served on the adjudicatee in person.

**150. Objections**

(1) An objection against the delivery of the certificate under section 149 shall be by way of petition to the Master, specifying in detail the grounds of the objection.

(2) At the foot of the petition, the Master shall fix a period for hearing the objection.

(3) The costs of objection shall be paid in accordance with articles 130 and 131 of the Code de Procédure Civile, and shall not be considered as costs of sale.

**151. Proceedings for resale**

(1) The party prosecuting the *folle-enchère* shall—

- (a) on proof of service of the certificate and *commandement* specified in section 149; or
- (b) where the *folle-enchère* is prosecuted after delivery of the title of the adjudicatee, on proof of the service of the warrant for payment and *commandement*,

apply to the Master to appoint a date for the resale by *folle-enchère*.

(2) The resale shall take place not less than 20 days nor more than 30 days from the date of the application.

#### **152. Notice**

(1) The party prosecuting the *folle-enchère* shall cause a notice of the resale to be published in—

- (a) 3 daily newspapers, within 4 days from the date of the Master's order fixing the day of the resale; and
- (b) the *Gazette*, within 8 days from the date of the Master's order fixing the day of the resale.

(2) The notice shall be in the form of the Fourth Schedule.

(3) Where the property of which the *folle-enchère* is prosecuted has been previously adjudicated for less than 6,000 rupees, no notice in the *Gazette* shall be required.

#### **153. Postponement of sale**

(1) On the day appointed for the resale by *folle-enchère*, the postponement of the sale may, on the application of an interested party, be ordered by the Master.

(2) The postponement shall take place in accordance with section 36, and the sale shall take place after fresh publications have been made in 3 daily newspapers not less than 12 days before the sale.

#### **154. Resale prevented by adjudicatee**

Where, before the resale of the property takes place, the adjudicatee—

- (a) proves, to the satisfaction of the Master that he has fulfilled all the conditions of the adjudication then incumbent on him; and
- (b) deposits with the Master a sum sufficient to defray the costs of *folle-enchère*, as taxed by the Master,

the Master shall order the resale not to take place.

#### **155. Costs of concurrent sale and resale**

The costs of sale begun before the Master shall never be employed as costs of resale, and the costs of a resale which is in course of prosecution shall never be employed as costs of a current sale.

#### **156. Liability of *fol-enchérisseur***

(1) The adjudicatee against whom the resale by *folle-enchère* is prosecuted (*fol-enchérisseur*) shall—

- (a) be responsible for the difference between the purchase price and the price at which the property has been resold by *folle-enchère*; and
- (b) have no right to claim any excess of price obtained on the resale.

(2) Any excess of price under paragraph (b) shall be distributed as part of the sale price of the property.

## **PART VII – PROPERTY SOLD OTHERWISE THAN BY PUBLIC AUCTION**

### **157. Deposit of title deed**

(1) Any new owner proprietor of an immovable property who has acquired it otherwise than under a sale by public auction before the Master, and who wishes to protect himself from the effect of proceedings under articles 1658 to 1685 of the Code Civil Mauricien, shall, before those proceedings have been commenced, or, at the latest, within 30 days of service on him of the first summons (*sommation*)—

- (a) deposit his title at the Master's Office;
- (b) notify the deposit, through an usher specially designated by a Judge, to the creditors who have taken their inscription before or on the day of the transcription of his title; and
- (c) publish, in 3 daily newspapers, a summary notice of the deposit under paragraph (b).

(2) (a) Notification under subsection (1) (b) shall be served on the creditors at the domicile which they have elected in their inscription.

(b) Where no election of domicile has been made on behalf of a vendor, the notification shall be served on him either in person or at his actual or last known domicile.

### **158. Requisition for resale**

(1) An inscribed or judgment creditor may, within 15 days following the fulfilment of the formalities under section 157, make a requisition that the property be put up for sale by public auction before the Master.

(2) Where the requisition is made by a creditor holding a vendor's privilege duly inscribed, he shall not be debarred from making a declaration that he intends to enter an action in cancellation in the manner specified in section 23.

(3) The requisition shall be made by—

- (a) a mere declaration to that effect, in the margin, or at the foot, of the document of deposit (*acte de dépôt*); and
- (b) a simultaneous deposit of a sum of money, to be fixed by the Master, which shall not exceed 5,000 rupees.

### **159. Where requisition is not made**

(1) Where no inscribed or judgment creditor makes a requisition under section 158, the value of the property shall be deemed to be definitely fixed at the price stipulated in the deed of sale or declared by the purchaser.

(2) The purchaser shall be freed from every privilege or inscribed mortgage on—

- (a) payment of his price to the creditors according to the ranking of their claims; and
- (b) deposit of the price under paragraph (a) with the Master.

**160. Formalities of resale**

(1) Where the property is put up for sale by public auction, the sale shall be proceeded with under the formalities prescribed for sales by forcible ejectment.

(2) The sale shall be proceeded with, at the instance of the purchaser, within 15 days after the date of the requisition specified in section 158.

(3) Where, after the period specified in subsection (2), the purchaser has taken no step, the sale may be prosecuted at the instance of an inscribed or judgment creditor.

**161. Memorandum of charges**

(1) The party prosecuting the resale shall, within 15 days after the requisition for the sale, deposit the memorandum of charges and conditions of sale.

(2) Where the party prosecuting the sale fails to do so within the period specified in subsection (1), an inscribed or judgment creditor may do so in his place, and shall then be *ipso facto* subrogated in the proceedings.

**162. Sale not to be stopped**

The abandonment of the proceedings (*désistement*) by the creditor who has made a requisition for the resale shall not stop the resale, except on the express and written consent of the inscribed creditors and the judgment creditors who have previously filed with the Master an opposition against any abandonment of the proceedings.

**163. Forfeiture of deposit**

Where the biddings at the resale by public auction do not exceed one tenth of the price stipulated in the deed of sale, the sum deposited under section 158 shall be forfeited, and shall be added to the price stipulated in the deed, to be distributed in accordance with the law.

**164. Where title contains various properties**

Where the title of the new owner comprises movable and immovable property, some or all of which is burdened with mortgages but with different claims on each, the new owner shall declare, in his document of deposit and in his notification, the respective amounts of the total price he proposes to affect to each property.

**165. Reimbursement**

(1) The adjudicatee shall, over and above his price of adjudication—

- (a) reimburse to the dispossessed purchaser the costs of his contract, and of the transcription, the deposit, and the notification of the deposit; and
- (b) pay the costs incurred towards the resale of the property in the manner provided in sections 34 and 74.

(2) The duty payable upon the voluntary alienation shall be also refunded to the dispossessed owner as soon as the property has been adjudicated on the resale.

**166. Effect of adjudication**

The adjudication shall operate *pleno jure* as a resolution of the previous alienation.

**167. Property acquired by exchange or donation**

Sections 157 to 166 shall apply to immovable property acquired by exchange or donation.

**PART VIII – DISTRIBUTION BY WAY OF ORDER**

**168. Title to be registered and transcribed**

As soon as an adjudicatee has, under section 44, deposited with the Master the amount payable by way of duty on the registration and transcription of his title, the Master shall, *ex officio*, cause the title to be registered, transcribed and returned to him by the Conservator of Mortgages.

**169. Application for certificate**

(1) Immediately after the date of the transcription of the title of an adjudicatee, the party having the carriage of the proceedings or notwithstanding article 2201 of the Code Civil Mauricien, a notary designated by the Master shall apply, in writing, to the Conservator of Mortgages for a certificate of any inscription burdening the property sold.

(2) Where an application under subsection (1) is not made within 15 days after the transcription, the most diligent among the creditors or the purchaser may make the application and, on doing so, shall be *ipso facto* subrogated in the carriage of the proceedings.

[S. 169 amended by Act 4 of 1999.]

**170. Certificate transmitted to Master**

The Conservator of Mortgages, or, notwithstanding article 2201 of the Code Civil Mauricien, the notary designated under section 169, shall, *ex officio*, within 180 days of the application under section 169, transmit the



certificate to the Master, and the costs of the certificate shall be paid to the Master by the party who has the carriage of the proceedings.

[S. 170 amended by Act 4 of 1999.]

**171. Opening of *ordre***

(1) The Master, on receipt of the certificate, shall—

- (a) make an order declaring that the *ordre* is opened; and
- (b) cause a copy of his order to be posted up in some conspicuous place in his office.

(2) The original shall be annexed to the certificate of inscriptions, and shall be filed in the Master's Office.

**172. Notice to inscribed creditors**

(1) The party who has the carriage of the *ordre* shall, within 15 days of the opening of the *ordre*, summon the inscribed creditors to produce their claims.

(2) The summons shall be served on—

- (a) the creditors, at the domicile they have elected in their inscription; and
- (b) the vendor, at his actual domicile where he has made no election of domicile.

**173. Notice to adjudicatee**

The opening of the *ordre* shall, within the period specified in section 172 (1), be notified to the adjudicatee at the domicile elected by him under sections 40 and 41.

**174. Original of summons to be filed**

(1) Within 15 days after service of the summonses on the inscribed creditors, the party having the carriage of the *ordre* shall file the originals of the summonses in the Master's Office.

(2) Summonses shall be marked as filed, and the fact of filing shall be mentioned in the memorandum of proceedings (*procès-verbal*) of the *ordre*.

**175. Production of claims**

(1) Within 30 days after service of the summonses, every creditor shall produce his title (*titre*), together with a memorandum of production signed by his attorney, and containing a demand of collocation for the claim produced, and for the costs of production.

(2) The Master shall mark the title as filed, and shall annex the several documents of production to the minutes of the proceedings.

(3) The title shall—

- (a) not be withdrawn from the Master's Office until after the *ordre* has been finally closed; and
- (b) subject to any rules made by the Master or a Judge, be open to the inspection of all interested parties.

(4) Notwithstanding subsection (3), a creditor whose claim has been finally collocated may, unless ordered otherwise by the Master, withdraw his title on the objection of any other party to the *ordre*.

#### **176. Provisional scheme of distribution**

(1) (a) Where the Master has drawn up the provisional scheme of distribution, he shall sign it and issue a notice signed by him.

(b) The notice shall be posted up in his Office.

(2) Within 10 days after the posting of the notice in the Master's Office, the attorney who has the carriage of the proceedings shall notify and summon the attorneys of the creditors who have made production and the execution debtor to take communication of the provisional scheme of distribution, and make such objection to the scheme as they think fit, within 30 days from the date of service.

#### **177. Production out of time**

Where a creditor has neglected to make a production of his claim within the period specified in section 175, he may do so at any time before the expiry of the 30 days for objecting to the provisional scheme of distribution, but, in such case, he shall—

- (a) give, at his own cost, notice of his production to the creditors who have already made production of their claims; and
- (b) pay the costs of his production.

#### **178. Foreclosure**

Where a creditor, who has made a production and has been served with the notice under section 176, fails to take communication of, and object to, the provisional scheme of distribution within the period of 30 days, he shall be *ipso facto* finally foreclosed from making any further objection.

#### **179. Ventilation**

(1) Where there is necessity for the ventilation of the sale price of immovable properties sold together in one lot, the Master may, on the *ex parte* application of an interested party or even *ex officio*, make an order to that effect, on the memorandum of proceedings, appointing an appraiser and fixing a period within which he must file his report.

(2) The order shall be notified to the appraiser by the party who has the carriage of the proceedings.

(3) It shall not be necessary to administer an oath to the appraiser.

(4) Where the report of the appraiser is filled, it shall be annexed to the memorandum of proceedings without further formality, and the Master shall make the ventilation and establish the provisional scheme of distribution.

#### **180. Objections**

Any party who objects to the provisional scheme of distribution shall—

- (a) specify the collocation contested by him;
- (b) specify his principal ground of objection; and
- (c) produce and file any title or documentary proof in support of his objection.

#### **181. Uncontested claims**

(1) Where there is an uncontested claim prior in ranking to a contested claim, the Master shall—

- (a) close the *ordre* in respect of the uncontested claim; and
- (b) forthwith issue a warrant for payment (*bordereau de collocation*) for the claim.

(2) The Master may proceed, in the same manner as specified in subsection (1), with regard to any uncontested claim, provided that a sufficient surplus is reserved for payment of the contested claim.

#### **182. Uncontested scheme of distribution**

Where there is no contest in relation to the provisional scheme of distribution, the Master shall—

- (a) after the expiry of the time limit, finally close the *ordre*;
- (b) tax the costs of erasure of inscriptions not collocated for payment, and of the procedure for establishing the *ordre*, and those costs shall be collocated by preference over all claims or creditors;
- (c) deliver warrants for payment to the creditors collocated for payment; and
- (d) order the erasure of the inscriptions of all creditors who have not been collocated in so far as those inscriptions affect the property sold.

#### **183. Costs of acquittance**

The costs of discharge (*quittance*) and of erasure of inscriptions of the creditors collocated for payment, shall be borne by the adjudicatee.

#### **184. Hearing of objections**

(1) The Master shall, on the petition of the attorney who has the carriage of the proceedings, fix a date for hearing the objections to the provisional scheme of distribution.

(2) Where the attorney has taken no steps to have the objections disposed of within 14 days of the expiry of the time for making those objections, the attorney of any other interested party may do so.

(3) Where a party wishes to produce additional titles or documentary evidence, he shall do so not less than 3 days before the hearing.

(4) Notwithstanding subsection (3), the Master may, on good cause shown to his satisfaction, grant a postponement for a specified period for the production of additional proof, and his decision shall be without appeal.

#### **185. Appeal**

(1) In the case of any appeal from a decision of the Master, the creditor collocated last in rank may be made a party in case of need.

(2) No person, other than one whose collocation is contested by the appellant, shall be made a party in the appeal.

(3) Any party, whose collocation is not contested on appeal, shall be entitled to immediate delivery of his *bordereau* by the Master.

(4) The appellant shall, in his appeal, specify his principal ground of appeal.

#### **186. Final closure of *ordre***

(1) As soon as final judgment is given on appeal, the Master shall—

- (a) finally close the *ordre* and deliver warrants for payment to the parties entitled to receive it; and
- (b) order the erasure of the inscriptions of all creditors who have not been collocated for payment.

(2) All the warrants for payment delivered by the Master under subsection (1) shall specify the title by virtue of which the collocation has taken place, with the date, volume and number of the inscription.

#### **187. Costs of contested claims**

(1) The costs of the litigant creditors, whether before the Master or on appeal, shall be paid by the unsuccessful party, unless the Master or the Court orders otherwise, and those costs shall not be paid as costs of the *ordre*.

(2) Any contesting party, who has been negligent in producing in time, his titles or documentary evidence, may be liable to payment of costs on the day, even though successful.

#### **188. Erasure of inscriptions**

(1) As soon as the Master has closed the *ordre*, he shall deposit at the office of the Conservator of Mortgages an extract of the judgment ordering the erasure of all inscriptions not collocated for payment.

(2) The Conservator shall, on receipt of the judgment, proceed to the erasure of all those inscriptions.

**189. Certificate of erasure**

The certificates of erasure shall be annexed to the memorandum of proceedings.

**190. *Mainlevée* on payment of warrant**

Each creditor, collocated for payment by the mere fact of giving an authentic discharge for the amount for which he has been collocated, shall be deemed to have given his consent to the erasure of all inscriptions accruing to him in respect of his claim.

**191. Erasure by Conservator**

As soon as each claim collocated is paid, the Conservator of Mortgages shall, on production of the warrant for payment and an extract of the authentic discharge of the creditor, *ex officio* erase the inscriptions to the extent of the amount paid.

**192. Erasure on total or partial payment**

The *ex officio* inscription—

- (a) may be reduced, on the payment of the claim collocated, according to the extent of the amount paid; and
- (b) shall be finally erased, on proof by the adjudicatee that he has paid the purchase price to the creditors collocated for payment or to the execution debtor, as the case may be.

**193. Opening of *ordre***

(1) Where a property has been sold, otherwise than by forcible ejectment, the *ordre* may be opened at the request of the most diligent creditor or of the purchaser.

(2) Whatever may be the mode of sale, no distribution by way of *ordre* shall be necessary where there are less than 4 inscribed creditors on the property.

(3) Where there are less than 4 inscribed creditors on the property, the distribution of the price shall take place by the judgment of the Master.

**194. Warrant for payment executory**

All warrants for payment issued by the Master shall, without any additional formality, be executory.

**195. Payment of interest**

(1) Where there has been a sale by forcible ejectment or a sale of immovable property belonging to a bankrupt or insolvent, and the *ordre* has

not been finally closed within 6 months from the date of the judgment of adjudication, the adjudicatee shall, notwithstanding anything to the contrary in the memorandum of charges, at the end of those 6 months, and then every 3 months until the final closing of the *ordre*, pay into the hands of the Master all interest at such periods due by him in respect of the sale price.

(2) Where the adjudicatee is, at any time, 3 months in arrears of payment, an inscribed creditor may, on obtaining a certificate from the Master, and after service of the certificate on the adjudicatee, together with a *mise en demeure* to pay the interest in arrears, take proceedings under sections 148 to 156 for the resale of the property by *folle-enchère*.

#### **196. Inscription by creditor**

(1) A creditor may take an inscription to preserve the rights of his debtor.

(2) The amount of the collocation of the debtor shall be distributed rateably among all creditors of the debtor who, before the final closure of the *ordre*, have taken inscriptions under subsection (1), or have lodged attachments against the amount of the collocation.

#### **197. Subrogation**

(1) Where the attorney who has the carriage of the proceedings has not observed the formalities or periods specified in sections 168 to 200, he shall be deprived of the further carriage of the proceedings.

(2) The Master shall, on the *ex parte* application of an interested party, make an order replacing the attorney with another one.

(3) The order shall be entered on the memorandum of proceedings and shall be final and irrevocable.

(4) The defaulting attorney shall—

- (a) forthwith hand over to the attorney replacing him, after written acknowledgement, all documents in his possession relating to the proceedings; and
- (b) not be entitled to claim payment of his costs after the final closure of the *ordre*.

#### **198. Rectification of *ordre***

(1) Where a property is resold by *folle-enchère*, pending the proceedings for the distribution by way of *ordre* of the sale price, or even after the *ordre* has been finally closed and the warrants for payment issued, a fresh *ordre* shall not be necessary, but the Master shall amend the scheme of distribution according to the result of the resale, and make the warrants for payment executory against the new adjudicatee.

(2) The party applying for the amendment shall give notice of his application to the creditors collocated at the *ordre*.

### 199. Distribution of sale price

Where an immovable property is sold by public auction before the Master, the sale price shall be distributed in accordance with law, without regard to—

- (a) any previous sale of the same property; or
- (b) whether an *ordre* of the previous sale price has been opened or not.

### 200. Adjudicatee not affected by *folle-enchère*

(1) Where an immovable property is sold by public auction before the Master, the adjudicatee shall not be affected by a right of *folle-enchère* resulting from any unpaid sale price of the property, or a warrant of collocation on an earlier sale.

(2) The holder of a right of *folle-enchère* shall only retain the right to produce and claim payment, at the *ordre* or distribution of the new purchase price.

## PART IX – MISCELLANEOUS

### 201. Price fixed by sale

Where an immovable property is sold by public auction before the Master, the final price of adjudication shall be deemed to be the final and definitive value of the property, and the adjudicatee shall be freed from all privileged and mortgage claims by paying the adjudicated price in accordance with law.

### 202. Legal mortgages

(1) Subject to subsection (2), every sale by public auction before the Master shall also have the effect of *ipso facto* clearing the property from all legal mortgages not inscribed before the date of the transcription of the title of the adjudicatee.

(2) A creditor who, by way of legal mortgage, has not inscribed his claim before the transcription, may claim payment according to his ranking at the distribution of the sale price.

### 203. Date of sale

No sale shall have effect with regard to third parties, except from the date of transcription of the title of the adjudicatee.

### 204. Time for appeal

Any person, who wishes to appeal to the Supreme Court against an order or decision of the Master under this Act, shall lodge his appeal in the Registry, and serve notice of the appeal on all interested parties within 21 days from the date of the order or decision.

[S. 204 amended by Act 29 of 1992; Act 15 of 2000.]

**205. Appeals set down for hearing**

Every appeal shall, at any time of the term, be entered on the cause list, and shall be heard and determined with precedence over all other causes for the hearing of which no special day has been already appointed.

**206. Dismissal of appeal**

Where an appeal is dismissed, the appellant shall pay all the costs of appeal.

**207. Possession of property pending appeal**

(1) No appeal shall lie against a judgment of adjudication which is not objected to at the time of the adjudication.

(2) The fact of an objection shall, on the day of adjudication, be recorded by the Master on the memorandum of the *cahier des charges*.

(3) Where an appeal is lodged, the adjudicatee may take possession pending the appeal, and where he is afterwards dispossessed, he may claim and recover, by way of privilege, ranking over all other privileges, on the price of the property, his outlay for the maintenance of the property.

(4) The outlay claimed under subsection (3) may be revised and approved by the Master.

**208. Incidental applications**

An application before the Master, relative or incidental to any of the matters in this Act for which express provision is not made, shall be made by petition in accordance with sections 53 and 54.

**209. Nullities**

No person, other than a prejudiced party, may take up an objection.

**210. One attorney for parties having same interest**

(1) In any proceedings under this Act where several parties have the same interest, they may be represented by one and the same attorney.

(2) Where they cannot agree on the choice of an attorney, the Master or a Judge may appoint the attorney representing the greatest number of interested parties.

(3) Where the parties represented by several attorneys are equal in number, the attorney who is senior in ranking shall have charge of the proceedings, unless strong and reasonable grounds are shown against the choice of that attorney.

(4) The same attorney may appear for the guardian and subguardian of a minor, except where the interest of the minor and guardian appear to be in conflict.



**211. Judgment by consent as to costs**

No judgment by consent for the payment of any costs out of a common fund, the subject matter of distribution, shall be binding on any parties other than the actual parties to the judgment.

**212. Proof of newspapers**

No proof of the authenticity of the Gazette, or of any newspaper published in Mauritius shall be necessary, other than the signature of the Master on the sheets filed in his office under this Act.

**213. Petition not to be registered**

In every sale by public auction made before the Master, it shall not be necessary to register—

- (a) a petition addressed to the Master; or
- (b) an order of the Master.

**214. Seizure of several properties of debtor**

(1) The separate immovable properties belonging to the same debtor shall not be seized successively unless they—

- (a) are worked together as one estate; or
- (b) have been specially mortgaged for the security of one debt.

(2) No second or subsequent seizure shall take place unless the price of the first sale has not been sufficient to pay the claim of the seizing creditor.

**215. Sale of several properties of same owner**

Where several immovable properties belonging to the same owner or co-owners are to be sold before the Master, they shall be sold under one and the same memorandum of charges in—

- (a) one lot;
- (b) separate and distinct lots; or
- (c) sets of lots.

**216. Lapse of seizure**

A seizure of immovable property shall be deemed to have lapsed where no step has been taken in the proceedings for one year from the date of the last step in the proceedings.

**217. Suggestions**

(1) Where it is necessary, in any case, to enter a suggestion in any record of proceedings under this Act, the suggestion shall be entered, at the request of an interested party, at the foot of the memorandum of charges.

(2) The suggestion shall be read and made public at the following public sitting held by the Master for the prosecution of the sale.

(3) Where an objection is made to the suggestion, the Master shall hear the objection and take a decision, but shall award no costs.

**218.** —

**219. One notice sufficient**

Where a notice is served on inscribed creditors, one notice shall be sufficient for each creditor, irrespective of the number of his inscriptions.

**220. Service of notice on heirs**

(1) In the case of proceedings by way of forcible ejection prosecuted against the heirs of a debtor, it shall not be necessary, except in the case of the service of the *commandement*, to serve a notice prescribed by law on all the heirs individually.

(2) It shall be sufficient if the notice is served collectively on the heirs at the elected or last known domicile of the deceased.

**221. Filing of notice**

(1) Where a notice has been published in the Gazette or in a daily newspaper, it shall only be necessary to file, in the Master's Office, the single sheet on which the notice is printed.

(2) The Master shall certify the sheet to be part of the Gazette or of a newspaper, giving the name of the paper and its date.

**222. Notice in French and English**

(1) A notice, which is to be published in 3 daily newspapers may be published in French in 2 of those newspapers, and in English in one of them.

(2) Where the notice referred to in subsection (1) relates to a property which is situated in Rodrigues, the notice shall, in addition, be published in French or in English in at least one newspaper which is published and distributed in Rodrigues.

[S. 222 amended by s. 10 (b) of Act 3 of 2018 w.e.f. 27 June 2018.]

**223.** —

**224. Notice of property to be sold**

Where a notice which refers to the sale of property before the Master is required to be published in the Gazette and in a daily newspaper, it shall—

- (a) not be necessary to give in the notice all the boundaries of the property to be sold and of every plot of land included in the property; and
- (b) be sufficient to give a general description of the whole property with 2 of the metes and bounds (*tenants et aboutissants*) or, in the case of urban property, the street and number, and refer to the *cahier des charges* in which a full description of the property and of any plot of land included in the property is given.

### 225. Appointment of surveyor and attorney

(1) Where an application is made to the Master for a division in kind under sections 105 to 118, and he is satisfied on proof that the value of the property does not exceed 3,000 rupees, he shall *ex officio* appoint a land surveyor to make the appraisal mentioned in sections 110 and 111.

(2) The Master, on the *ex parte* application of an interested party—

- (a) where the applicant is represented by an attorney, shall appoint the applicant's attorney; and
- (b) where the applicant is not represented by an attorney, may appoint *ex officio* an attorney,

to conduct the proceedings for the division in kind until completion.

### 226. Fees of attorney and surveyor

(1) An attorney shall be entitled, for anything done by him in connection with the division in kind, to the fees and disbursements applicable by law to attorneys in the Supreme Court, but the total amount of the fees to be paid to him shall not exceed—

- (a) where the assets of the succession do not exceed 500 rupees, 7 per cent;
- (b) where the assets of the succession exceed 500 rupees, 5 per cent.

(2) A land surveyor may receive, for all fees and disbursements payable to him for anything done by him under an order of the Master under section 225, a sum not exceeding 100 rupees, to be awarded by the Master in accordance with the importance of the work done by him.

### 227. Application to Outer Islands

(1) Subject to this section, this Act shall apply to the seizure and sale of immovable property in the Outer Islands mortgaged as security for a loan.

(2) Where a loan granted is to be secured by a mortgage on property situated in any of the Outer Islands, the deed witnessing the loan shall—

- (a) contain a full description of the property mortgaged, including all the houses, buildings, constructions and plantations generally forming part of the premises mortgaged;
- (b) give the apparent value of the property mortgaged, including that of all the buildings, constructions and plantations generally forming part of the premises mortgaged; and
- (c) specify the domicile elected by the borrower in Port Louis at which all notices required to be served in connection with the seizure and sale of the property mortgaged up to the final closing of the *ordre* of the scheme of distribution by attribution of price, as the case may be, shall be served.

(3) (a) The borrower shall, at the request of his creditor, supply his creditor, not more than once in a year, with a written statement, signed by him, containing a complete list and full description of all the houses, buildings, constructions and plantations generally forming part of the premises mortgaged together with the apparent value of the whole of those premises.

(b) Where the borrower fails to supply the statement under paragraph (a), the creditor shall cause to be served on him, at his elected domicile, a notice, calling on him to supply the creditor with the statement within the time fixed in the notice.

(c) Where the borrower fails to supply the statement within the time fixed in the notice, the loan shall become due and demandable forthwith.

(d) In this subsection and in subsection (8), "borrower" means the original debtor or any owner or co-owner of the property mortgaged.

(4) —

(5) Notwithstanding any other enactment, the usher effecting the seizure shall not be required to go on site of the property which is the subject matter of the seizure.

(6) The usher's memorandum of seizure (*procès-verbal de saisie*) shall contain—

- (a) a description of the title (*titre*) in virtue of which the seizure is effected, containing the date of the title (*titre*), the name of the notary, the amount of the debt, and a reference to the transcription, if the title (*titre*) has been transcribed;
- (b) a description of the property seized, as contained in the deed of mortgage or in the latest statement supplied by the borrower under subsection (3);
- (c) the apparent value of the property, as given in the deed of mortgage or in any statement supplied by the borrower under subsection (3); and
- (d) the constitution of an attorney, whose office shall be taken to be the domicile of the execution creditor, where all notices connected with the seizure shall be served on the creditor.

(7) The usher shall, at the time of the seizure, leave a copy of his memorandum of seizure with the debtor, in person or at his elected domicile.

(8) A notice having reference to the sale, after seizure, of any property situated in the Outer Islands, and mortgaged as security for a loan, may contain the description of the property as in the deed of mortgage, or in the latest statement supplied by the borrower, and need not mention boundaries.

(9) The purchaser of a property situated in the Outer Islands, and mortgaged as security for a loan, shall not be entitled to an indemnity, or diminution of the sale price of the property, on its sale by levy, by reason of any bad or inaccurate description, including any bad or inaccurate description of any of the houses, buildings, constructions and plantations forming part of

that property occurring in the memorandum of charges, or by reason of the non-existence, on the day of the sale, of any of these houses, buildings, constructions and plantations.

(10) In this section "Outer Islands" means the islands under the jurisdiction of the Republic of Mauritius other than Mauritius or Rodrigues.

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**FIRST SCHEDULE**

[Sections 31, 37 and 104]

WARNING is given that on ..... the final adjudication shall take place before ..... , the Master, of a portion of land (or) of a house (or) of a ..... situated in the district (or) town of ..... measuring ..... and seized against ..... (or) the heirs of ..... at the request of (or) the heirs of .....

All parties claiming to take inscriptions of legal mortgage on that property are warned that they must do so before the transcription of the judgment of adjudication, failing which, they shall be debarred of that right.

Date: ..... 20 .....

AB

of .....  
Attorney in charge  
of the sale

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**SECOND SCHEDULE**

[Sections 85 and 101]

WARNING is given that the *Cahier des Charges* of the judicial sale of a portion of land (or) a house, (or) a country house (or) a Sugar Estate, belonging to the minor (or) minors ..... situate in the district (or) town of ..... measuring ..... and bounded as follows ..... has, on ..... been filed in the Master's Office.

The ..... has been fixed for the day of sale.

All parties claiming a right to take inscriptions of legal mortgage are warned that they must exercise their right before the transcription of the judgement of adjudication, failing which, they shall forfeit their right.

Date: ..... 20 .....

AB

of .....  
Attorney in charge  
of the sale

**THIRD SCHEDULE**

[Section 142]

Notice is given that on ..... the property, situated in the district of ..... (or) town of ..... levied on ..... (or) the heirs of ..... at the request of ..... (or) the heirs of ..... was sold, for a price of rupees ..... and purchased by AB.

Afterwards, on ..... one CD has made an outbidding of one sixth above that price.

I have therefore fixed ..... for the sale of that property, upon the outbidding.

Date: ..... 20 .....  
.....  
Master and Registrar

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**FOURTH SCHEDULE**

[Section 52]

Notice is given that on ..... the property situated in the district of ..... (or) town of ..... measuring ..... and bounded ..... and which had been adjudicated to ..... on ..... will be resold by *folle-enchère*.

The resale has been fixed by the Master to take place on .....

Date: ..... 20 .....  
.....  
AB  
of .....  
Attorney in charge  
of the sale