

COURT USHERS ACT

Act 31 of 1952 – 25 October 1952

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COURT USHERS ACT

EDITORIAL NOTE: The words “An usher”, “an usher”, “usher”, “Ushers”, and “ushers” have been deleted and replaced by the words “A Court Usher”, “a Court Usher”, “Court Usher”, “Court Ushers” and “court ushers”, respectively wherever they appear, by section 3 of Act 13 of 2006 w.e.f. 3 August 2006.

1. Short title

This Act may be cited as the Court Ushers Act.

1A. Interpretation

In this Act—

“Court Usher” means an usher of a Court who is a public officer and whose appointment is notified in the *Gazette* under section 2;

“registered usher” means an usher appointed as such under section 26B (3) (a) and does not include a Court Usher.

[S. 1A inserted by s. 4 of Act 13 of 2006 w.e.f. 3 August 2006; amended by s. 3 of Act 5 of 2011 w.e.f. 10 October 2011.]

2. Appointment of Court Ushers

All appointments of Court Ushers shall be notified in the *Gazette*.

3. Qualification of Court Usher

No person shall be eligible for appointment to the office of Court Usher unless—

- (a) he is a Mauritian citizen;
- (b) —
- (c) he holds such qualifications as may be specified in a scheme of service approved by the Public Service Commission;
- (d) he has passed such examination as may be prescribed by rules made by the Chief Justice; and
- (e) he produces such evidence of his good conduct and capacity as appears to the Chief Justice sufficient.

[S. 3 amended by s. 5 of Act 13 of 2006 w.e.f. 3 August 2006; s. 4 of Act 5 of 2011 w.e.f. 10 October 2011.]

4. – 9. —

10. Posting of Court Ushers

The Master and Registrar shall designate the Court Usher to be attached to every Court and may require a Court Usher attached to any Court to act in respect of any other Court.

[S. 10 amended by Act 20 of 1993.]

11. – 12. —

13. Duties of Court Ushers at Court sitting

Court Ushers shall perform such duties at the sittings of the Courts as may be prescribed by rules made under this Act.

14. Court Ushers to act without delay

(1) Subject to this section, every Court Usher shall act without delay on the receipt of any judicial or extrajudicial process which he is required to serve or execute.

(2) Where a Court Usher is prohibited from acting on account of relationship, as mentioned in article 66 of the Code de Procédure Civile, he shall at once notify the fact to the Master and Registrar, or to the District Clerk or Head Clerk of the Court to which he is attached, as the case may be, and another Court Usher shall then be appointed to act in his stead.

(3) Where a Court Usher satisfies the Master and Registrar, or the District Clerk or Head Clerk of the Court to which he is attached, as the case

may be, that there is good reason for him not to act in a particular case, the Master and Registrar or the District Clerk or Head Clerk may appoint another Court Usher to act in his stead.

[S. 14 amended by Act 29 of 1992.]

15. Incorrect and illegible acts

(1) All copies to be notified by Court Ushers shall be correct and legibly written.

(2) A Court Usher who fails to comply with this section shall be liable to disciplinary proceedings.

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16. Failure to serve document

(1) A Court Usher who does not deliver personally to the party or at his place of abode any act, summons, judgment or copy which he has been required to serve shall be liable to disciplinary proceedings.

(2) Where proceedings under subsection (1) show that the Court Usher acted fraudulently, he shall be liable to criminal prosecution and to be punished under section 107 of the Criminal Code.

17. Court Ushers not liable for registration duty

Notwithstanding the Registration Duty Act, Court Ushers shall not be responsible for the registration of a document drawn up or served by them in the discharge of their functions, or for the payment of registration duty on it.

18. Liability for registration

(1) An attorney or other person who employs a Court Usher attached to the Supreme Court for the execution of any judicial or extrajudicial process, shall cause every document drawn up or served by the Court Usher in the execution of the process to be registered within the period fixed by law and shall pay to the Registrar-General the registration duty due on the document.

(2) The Registrar-General shall deliver or cause to be delivered to the attorney or other person making such payment an acknowledgement of the amount paid.

[S. 18 amended by Act 32 of 1983.]

19. Note of costs

(1) Every Court Usher shall make, at the foot of any document drawn up or served by him in the execution of any judicial or extrajudicial process, a note of the full amount of the fees payable in respect of his services for the execution of the process.

(2) A Court Usher who fails to comply with subsection (1), or who wilfully makes a false statement in the note, shall be liable to disciplinary proceedings.

20. Fees for travelling

Where a fee is due for the travelling expenses of a Court Usher, there shall be allowed one journey for all process served or executed by the Court Usher during the course of one and the same journey in the same district at the request of the same person.

21. Fees accruing to Consolidated Fund

(1) Subject to subsection (1), any fee payable to a Court Usher under an enactment shall be paid by the party by whom the fee is due and accrue to the Consolidated Fund.

(2) Where a person has been authorised to sue or to defend to any action as a pauper, no fee shall be payable by the person in respect of any service by the Court Usher employed on his behalf.

22. Supreme Court Court Ushers

(1) (a) Every attorney or other person, in this Act referred to as “the applicant”, requiring the services of a Court Usher attached to the Supreme Court, shall in the first instance, except where the Master and Registrar otherwise orders, not later than 48 hours before the time at which any act is required to be done by the Court Usher, call at the Court Ushers’ Office and cause the Court Usher in attendance to insert on the document needed for effecting the required service the amount which, in his opinion, is necessary to cover the costs of service including the costs of travelling.

(b) The amount shall be duly deposited by the applicant with the Cashier of the Supreme Court.

(2) On proof that the deposit mentioned in subsection (1) has been duly made, the Court Usher in attendance shall make an entry in a special register which shall be kept at the Court Usher’s Office in the prescribed form, noting the name and address of the applicant, the date and time at which the relevant documents are received by him and their number and description and the name of the Court Usher appointed to effect service under subsection (3).

(3) (a) The Chief Court Usher shall, in accordance with such directions as may be given to him either generally or in any special case by the Master and Registrar regarding the distribution of business among Court Ushers, appoint a Court Usher to effect the required service and shall duly notify him of his appointment in the manner prescribed.

(b) The Master and Registrar shall, after such costs have been incurred and, where necessary, taxed, refund to the applicant any amount deposited in excess of the actual costs, and shall likewise claim from the applicant any amount by which the actual costs have exceeded the amount deposited by the applicant.

(4) (a) Any applicant refusing or failing to pay any sum claimed as provided in subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

(b) Any amount claimed under subsection (3) may further be recovered in accordance with the Recovery of State Debts Act.

(5) A Court Usher who contravenes this section shall be liable to disciplinary proceedings.

(6) Any person who wilfully makes or causes to be made, or is privy to the making of, any falsification in any matter relating to the register kept under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 12 months.

[S. 22 amended by Act 48 of 1991; Act 29 of 1992; Act 20 of 1993;
s. 6 of Act 13 of 2006 w.e.f. 3 August 2006.]

23. Responsibility of attorneys

(1) The attorney in charge of a case before the Supreme Court shall be personally responsible for the payment to the Master and Registrar of any fee which may be due in respect of the services of a Court Usher in connection with the proceedings in the case.

(2) Any attorney who refuses or fails to pay the fee on presentation of a claim for it by the Registrar in a manner to be prescribed by rules made under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

24. Process money payable to Master and Registrar

(1) Every Court Usher attached to the Supreme Court levying or receiving any money by virtue of any process shall, within 3 days after receiving it, pay it into the hands of the Master and Registrar who shall then notify the party entitled to it or his attorney of such payment.

(2) Every Court Usher who fails to comply with this section shall be liable to disciplinary proceedings.

25. Supreme Court Court Ushers to keep registers

(1) (a) Notwithstanding the Registration Duty Act, every Court Usher attached to the Supreme Court shall keep a register in the form prescribed.

(b) He shall daily—

- (i) make the necessary entries in each column, without leaving any blank or interlinear space; and
- (ii) submit the register to the Registrar for inspection not later than the fifth of each month.

(c) The register shall be supplied to every such Court Usher by the Master and Registrar.

(2) A Court Usher who fails to comply with subsection (1), or who wilfully makes any false entry in the register, shall be liable to disciplinary proceedings.

26. District Court Court Ushers

(1) Every applicant, requiring any extrajudicial process to be served by a Court Usher attached to a District Court shall, except where the Magistrate otherwise orders, not later than 48 hours before the time at which the service is to be effected, apply to the District Clerk of the Court to which the Court Usher is attached, and shall at the same time hand over to that District Clerk any document that may be needed by the Court Usher for effecting the required service.

(2) (a) The District Clerk shall thereupon make an entry in a special register to be kept by him for that purpose in a form to be prescribed, noting the

name and address of the applicant, the date and time at which the application and the relevant documents are received by him, the number and description of the documents received, and the name of the Court Usher who is to effect the required service.

(b) Where the number of Court Ushers attached to a District Court exceeds one, the Court Usher to be appointed for the purpose of effecting the required service shall be selected by the District Clerk in the manner prescribed.

(3) The District Clerk shall thereupon notify the Court Usher of his appointment in the manner prescribed.

(4) Every Court Usher so appointed shall, on receipt of the notification, collect from the District Clerk any documents handed over by the applicant and shall, in an appropriate column of the register, note the date and time at which the documents are collected by him and affix his signature opposite the entry to which the documents relate.

(5) (a) No application shall be entertained by the District Clerk unless, at the time of the application, the applicant deposits as well such sum in cash as may in the discretion of the District Clerk be considered sufficient to cover the costs of the required service, including the cost of travelling by the Court Usher.

(b) The District Clerk shall, after costs have been incurred and, where necessary, taxed, refund to the applicant any amount deposited in excess of the actual costs, and shall likewise claim from the applicant any amount by which the actual costs have exceeded the amount deposited by the applicant.

(6) (a) Any applicant who refuses or fails to pay any sum claimed as provided in subsection (5) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

(b) Any amount claimed under subsection (6) may further be recovered in accordance with the provisions of the Recovery of State Debts Act.

(7) A Court Usher who contravenes this section shall be liable to disciplinary proceedings.

(8) Any person who wilfully makes or causes to be made, or is privy to the making of, any falsification in any matter relating to the register kept under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 12 months.

[S. 26 amended by Act 48 of 1991; Act 20 of 1993.]

26A. Application of sections 26A to 26H

Sections 26A to 26H shall apply to every registered usher.

[S. 26A inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26B. Appointment of registered usher

(1) Any citizen of Mauritius may make a written application to the Chief Justice, through the Master and Registrar, for appointment as a registered usher where—

- (a) he holds such qualifications, and he has passed such examination, as may be prescribed by rules made under this Act; and
- (b) he satisfies the Chief Justice that he is of good character.

(2) (a) An application under subsection (1) shall be in such form, and shall provide such information, as may be prescribed by rules made under this Act.

(b) Where a person has been appointed as a registered usher, he shall notify the Master and Registrar in writing of any change in the information provided under paragraph (a) not later than 7 days after the occurrence causing the change.

(3) (a) Where a person satisfies the requirements of subsection (1), the Chief Justice may appoint him as a registered usher after he has complied with section 26C.

(b) The Master and Registrar shall cause notice of an appointment made under paragraph (a) to be published in the *Gazette*.

[S. 26B inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26C. Security by registered usher

(1) Every registered usher shall, before being appointed, enter into a security, in such amount as may be prescribed by rules made under this Act, by means of a bank guarantee or such other obligation as may be approved by the Chief Justice, to be of good behaviour, perform the duties of his office and comply with this Act.

(2) A competent Court may order that a security entered into under subsection (1) shall be made available for the payment of any damages, interest and costs which the registered usher has been ordered to pay to a person who has retained his services.

(3) Where the security entered into under subsection (1) has been used for the purpose referred to in subsection (2), the registered usher shall provide fresh security up to the amount prescribed under subsection (1), or such additional security as the Chief Justice may require, in order to continue to exercise his duties under this Act.

(4) The Chief Justice may, in the exercise of disciplinary proceedings against a registered usher under section 26G, order that the security be forfeited to the State.

[S. 26C inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26D. Duties of registered usher

(1) (a) Subject to paragraph (b), every registered usher shall promptly provide the necessary services to any attorney or other person who requires him to serve or execute any judicial or extra-judicial process.

(b) A registered usher may refuse to provide his services where he is prohibited under any other enactment from so doing.

(2) Where, for the purposes of performing any duty referred to in subsection (1), a registered usher requires a document which is in the custody of a Court, every Court Officer of that Court shall provide all necessary assistance to the registered usher and, where a document is handed over to the latter, the Court Officer shall cause an entry to be made in the appropriate register.

(3) Subject to subsection (4), a registered usher shall not perform the duties prescribed for Court Ushers under section 13, other than those specified in subsection (1) (a).

(4) The Master and Registrar may request a registered usher to perform the duties prescribed for Court Ushers under section 13, for such time as may be necessary, on payment of an allowance to be determined by the Chief Justice.

[S. 26D inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26E. Fee and registration duty

(1) An attorney or other person who requires the services of a registered usher shall pay to him—

- (a) such fee for his services and such allowance for travelling as may be prescribed by rules made under this Act;
- (b) any amount leviable under any enactment relating to registration duties.

(2) Every registered usher shall be responsible and liable for the payment of any amount due by virtue of an enactment relating to registration duties.

[S. 26E inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26F. Performance of duties by registered usher

(1) Every registered usher shall—

- (a) make every necessary annotation on a document to explain the steps taken by him, in the exercise of his duties, in relation to the document;
- (b) make every annotation under paragraph (a) in clear language, in legible characters and in English; and
- (c) make a note, at the foot of or some other convenient space on the document, of all the fees and costs, including registration duties, payable in respect of his services.

(2) (a) Every registered usher shall keep a register, in such form as may be prescribed, in which he shall forthwith make an entry of—

- (i) the fact that his services have been retained, the nature of the service and the fees and costs, including registration duties, and travelling allowance which have been paid to him;
- (ii) the steps taken by him in respect of the service; and
- (iii) any occurrence which may have obstructed him in the performance of his duty.

(b) Every registered usher shall cause the register kept under paragraph (a) to be inspected by the Master and Registrar or any other public officer deputed by the latter—

- (i) whenever he is required to do so; and
- (ii) in any event, on 31 January, 30 April, 31 July and 31 October in every year.

[S. 26F inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26G. Disciplinary proceedings

(1) Where he considers that a registered usher has failed to comply with section 26C, 26D, 26E or 26F or committed any other wrongful act, the Chief Justice shall appoint a disciplinary tribunal consisting of 3 Magistrates to enquire into the matter and provide him with a report indicating whether or not the registered usher is guilty of the alleged misfeasance.

(2) A disciplinary tribunal set up under subsection (1) shall arrive at a decision by a majority of its members.

(3) Where the report under subsection (1) is unfavourable to a registered usher, the Chief Justice may order that—

- (a) the registered usher's appointment be suspended for a period not exceeding 12 months or revoked;
- (b) any amount of security provided under section 26C be forfeited to the State.

[S. 26G inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

26H. Offences

(1) Any person who wilfully makes or causes to be made, or is privy to the making of, any falsification in any matter relating to the register kept under section 26F (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 12 months.

(2) Any person who wilfully obstructs, molests, opposes, hinders or assaults a registered usher in the performance of his duties, or any person lawfully assisting a registered usher, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding 12 months.

[S. 26H inserted by s. 5 of Act 5 of 2011 w.e.f. 10 October 2011.]

27. Rules

The Chief Justice may make rules for the purposes of this Act.

[S. 27 amended by s. 6 of Act 5 of 2011 w.e.f. 10 October 2011.]
