

DISTRICT AND INTERMEDIATE COURTS (CIVIL JURISDICTION) ACT

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DISTRICT AND INTERMEDIATE COURTS (CIVIL JURISDICTION) ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the District and Intermediate Courts (Civil Jurisdiction) Act.

2. Interpretation

In this Act—

“cashier” means District Cashier;

“clerk” means—

(a) in relation to the Intermediate Court, the Head Clerk;

(b) in relation to a District Court, the District Clerk;

“Judge” means a Judge in Chambers;

“oath” includes solemn affirmation and declaration in cases where a solemn affirmation or declaration is by law allowed instead of an oath;

“prescribed amount” has the same meaning as in the Courts Act;

“Registrar” includes any clerk having authority to act for the Registrar.

3. —

PART II – PROCEDURE

4. Suit by plaintiff

(1) On the application of any person who wishes to bring a suit under this Act, the clerk shall enter into a book to be kept for this purpose in his office, a plaint in writing, stating the names and the last known places of abode of the parties and the substance of the action intended to be brought.

(2) Every such plaint shall be numbered in every year, according to the order in which it shall be entered, and thereupon a summons, stating the substance of the action, and bearing the number of the plaint in the margin, shall be issued under the signature of the clerk and the seal of the Court, and be served upon the defendant not later than 48 hours before the trial, which period, however, may be shortened on reasonable cause being shown.

(3) No misnomer or inaccurate description of any person or place in any plaint or summons shall vitiate the same, where the person or place is described so as to be commonly known.

5. Where summons may issue

(1) Before a District Court, such plaint shall be entered and such summons shall issue in the district in which the defendant or one of the defendants dwells or carries on his business at the time of the action brought, or, where any immovable property is the subject matter of the suit, in the district in which such property is situate either in whole or in part.

(2) (a) Such summons may also, by leave of the Magistrate, issue in any district in which the defendant or one of several defendants has dwelt or carried on business at any time within the 6 months before the action brought or in which the cause of action has arisen in whole or in part.

(b) Where such leave is granted, the Court shall have jurisdiction as fully as if the defendants or every one of several defendants dwelt or carried on business within the district at the time of the action brought.

(3) Where a plaintiff is or has been a trader within the meaning of the Bankruptcy Act and carries on or carried on business as such in the district of Port Louis and the defendant dwells or carries on business in any other district, the plaint may be entered and the summons may issue either in the district of Port Louis or in the district in which the defendant dwells or carries on business, provided that the subject matter of the plaint is not immovable property and has arisen out of and in connection with the plaintiff's business as a trader in the district of Port Louis.

6. Service by post

(1) The clerk shall cause any summons or other process which is required to be served to be sent by registered post with advice of delivery to the address of the person to be summoned.

(2) The summons shall be posted in an envelope on which shall appear a notice that, in case the envelope is not delivered at the given address, it shall be returned to the clerk whose address shall be designated on the envelope.

(3) The clerk responsible for the service shall cause a certificate stating the date and place of posting of the summons or other process together with the advice of delivery to be filed not less than 7 days before the returnable date.

[S. 6 amended by Act 4 of 1999.]

7. Service by usher

(1) Where any summons or other process sent by registered post under section 6 is returned undelivered, it shall be served by the usher of the Court in the district where the person to be summoned resides.

(2) The usher shall, within 24 hours of service, send his return of the service or notification of the summons or other process to the clerk of the Court who shall sign or initial on the original.

(3) Any usher who fails to make his return within the time specified in subsection (2), shall be liable to a fine not exceeding 50 rupees to be imposed summarily by the Court.

[S. 7 amended by Act 4 of 1999.]

8. Payment of fees

(1) There shall be paid on every proceeding in the Intermediate Court or a District Court such fees as are prescribed.

(2) (a) A table of such fees shall be put up in some conspicuous place in the Court House, and in the clerk's office.

(b) The fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before the proceeding.

[S. 8 amended by Act 4 of 1999.]

9. Documents exempt from duty

All documents made use of or produced before any Court, in any matter or suit, shall be exempt from registration and stamp duties.

[S. 9 amended by Act 4 of 1999.]

10. —

11. Cause of action not to be divided

(1) (a) No plaintiff shall divide any cause of action for the purpose of bringing 2 or more suits, but a plaintiff who has a cause of action for more than the prescribed amount may abandon the excess, and may, on proving his case, recover an amount not exceeding the prescribed amount.

(b) The judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

(2) The plaintiff may join several causes of action in the same plaint provided they do not exceed the jurisdiction of the Court.

12. Arbitration

(1) The Magistrate may, in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person and in such manner and on such terms as he thinks reasonable and just.

(2) The award of the arbitrator or arbitrators or umpire, shall be entered as a judgment in the cause, and shall be binding and effectual to all intents as if given by the Magistrate.

13. Payment into Court by defendant

(1) (a) The defendant in any action brought under this Act, may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred up to the time of such payment, and notice of such payment shall be communicated by the clerk of the Court to the plaintiff, and the sum of money shall be paid to the plaintiff.

(b) Where the plaintiff elects to proceed and recovers no further sum in the action than has been so paid into Court, the plaintiff shall, upon the order of the Court, pay to the defendant the costs incurred in consequence of such action being continued after such payment.

(2) Where *offres réelles* are made under article 1257 and following of the Code Civil Mauricien, the money tendered shall be deposited at the office of the cashier.

(3) The usher of any Court may act as the *officier ministériel* referred to in article 1258 and following of the Code Civil Mauricien.

14. Appearance by barrister or attorney

No person shall be entitled, except in State and revenue cases, to appear for any party in any proceeding before a District Court unless he is an attorney or barrister, or unless he is allowed by the Magistrate to appear instead of such party.

[S. 14 amended by Act 48 of 1999.]

15. Proceeding when plaintiff does not appear

(1) Where on the day of the return of any summons or at any continuation or adjournment of the Court, or of the cause for which the summons has been issued, the parties do not appear, the cause may be struck out.

(2) Where the plaintiff does not appear but the defendant does appear, the Court may non-suit the plaintiff, or give judgment for the defendant, and in either case award costs against the plaintiff.

16. When defendant does not appear

(1) Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court, upon the proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as valid as if both parties had attended.

(2) In any case in which judgment has been so given in the absence of the defendant, the Court may, at the same or any subsequent sitting and on proof that he did not receive service of the plaint with summons or on other sufficient cause shown, set aside the judgment and order a new trial of the cause of action upon such terms, including the payment of costs or the giving of security for debt or costs, as the Court may determine.

[S. 16 amended by Act 4 of 1999.]

17. When defendant resists the claim

(1) (a) Where the defendant appears and does not admit the demand, his plea or defence shall be recorded.

(b) The Court shall then proceed to hear such witnesses as the plaintiff may call and such other proof as he may adduce in support of his plaint, and hear such witnesses as the defendant may call and such other proof as he may adduce in his defence.

(c) When the Court has heard what each party has to say, it shall give such judgment as justice may require and may award costs to the successful party.

(2) The clerk shall take minutes of the proceedings and shall also take down in writing the depositions of witnesses.

18. Magistrate may grant time

(1) The Court may, in any case, make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and may also adjourn any sitting, or the hearing of any cause, in such manner and under such conditions as the Court thinks fit.

(2) The Court may make orders concerning the time, not exceeding 6 months, and by what instalments, any debt or damages or costs for which judgment is obtained shall be paid, and all such money shall be paid into Court if so ordered by the Court.

(3) This section shall not apply where judgment is signed after issue of a writ for recovery of a bill of exchange or promissory note.

19. Bills of exchange and promissory notes

(1) Sections 2 to 8 of the Courts (Civil Procedure) Act shall extend to actions before the Intermediate Court or a District Court for the recovery of bills of exchange and promissory notes where the amount claimed is within the jurisdiction of such Court.

(2) The forms of procedure contained in the Schedule to the Courts (Civil Procedure) Act shall, *mutatis mutandis*, be applicable to similar proceedings before the Intermediate Court or a District Court, and all acts, matters and things which under that Act may be done and performed by the Supreme Court or a Judge, may in any similar proceedings before the Intermediate Court or a District Court be done or performed by a Magistrate.

(3) Judgments recovered in such cases may be executed as any other judgment of the Intermediate Court or a District Court, and costs in such proceedings when allowed by the Magistrate shall be taxed.

20. Attachment

(1) (a) The Magistrate, upon the application of any creditor, may, within the limits of his jurisdiction, allow such creditor to lodge in the hands of a third party, any attachment or opposition against the payment or delivery of any sums or effects due or belonging to his debtor, to the amount of one third over and above the debt actually due.

(b) The attachment or opposition shall be valid without any other formality than the service of the Magistrate's order until the right of the seizing party has been finally adjudicated or otherwise directed by the Magistrate.

(2) Where the defendant is a trader, or the plaint entered is for the recovery of rent, the Magistrate may, on satisfactory proof being given that the defendant is about to remove his goods and chattels, issue an order for the provisional seizure of the goods and effects of the defendant.

PART IIA – SMALL CLAIMS PROCEDURE

21. Lodging claims

(1) Proceedings under this Part shall be commenced by lodging a claim with the clerk of the District Court in the district where the defendant resides.

(2) A claim shall be in writing in the form set out in the First Schedule and shall be signed by the claimant.

(3) A claim may be made orally to the clerk who shall cause it to be reduced in writing.

(4) Where a claim has been reduced in writing under subsection (3), the clerk shall read over and explain to the claimant the contents of the form and, where the claimant confirms the correctness of the claim, the claimant shall sign the form in the presence of the clerk and a copy shall be given to him.

[S. 21 added by Act 4 of 1999.]

21A. Contents of a claim

(1) A form referred to in section 21 shall contain—

- (a) the name and address of the claimant;
- (b) the name and address of the defendant;
- (c) the amount or the estimated amount of the claim;
- (d) such other particulars of the claim as are reasonably sufficient to inform the defendant of the ground for the claim and the manner in which the amount claimed by the claimant has been calculated;
- (e) the time limit specified in section 21E within which the defendant shall reply to the claim;
- (f) a request for the defendant to make a declaration as—
 - (i) whether the claim is accepted in full;
 - (ii) whether the claim is disputed in full, with a brief account of the reasons for such dispute;

- (iii) whether the claim is disputed in part, with a statement as to the part of the claim that is disputed and the reasons for such dispute;
- (iv) the manner in which the defendant proposes to pay the undisputed amount, in case of an admission in whole or in part of the claim.

[S. 21A inserted by Act 4 of 1999.]

21B. Jurisdiction

(1) Where a claim is for an amount of more than 25,000 rupees, a claimant may abandon the excess, and the Court shall have jurisdiction to hear and determine the claim.

(2) No claim under Part IIA shall be brought before a Court—

- (a) where proceedings relating to the subject-matter of that claim have been already determined by that Court or any other Court;
- (b) where at the commencement of this Act proceedings in relation to a claim are pending before that Court or any other Court;
- (c) after the expiration of one year from the date on which the cause of action arose.

[S. 21B inserted by Act 4 of 1999.]

21C. Claim not to be divided

No claim shall be split or divided and pursued in separate proceedings before a Court under this Part for the sole purpose of bringing the sum claimed in each of such proceedings within the jurisdiction of a Court.

[S. 21C inserted by Act 4 of 1999.]

21D. Exclusion and transfer of proceedings

(1) Where a Court is of the opinion that a claim lodged with it under section 21 is beyond its jurisdiction under this Part, it shall discontinue any proceedings already started and advise the claimant accordingly.

(2) A discontinuation of proceedings under subsection (1) shall not debar the claimant from instituting fresh proceedings according to law.

[S. 21D inserted by Act 4 of 1999.]

21E. Settlement through Court

(1) Where a claim has been communicated to the defendant in accordance with section 21H, the defendant shall, within 14 days of the date of the communication, lodge with the clerk his reply in the form specified in the First Schedule.

(2) Where the defendant admits the claim in full, the Magistrate may give judgment against the defendant in the sum claimed and may award costs, and the clerk shall inform the claimant and the defendant accordingly.

(3) Where the defendant—

- (a) fails to reply to the claim within the time-limit specified in subsection (1);
- (b) disputes the claim in full or in part; or
- (c) makes a counterclaim,

the Court shall, before hearing the claim, convene the parties to the dispute in Chambers, on a date to be fixed by the Court, for consultation with a view to effecting a settlement acceptable to all the parties.

(4) The date to be fixed under subsection (3) shall be not later than one month from the date on which the reply was received or should have been received under subsection (1).

(5) Where a settlement is reached between the parties, the Court may make such order as it thinks fit to give effect to the settlement reached by the parties.

(6) An order made under subsection (5) shall have effect as a judgment of the Court for the purposes of section 22.

[S. 21E inserted by Act 4 of 1999.]

21F. Hearing of the claim

(1) Subject to section 21H, where it appears to the Court that a settlement under section 21E (3) will not be possible within a reasonable time, it shall fix a date for hearing the claim and give notice of the hearing in the form specified in the Second Schedule to—

- (a) the claimant;
- (b) the defendant; and
- (c) every person who appears from the claim form to have a sufficient interest in the claim.

(2) The clerk shall, at the request of a claimant or defendant, summon any person to appear before a Court, where the presence of such a person is necessary to enable the Court to determine the questions in dispute in the claim.

[S. 21F inserted by Act 4 of 1999.]

21G. Claim involving substantial question of law

(1) Where the Court finds that—

- (a) the dispute involves a question of law of substantial importance;
- (b) the claim is unsuitable for summary determination by reason of the counterclaim made by the defendant, or for any other reason,

the Court shall, unless the claimant elects to discontinue his claim, proceed to hear the claim according to the procedure specified in Part II.

(2) Where a claimant elects to discontinue his claim, the Magistrate shall not make any order as to costs.

[S. 21G inserted by Act 4 of 1999.]

21H. Service

Service of a copy of a claim, notice of hearing, summons, document or process that is to be served on any person in any proceedings under this Part shall be served by the clerk in the manner specified in sections 6 and 7.

[S. 21H inserted by Act 4 of 1999.]

21I. Proceedings of the Court

(1) A Court shall regulate its own procedure and, in so doing, shall endeavour to avoid formality in its proceedings.

(2) A Court may, of its own motion or at the request of any party, summon any witness and require the production of any record, book, deed, writing or other document which is relevant in any proceedings relating to a claim.

(3) A Court shall deal with any matter which it may consider relevant to a claim, whether or not it has been raised by a party.

[S. 21I inserted by Act 4 of 1999.]

21J. Appearance before Court

(1) Subject to subsection (2), any party to the proceedings before a Court may present his own case.

(2) A party to any proceedings before a Court may be represented by counsel or attorney or by a duly authorised representative.

(3) Subject to section 161A of the Courts Act, all proceedings before a Court shall be held in public.

[S. 21J inserted by Act 4 of 1999.]

21K. Claims may be heard together

(1) Where 2 or more claims are filed and it appears to a Court that—

- (a) a common question of fact or law arises in both or all of them;
- (b) the claim arose out of the same cause of action; or
- (c) it would be in the interest of justice,

the Court may order that such claims be heard at the same time.

(2) The power conferred by this section may be exercised by a Court notwithstanding that the hearing of one or more of the claims has begun.

[S. 21K inserted by Act 4 of 1999.]

21L. Judgment in default of appearance

(1) Where a defendant fails to appear at the hearing personally or is not represented by counsel or attorney or by a duly authorised representative, the claimant may move the Court for judgment in his favour.

(2) The Court shall not deliver judgment against a defendant under this section unless it is satisfied that a copy of the claim and the notice of hearing have been communicated to the defendant under section 21H.

[S. 21L inserted by Act 4 of 1999.]

21M. Determination of claims

(1) A Court shall determine a claim and pronounce such judgment as it thinks fit as soon as possible after the conclusion of a hearing.

(2) A Court may, at any time, dismiss a claim which it considers to be frivolous or vexatious on such terms as to costs as it thinks fit.

(3) The Court may make such ancillary orders as may be necessary to give effect to any order made by it under this section.

(4) Any judgment of a Court may include interest at such rate not exceeding the legal rate as may be fixed by the Court on the whole or any part of the sum claimed for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[S. 21M inserted by Act 4 of 1999.]

21N. Rules

The Chief Justice may make such rules as he thinks fit for the purposes of this Act.

[S. 21N inserted by Act 4 of 1999.]

21O. Enforcement of judgment of Court

A judgment of the Court may be enforced in the manner specified in Part III.

[S. 21O inserted by Act 4 of 1999.]

21P. Appeal

(1) A party to proceedings before a Court may appeal to the Supreme Court against any final judgment or order made by the Court under this Part.

(2) An appeal under this Part shall be made in accordance with Part IV.

[S. 21P inserted by Act 4 of 1999.]

21Q. Interpretation

In this Part—

“claim” means a small claim under section 21 but does not include any claim—

- (a) under section 111 of the Courts Act;
- (b) in respect of which the Industrial Court has exclusive jurisdiction;

“claimant” means a person who lodges a claim under section 21;

“Court” means a District Court;

“defendant” means any person against whom a claim is lodged and includes any person who becomes a party to the proceedings as defendant.

[S. 21Q inserted by Act 4 of 1999.]

PART III – EXECUTION OF JUDGMENT

22. Recovery of amount awarded

(1) Where the Court has made an order for payment of money, the amount shall be recoverable in case of default or failure of payment forthwith, or at the time and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order has been made.

(2) The clerk, at the request of the party prosecuting such order, shall issue under the seal of the Court a warrant of execution to one of the ushers of the Court, who by such warrant, shall be empowered to levy by distress and sale of the goods and chattels of such party (excepting those declared unseizable by the laws of Mauritius), such sum of money as shall be ordered, wherever such goods and chattels may be found, and also the costs of the execution.

(3) All police officers shall aid in the execution of every such warrant.

23. Execution out of district

(1) A warrant issued from a District Court may be executed in a district out of the jurisdiction of such Court.

(2) The clerk of the Court within whose jurisdiction the execution of the warrant is sought shall, on receipt of such warrant, seal it with the seal of his Court and issue it to one of the ushers of the Court for execution.

(3) The usher shall proceed to execute the same and shall return to the clerk what he has done in execution of such process, and the clerk shall pay over to the clerk of the Court from which the warrant was issued all money received in pursuance of the warrant, retaining the fees for the execution of the warrant.

24. Execution stayed when time granted

Where the Court makes an order for payment of any sum of money by instalments, execution on such order shall not issue against the party until after default in payment of some instalment, according to such order, and execution or successive executions may then issue for the whole of those sums of money and costs then remaining unpaid, or for such portion thereof as the Court shall order, either at the time of making the original order, or at any subsequent time.

25. Execution against immovable property

(1) Where the amount levied by distress is insufficient, the Magistrate may issue a writ of execution against any immovable property belonging to the debtor, in whatever district it may be situate.

(2) Where after 10 days from the service of the writ on the debtor, the judgment remains unsatisfied, any immovable property belonging to him may be seized and put up for sale before the Master in the manner provided in the Sale of Immovable Property Act.

26. Execution against goods and chattels

(1) Every usher executing any process or execution against the goods and chattels of any person, shall deliver to that person a list of any goods and effects so seized, and no sale of any such goods shall take place until 4 days after notice of the sale has been published in the *Gazette*, unless such goods are, in the opinion of the Magistrate, of a perishable nature, or upon the request in writing of the party whose goods have been taken.

(2) Until such sale, the goods shall be deposited by the usher in some fit place, or they shall remain in the custody of a fit person approved by the said usher.

(3) Such goods shall be sold by the usher, and every usher levying or receiving any money by virtue of any process issuing out of a Court shall forthwith pay over the same to the cashier who shall keep the same 3 days before paying the party entitled.

27. Execution suspended on payment

(1) The clerk shall cause to be inserted or endorsed in or upon every warrant of execution issued against the goods and chattels of any person, the sum of money and costs adjudged, with the sums allowed as increased costs for the execution of such warrant.

(2) Where the party against whom execution is issued, before the actual sale of the goods and chattels, pays or causes to be paid, or tenders to the clerk of the Court or to the usher holding the warrant of execution, such sum of money and the costs or such part as the person entitled agrees to accept in full discharge of his debt or damages and costs, together with the fees directed to be paid, the execution shall be suspended, and the goods and chattels shall be discharged and set at liberty.

28. Payment of fines

Payment of any fine imposed by any Magistrate under this Act may be enforced upon the order of the Magistrate in the same manner as payment of a fine imposed in a criminal case by a Magistrate.

29. No stay except on appeal

No judgment or execution shall be stayed, delayed or reversed by any writ of error or *supersedeas*.

30. Failure to pay a judgment debt

(1) Any party who has obtained any judgment or order, in any 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 the Magistrate in Chambers for an order calling the debtor to be examined before the Court.

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

(3) The debtor shall be examined, but not upon oath, before the Court touching 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. 30 amended by s. 4 (a) of Act 27 of 2006 w.e.f. 18 December 2006.]

31. – 33. —

[Ss. 31 to 33 repealed by s. 4 (b) of Act 27 of 2006 w.e.f. 18 December 2006.]

34. Obstruction of officer

(1) Where an officer or usher of the Court is assaulted in the execution of his duty, or where any rescue is made or attempted to be made of any goods levied under process of the Court, the person so offending shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees, to be recovered by order of the Court, and the usher or any officer of police, may, in any such case, take the offender into custody, with or without warrant, and bring him before the Court.

(2) Nothing in this section shall be a bar to a prosecution under the Criminal Code.

35. Negligence of usher

Where an usher who is employed to levy execution against goods and chattels, by neglect or connivance, or omission, loses the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission (the fact alleged being proved to the satisfaction of the Magistrate on the oath of a credible witness), the Magistrate shall order such usher to pay such damages as it appears that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the execution was issued, and the usher shall be liable thereto, and, upon demand made and his refusal so to pay and satisfy the same, payment shall be enforced by such ways and means as are provided in this Act.

PART IV – APPEAL

36. Appeal

(1) A party to a suit or action before the Intermediate Court or a District Court, whether such suit or action has been entered by plaint with summons, or by any other process, may appeal to the Supreme Court against any final judgment.

(2) Subject to subsection (1), a judgment shall be final to all intents and purposes.

37. Time for appealing

(1) (a) Every person appealing shall, within 21 days of the date of the judgment, exclusively give notice in writing of such appeal to the clerk of the Court.

(b) Upon receipt of the notice under paragraph (a), the Magistrate shall immediately bind the party giving such notice, together with one or more sureties, by recognisance in favour of the respondent in such sum as the Magistrate thinks sufficient to cover the costs of the appeal.

(c) The condition of the recognisance shall be that the appellant shall appear and within a fortnight of giving notice to the clerk prosecute such appeal to its conclusion, and pay such costs as the Supreme Court may award.

(2) The clerk may examine on oath any person offered as surety or may require him to make affidavit touching his means of paying the amount of security required, and any person, who, when so examined or in any such affidavit, makes any false statement, shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

(3) (a) The appellant shall, within a fortnight of the day on which the recognisance is given under subsection (1), lodge his appeal in the Registry and serve notice of the appeal on the respondent.

(b) Where subsequently the appeal is dismissed, the Magistrate may, on production of a certificate signed by the Registrar that such appeal has

been dismissed and on production of a taxed bill of the costs of such appeal, forthwith issue execution against the appellant for recovery of the judgment and all costs, or against the surety for recovery of the costs of appeal.

[S. 37 amended by Act 29 of 1990; Act 29 of 1992.]

FIRST SCHEDULE

[Section 21]

IN THE DISTRICT COURT OF

SMALL CLAIMS FORM

Case Number:

- 1. Name of claimant:
Address of claimant:
Telephone No.:
2. Address for service and payment (if not as above):
Ref./Tel. no.:
3. Name of defendant:
Address of defendant:
4. Amount claimed:

Brief description of type of claim:
Particulars of the claim (showing the grounds on which the claim is based and how it has been calculated):

YOU MAY REPLY TO THIS CLAIM BY FILING THE ATTACHED FORM AND LODGING YOUR REPLY WITHIN 14 DAYS WITH THE CLERK OF THE DISTRICT COURT OF

Address

Date: Signature of claimant:

REPLY FORM

[Section 21E]

Declaration by defendant

(To be filled by defendant and communicated to the clerk of the District Court of

I hereby declare that—

*(a) I accept the claim in full. I shall effect payment as follows—

.....
.....

FIRST SCHEDULE—continued

*(b) The claim is disputed in full. The grounds for disputing the claim are as follows—

.....
.....

*(c) The claim is disputed in part. The part of the claim which is disputed and the grounds for such dispute are as follows—

.....
.....

*(d) I admit part of the claim as follows—
(please state how you propose to pay the undisputed amount)

.....
.....
.....
.....
.....

Signature of defendant:

Date:

*Delete as appropriate

[First Sch. added by Act 4 of 1999.]

SECOND SCHEDULE

[Section 21F]

IN THE DISTRICT COURT OF

SMALL CLAIMS

NOTICE OF HEARING

Claimant:

Case No.:

Date:

Defendant:

To the Claimant and Defendant

DETAILS OF HEARING

This case is hereby fixed for hearing on merits.

The hearing will take place at on
..... at o'clock.

If you do not attend the Magistrate may make decisions in your absence and award costs.

Magistrate Directions (What should you do)

- (a) Not less than 14 days before the hearing, you must send the other party a copy of all documents you have which you are going to use in connection with your case; and

SECOND SCHEDULE—continued

- (b) not less than 8 days before the hearing you must send to the Court and to the other party—
 - (i) a copy of any report or document you are going to use in connection with your case, and
 - (ii) the name(s) and address(es) of any witness(es) you intend to call.

Signature of Clerk of the Court:

Date:

[Second Sch. added by Act 4 of 1999.]
