

COURTS (CIVIL PROCEDURE) ACT

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COURTS (CIVIL PROCEDURE) ACT

1. Short title

This Act may be cited as the Courts (Civil Procedure) Act.

1A. Interpretation

“Chief Executive” means the Chief Executive of a local authority;

“local authority” has the same meaning as in the Local Government Act 2011.

[S. 1A inserted by s. 165 (5) (a) of Act 36 of 2011 w.e.f. 15 December 2011.]

2. Action by writ of summons

(1) Any action on a bill of exchange or a promissory note commenced within 6 months from the date on which the bill or note became due and payable may be commenced by writ of summons in Form A of the Schedule.

(2) The plaintiff may, on proof of personal service within the jurisdiction on the defendant of—

- (a) a writ under subsection (1); or
- (b) an order for leave to proceed together with a copy of the writ of summons and indorsements thereon where the defendant has not obtained leave to appear and appeared to the writ according to the exigencies thereof,

at once sign final judgment in Form B of the Schedule, for any sum not exceeding the sum indorsed on the writ together with interest at the rate specified (not exceeding the legal rate of interest) or where none is specified, the rate of interest allowed by law in such cases to the date of the judgment, and a sum for costs to be fixed by the Judge, unless the plaintiff claims more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may, upon such judgment, issue execution forthwith.

3. Leave to defend

A Judge shall, upon application within 12 days from service under section 2, give leave to appear to such writ, and to defend the action, on the defendant paying into Court the sum indorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge thinks sufficient to support the application, and on such terms as to security or otherwise as the Judge thinks fit.

4. Setting aside judgment or execution

After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it appears reasonable to the Court or Judge to do so and on such terms as to the Court or Judge seems just.

5. Deposit of bill or note in Court

In any proceedings under this Act, the Court or Judge may order the bill or note sought to be proceeded upon, to be forthwith deposited with an officer of the Court, and further order that all proceedings be stayed until the plaintiff has given security for the costs of the proceedings.

6. Holder's remedies

The holder of a dishonoured bill of exchange or promissory note shall have the same

remedies for the recovery of the expenses incurred in protesting such bill or note, for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such bill or note.

7. Action against several parties

The holder of a bill of exchange or promissory note may, if he thinks fit, issue one writ of summons according to this Act, against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action against the parties named in it, and all subsequent proceedings against those parties shall be in like manner, so far as may be, as if separate writs of summons had been issued.

8. Supplementary rules

Where any question arises as to the procedure in respect of actions on bills of exchange and promissory notes which is not provided for sufficiently in an enactment of Mauritius, the law of England shall be applied to resolve the issue.

9. – 16. —

17. Security by foreign plaintiff

Article 16 of the Code Civil Mauricien and articles 166 and 167 of the Code de Procédure Civile in regard to the giving of security for costs, in their application to nationals, resident in Mauritius, of any foreign country with which the State of Mauritius has entered into an agreement, that such nationals shall not be compelled to give security for costs in any case where a Mauritius citizen would not be so compelled, shall have effect subject to such agreement.

18. – 25. —

[Ss. 21 to 25 repealed by s. 3 (a) of Act 27 of 2006 w.e.f. 18 December 2006.]

26. Examination of judgment debtor

(1) Any person who has obtained a judgment or order in the Supreme Court may, in every case where he has good and substantial reason to believe that his debtor has the means of paying him but wilfully refuses to do so, make an affidavit of the facts and apply to a Judge for an order calling the debtor to be examined before the Court.

(2) Where the Judge thinks that such order ought to be granted, he shall issue the order, which shall be served personally by an usher and the debtor shall be bound to appear before the Court on the day appointed in the order.

(3) The debtor shall be examined before the Court about his property, and witnesses may, by leave of the Court, be heard on the side of the debtor or of the creditor.

(4) Where the debtor—

- (a) does not attend the first or any subsequent sitting of the Court;
- (b) refuses to disclose any fact on which he is examined;
- (c) does, in the opinion of the Court, have the means to pay the debt, including payment by instalments; or
- (d) has, in the opinion of the Court, secreted or disposed of any of his property in such a manner as to defraud his creditor,

the Court may make such order as it thinks fit to satisfy the debt, including an order that any property of the debtor or any amount due or likely to be due to him shall be attached in the hands of the debtor or in those of any other person and be available to satisfy the debt.

(5) Any person who, after having been served with an order pursuant to subsection (2), secretes or disposes of any of his property in such a manner as to defraud his creditor shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

[S. 26 amended by s. 3 (b) of Act 27 of 2006 w.e.f. 18 December 2006.]

27. – 32. —

[Ss. 27 to 32 repealed by s. 3 (a) of Act 27 of 2006 w.e.f. 18 December 2006.]

33. —

34. – 36. —

[Ss. 34 to 36 repealed by s. 3 (a) of Act 27 of 2006 w.e.f. 18 December 2006.]

37. —

38. Opposition to salaries

No opposition to the payment or *saisie-arrêt* of any sum of money or of any goods due by way of salary to any person in the employment of Government or of a Municipal City Council, Municipal Town Council or District Council, or of any partnership, corporation, or other person shall, except as hereinafter provided, be in any case made or permitted.

[S. 38 amended by s. 165 (5) (b) of Act 36 of 2011 w.e.f. 15 December 2011.]

39. Opposition to pensions

No opposition to the payment or *saisie-arrêt* of any sum due by way of pension to any person who is or has been in the employment of Government or of a Municipal City Council, Municipal Town Council or District Council shall, except as hereinafter provided, be in any case made or permitted.

[S. 39 amended by s. 165 (5) (b) of Act 36 of 2011 w.e.f. 15 December 2011.]

40. Portion of salary or pension attachable

In case of the bankruptcy or insolvency of any person so entitled to salary or pension, the Bankruptcy Court may order that any portion not exceeding one third of such salary or pension be applied until the final discharge of the bankrupt or insolvent, or for any shorter period, to the payment of the debts of the bankrupt or insolvent.

41. Form and service of order and payment

(1) Such order shall be directed to the Accountant-General or to the Chief Executive, or the employer, as the case may be, and shall specify the name and position of the bankrupt or insolvent, the date of the bankruptcy or insolvency, the person to whom payment is to be made, the amount to be paid per month, and the period for which such payments are to continue.

(2) On such order being served by an usher upon the Accountant-General, the Chief Executive, or the employer, it shall be their duty respectively to pay on demand accompanied by tender of a receipt in writing, to the person appointed by the order to receive payment on the first day of each month during the continuance of the order, the specified portion of all salary or pension accruing due to the bankrupt or insolvent after the date of such service.

[S. 41 amended by s. 165 (5) (c) of Act 36 of 2011 w.e.f. 15 December 2011.]

42. Revocation and amendment of order

(1) Any such order may be revoked or varied by the Court.

(2) An amended order shall be, *mutatis mutandis*, in the form of an original order, and shall take effect from the date of its service by an usher upon the Accountant-General, the Chief Executive, or the employer, as the case may be.

[S. 42 amended by s. 165 (5) (c) of Act 36 of 2011 w.e.f. 15 December 2011.]

43. Judgments against civil servants

The Registrar or clerk of the Court in which any judgment for debt is given against any person in the employment of Government shall report the judgment for the information of the President.

[S. 43 amended by Act 48 of 1991.]

44. Opposition to sums due to contractors

No opposition to the payment or *saisie-arrêt* of any sums due by Government or a Municipal City Council, Municipal Town Council or District Council, in respect of contracts shall, except as hereinafter provided, be in any case made or permitted.

[S. 44 amended by s. 165 (5) (b) of Act 36 of 2011 w.e.f. 15 December 2011.]

45. Attachment for wages and materials

Where any workman or labourer employed, or any person who has provided materials used, in the performance of such contracts, has obtained judgment in any Court of competent jurisdiction against the person having such contract (hereinafter called “the contractor”) for any sum due for such work done or materials provided, the Court giving the judgment may order that any sum due or thereafter becoming due to the contractor in respect of such contract be attached to the extent of the judgment debt, and applied in satisfaction of the judgment, notwithstanding any transfer that may have been made of any such sum.

46. Attachment after completion of contract

Where any person has obtained judgment for a sum of money against a contractor who has completed his contract, the Court giving judgment may order that any sums due or thereafter becoming due to the contractor in respect of the contract be attached and applied in satisfaction of the judgment.

47. Form and service of order of attachment

(1) The order of attachment shall specify the names of the judgment creditor and debtor, the amount of the judgment debt, the nature and date of the contract, and if the order is made under section 45, that the amount specified is to be paid as a privileged claim first in rank.

(2) The order shall be directed to the Accountant-General or the Chief Executive, as the case may be, and shall be served by an usher, and all sums due to the contractor in respect of the contract shall, in the first instance, be applied and paid in accordance with the terms of the order.

(3) Such payment shall be made to the judgment creditor or his attorney, who shall give a receipt in writing, which shall be a valid discharge and release in respect of the payment.

[S. 47 amended by s. 165 (5) (c) of Act 36 of 2011 w.e.f. 15 December 2011.]

48. Priority of orders

(1) Subject to subsection (2), where more than one such order is made, they shall have priority according to law.

(2) Orders made under section 45 shall have priority over orders made under section 46.

49. Bankruptcy or insolvency

(1) In case of the bankruptcy or insolvency of the contractor, the Bankruptcy Court may order that all sums due or thereafter becoming due in respect of such contract be attached and applied to the payment of the debts of the bankrupt or insolvent.

(2) An order under subsection (1) shall be directed to the Accountant-General or the Chief Executive, as the case may be, and shall specify the name of the bankrupt or insolvent, the nature and date of the contract and the person to whom payment is to be made.

(3) The order shall be served by an usher, and all sums due at the time of such service or thereafter becoming due to the contractor in respect of such contract, shall be paid to the person specified in the order, who shall give a receipt in writing and the receipt shall be a valid discharge and release in respect of all sums paid in accordance with such order and before due service of notice of revocation under subsection (4).

(4) The Court may revoke or amend such order, and notice of revocation or amendment shall be served by an usher upon the person upon whom the original order was served or his successor in office.

[S. 49 amended by s. 165 (5) (c) of Act 36 of 2011 w.e.f. 15 December 2011.]

50. Effect of transfer

No transfer made by a contractor of sums which may be or become due to him in respect of contracts mentioned in section 44 shall affect the rights which Government or a Municipal City Council, Municipal Town Council or District Council may have against him in respect of the contracts.

[S. 50 amended by s. 165 (5) (b) of Act 36 of 2011 w.e.f. 15 December 2011.]

51. Effect of order of attachment

Any order or attachment given under this Act shall have the force and effect of a judgment validating an opposition or *saisie-arrêt* saving the right which any interested party may have to obtain the removal of the attachment before the competent Court.

52. – 53. —

54. Interpretation

In this Act—

“insolvency” means a judicial application for leave to make a *cessio bonorum*, or for a full discharge of debts;

“insolvent” means a person who makes a judicial application for leave to make a *cessio bonorum*, or for a full discharge of debts.

55. Execution of judgments for alimony

Where a Court decrees the payment of an alimony, either *pendente lite*, or otherwise, in a suit between husband and wife, or in any case between other persons where the law gives a right to an alimony, it shall be lawful, notwithstanding this Act, to issue, in execution of any such judgment, an attachment against any portion of any salary, or other sum of money, or property, which is not attachable under this Act.

56. Suits between spouses

Any judgment, by which the Supreme Court, in a suit between husband and wife, orders the payment by one of the parties to the other, of any sum of money, for defraying the costs which the latter may have to incur to prosecute his suit, or to carry on his defence, may be enforced in the same manner as is provided in section 55.

57. – 58. —

59. Saving

Notwithstanding sections 39, 40, 41, 42, 55 and 56, the restrictions imposed by the Pensions Act in regard to the attachment of any sum due to any person by way of pension, gratuity or other allowance by Government, shall apply and have full force.

60. Action against absent defendants

(1) (a) Civil and commercial actions against absent defendants, whether Mauritian citizens or not, shall be heard before the Supreme Court, or, by leave of a Judge, before the Intermediate Court or the District Court of Port Louis when the matter at issue is within the jurisdiction of the Intermediate Court or the District Court, as the case may be.

(b) In all such actions in the Supreme Court, the declaration or plaint with summons, as the case may be, shall not be filed or served, or in the Intermediate Court or in the District Court, the summons shall not be issued or served on such absent defendants without leave of the Supreme Court or of a Judge given in Form C or D of the Schedule.

(2) Service of such initial process shall be effected out of Mauritius in the same way as the initial process in an action is required to be served in the country or jurisdiction in which the service is to be effected, and proof of such service having been effected, when required by the Court in Mauritius, shall be given in the manner provided by the law in force in such country or jurisdiction.

(3) In this Act, “initial process” means—

- (a) in civil actions in the Supreme Court, the plaint;
- (b) in commercial actions in the Supreme Court, the plaint with summons;
- (c) in actions other than in the Supreme Court, the summons,

but does not include a *mise en demeure*.

(4) Sections 60 to 71 shall not apply to—

- (a) actions on bills of exchange or promissory notes brought under sections 2 to 8;
- (b) actions under the Divorce and Judicial Separation Act in relation to which regulations have been made pursuant to section 21 (2) of that Act;
- (c) any other civil or commercial action where rules have been made by the Judges with regard to service on absent parties.

[S. 60 amended by Act 29 of 1992; Act 15 of 1994.]

61. When leave may be granted

(1) The filing and service, or the issue and service, as the case may be, out of the jurisdiction of an initial process may be allowed where—

- (a) the whole subject-matter of the action is immovable property situate within the jurisdiction (with or without rents or profits);
- (b) an act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action;

- (c) relief is sought against a person ordinarily resident within the jurisdiction;
- (d) the action is founded on a breach or alleged breach within the jurisdiction of a contract wherever made, which ought to be performed within the jurisdiction;
- (e) an injunction is sought as to anything to be done within the jurisdiction or a nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not sought; or
- (f) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

(2) Nothing in this section shall prevent a plaintiff commencing an action against the Curator as representing an absentee, in accordance with the Curatelle Act.

62. Application to be supported by affidavit

(1) An application for leave to file and serve, or to issue and serve, as the case may be, an initial process on a defendant out of the jurisdiction shall be supported by affidavit stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country the defendant is or probably may be found, and whether such defendant is a Commonwealth citizen or not, and the grounds upon which the application is made.

(2) No leave shall be granted unless the Court or Judge is satisfied that the case is a proper one for service out of the jurisdiction under this Act.

(3) Where the Court or Judge is satisfied that the plaintiff has no means of ascertaining where the defendant is or probably may be found, leave to issue the initial process may nevertheless be granted where leave has been obtained to bring the action before the District Court.

63. Limitation on time for appearance

(1) An order giving leave to effect service outside the jurisdiction shall specify a time after service within which the defendant is to enter an appearance.

(2) The time specified in subsection (1) shall not, unless the Court otherwise orders, exceed 2 months.

64. Motion to set aside service or discharge order

The defendant before appearing may, without entering a conditional appearance, serve notice of motion to set aside such service or to discharge the order authorising such serve or to enlarge the time within which an appearance is to be entered.

65. Substituted service

(1) (a) The initial process shall be served personally on the defendant but the Court or Judge, where it or he is satisfied that—

- (i) reasonable efforts have been made to effect personal service of the process; or
- (ii) the plaintiff has no means to ascertain where the defendant is or probably may be found,

may, on the application of the plaintiff, make such order for substituted or other service or for the substitution for service of notice, by advertisement or otherwise as seems just.

(b) Such application shall be supported by an affidavit specifying the grounds upon which the application is made.

(2) The order made under this section shall specify the time after the substituted or other service has been effected, or after the publication of the notice by advertisement or otherwise, within which the defendant is to enter an appearance, and such time shall be limited as specified in section 63.

[S. 65 (1) (a) reprinted by Reprint 3 of 1983.]

66. Leave to plaintiff to proceed

(1) After the time limited by an order made under section 63 or 65, the Court or Judge, on proof that the order has been complied with and that the defendant has not entered an appearance, may direct the plaintiff to proceed in the action in such manner and subject to such conditions as the Court or Judge thinks fit.

(2) The plaintiff shall prove his case under subsection (1) in such manner as the Court shall direct, and the making of such proof shall be a condition precedent to the plaintiff obtaining judgment.

67. Actions begun by service in Mauritius

Where a defendant who has been personally served with an initial process in Mauritius quits Mauritius without leaving an attorney or agent to make an appearance for or represent and defend him, the Court or Judge may, after the time within which the defendant so served within the jurisdiction has entered an appearance, order that all ulterior orders, summonses, notices or process be not served personally, but be served at the defendant's last place of abode or business in Mauritius, and such service shall be sufficient to entitle the plaintiff to proceed in the action as provided in section 66.

68. Election of special domicile

(1) Where an absent defendant has in Mauritius no attorney or agent duly empowered to make an appearance for or represent and defend him, but has in the particular contract on which he is sued, specially elected a domicile for service, service at such domicile shall, for the particular matters or things for which the domicile was selected, be sufficient not only for the initial process, but also for all ulterior orders, summonses, notices, or processes in the action.

(2) In the case of minors or interdicted persons, the initial process, and all ulterior orders, summonses, notices or processes in the action shall also be served on the Ministère Public.

69. Where absent defendant's agent unknown

(1) Where an absent defendant has in Mauritius an attorney or agent duly empowered to make an appearance for or represent and defend him, but such attorney or agent is unknown to the plaintiff, proceedings shall begin and be carried on as herein enacted and as if there were no such attorney or agent.

(2) Such attorney or agent may intervene at any stage in the proceedings and, by leave of the Court or Judge, enter an appearance for the absent defendant and defend the action, subject to such terms as to time, costs or otherwise as the Court or Judge thinks fit, having in view the reasons set forth by such attorney or agent for not having made himself known.

70. Service on defendants in other islands

(1) Service of any document, whether personal or otherwise, where the party to be served is in any of the other islands under the jurisdiction of the State of Mauritius, shall be effected by serving a copy at the Attorney-General's Office, unless such person has in Mauritius an attorney or agent who may be served on his behalf.

(2) The copies served on the Attorney-General under subsection (1) shall be

forwarded by him for service in the island.

(3) (a) In the absence of an usher in such islands, service shall be effected by a person to be in each case designated by the Attorney-General.

(b) Such service shall be to all intents and purposes as effective as service by an usher.

71. Effect of Act on existing laws

Nothing in sections 60 to 70 shall be held to amend article 1985, *alinéa* 1, of the Code Civil Mauricien.

Schedule
[Sections 2 and 60]

FORM A

To C.D. of , in the District of

You are warned that unless, within 12 days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of the Supreme Court to appear, and do within that time appear, in our Supreme Court of Mauritius, in an action at the suit of A.B., the said A.B. may proceed to judgment and execution.

Witness, etc.,

Memorandum to be subscribed on the writ—

A.B., this writ is to be served within 6 months from the date hereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the writ before service thereof—

This writ was issued by E.F., of attorney for the plaintiff, or, this writ was issued, in person, by A.B., who resides at (mention the town, street, and number of the house, of the plaintiff's residence).

Indorsement—

The plaintiff claims rupees, (principal and interest), or, rupees, balance of principal and interest due to him as the payee (or indorsee) of a bill of exchange or promissory note, of which the following is a copy - (here, copy bill of exchange or promissory note, and all indorsements upon it).

And if the amount thereof be paid to the plaintiff or his attorney within days from the service hereof, further proceedings will be stayed.

NOTICE

Take notice that if the defendant does not obtain leave from one of the Judges of the Supreme Court within 12 days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do not within such time cause an appearance to be entered for him in the Court out of which this writ issues, the plaintiff will be at liberty at any time after the expiration of the 12 days, to sign final judgment for any sum not exceeding the sum above claimed and the sum of..... rupees for costs and issue execution for the same.

Leave to appear may be obtained on application at the Judge's Chambers, Supreme Court House, Port Louis, supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

Indorsement to be made on the writ after service thereof—

This writ was served by X.Y., on L.M. (the defendant) on Monday the day of in the year 20.....

By X.Y.

FORM B

In the Supreme Court

On the day of in the year (day of signing judgment)

Mauritius to wit A.B. in his own person (or by C.D. his attorney) sued out a writ against E.F. endorsed as follows—

(Here copy indorsement of plaintiff's claim)

And the said E.F. has not appeared

Therefore it is considered that the said A.B. recover against the said E.F. rupees together with rupees for costs.

FORM C

SUPREME COURT ACTION

Judge's order for leave to file declaration (or plaint with summons) and serve out of the jurisdiction.

Leave is granted to the plaintiff A.B. of to commence an action in the Supreme Court of Mauritius, against the defendant C.D. by filing his declaration (or plaint with summons) in the Registry of the Supreme Court, and to serve the same on the defendant out of the jurisdiction, to wit at in

Appearance is to be entered by the defendant C.D. in the Registry of the Supreme Court of Mauritius within months after service.

.....
Judge of the Supreme Court

[Form C amended by Act 29 of 1992.]

FORM D

INTERMEDIATE COURT/DISTRICT COURT ACTION

Judge's order for leave to issue summons and serve out of the jurisdiction.

Leave is given to the plaintiff A.B. of to commence an action in the Intermediate

Court/District Court of Port Louis (First Division) in Mauritius, and after plaint entered for the summons in the same on the defendant out of the jurisdiction, to wit at in

Appearance is to be entered by the defendant C.D. in the Intermediate Court/District Court within months after service.

.....
Judge of the Supreme Court

[Form D amended by Act 29 of 1992.]
