

CHAPTER 28

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CHAPTER 28

SUBORDINATE COURTS

An Act to provide for the constitution, jurisdiction and procedure of Subordinate Courts; to provide for appeals from such courts to the High Court; and to provide for matters incidental to or connected with the foregoing.	36 of 1933
[1st April, 1934]	28 of 1936
	16 of 1937
	22 of 1939
	22 of 1940
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	29 of 1949
	12 of 1952
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	41 of 1960
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PART I PRELIMINARY

1. This Act may be cited as the Subordinate Courts (Amendment) Act, 1998, and shall be read as one with the Subordinate Courts Act, in this Act referred to as the principal Act.. Short title Cap.28

2. In this Act, unless the context otherwise requires- Interpretation

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding; Cause

"clerk of the court" includes an assistant clerk of the court or other officer performing, or assisting a clerk of the court in, his duties; Clerk of the court

"court messenger" means a person authorised to serve process and levy executions and otherwise execute the orders of the High Court or a Subordinate Court; Court messenger

"defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of a Subordinate Court with any crime or offence; Defendant

"judgment" and "decree" shall be deemed synonymous terms; Judgment and decree

"matter" includes every proceeding in a Subordinate Court not in a cause; Matter

"perjury" means perjury as defined in section *one hundred and four* of the Penal Code; Perjury. Cap. 87

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether writ, petition or otherwise; Plaintiff

"suit" includes action, and means a civil proceeding commenced by writ of summons, or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding. Suit

(As amended by S.I. No. 63 of 1964)

PART II

CONSTITUTION OF SUBORDINATE COURTS

3. There shall be and are hereby constituted courts subordinate to the High Court in each District as follows: Establishment of Subordinate Courts

(a) a Subordinate Court of the first class to be presided over by a principal resident magistrate, a senior resident magistrate, resident magistrate or a magistrate of the first class;

(b) a Subordinate Court of the second class to be presided over by a magistrate of the second class;

(c) a Subordinate Court of the third class to be presided over by a magistrate of the third class.

(As amended by No. 28 of 1965 and Act No. 11 of 1990)

4. Each Subordinate Court shall have the jurisdiction and powers provided by this Act and any other written law for the time being in force and shall ordinarily exercise such jurisdiction only within the limits of the District for which each such court is constituted. General and territorial jurisdiction of Subordinate Courts

(No. 28 of 1965)

5. The Judicial Service Commission acting in the name of and on Appointment of magistrates

behalf of the President may appoint persons to hold or act in the office of principal resident magistrate, senior resident magistrate, resident magistrate or magistrate of any class.

(As amended by Act No. 28 of 1965 and No. 11 of 1990)

6. A Subordinate Court may sit at different places simultaneously when it is expedient that there should be two or more divisions of that Court presided over by different magistrates.

Simultaneous sittings of a Subordinate Court

(As amended by No. 28 of 1965)

7. Subject to the operation of any express statutory provision providing otherwise, and to the provisions of this Act and the Criminal Procedure Code, all magistrates shall have and may exercise, in all respects, equal power, authority and jurisdiction; and, subject as aforesaid, any magistrate may exercise all and any part of the jurisdiction by this Act or otherwise vested in a Subordinate Court, and, for such purpose, shall be and form a court.

Power and jurisdiction of magistrates.
Cap. 88

8. The trial of any civil cause or matter may, if the presiding magistrate so decides, be held with the aid of assessors, the number of whom shall be two or more, as to the presiding magistrate seems fit. If such trial is to be held with the aid of assessors, all the provisions relating to assessors, as contained in the Criminal Procedure Code, shall, so far as the same are applicable, apply to such trial.

Trial with assessors
Cap. 88

9. All Subordinate Courts shall use seals of such nature and pattern as the Chief Justice may, by statutory order, direct.

Seals

(As amended by G.N. No. 303 of 1964)

10. The sittings of Subordinate Courts shall usually be held in such buildings within Zambia as the Chief Justice shall, from time to time, assign as Court Houses for that purpose; but, in case a Subordinate Court shall sit in any other building or place, within the limits of its jurisdiction, for the transaction of legal business, the proceedings shall be as valid, in every respect, as if the same had been held in any such Court House.

Place of sitting

(As amended by G.N. No. 303 of 1964)

PART III

JURISDICTION AND LAW

- 11.** All Subordinate Courts shall be Courts of Record. Courts of Record
- 12.** The jurisdiction vested in Subordinate Courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Act and the Criminal Procedure Code, or by such rules and orders of court as may be made pursuant to this Act and the Criminal Procedure Code, and, in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction. Practice and procedure Cap. 88
- 13.** (1) Notwithstanding the provisions of any other written law regulating the transfer of proceedings between courts and subject to any general or special directions of the High Court, it shall be lawful for any Subordinate Court, in any civil or criminal proceedings and at any stage of the proceedings before judgment, to order such proceedings to be transferred for trial to any Local Court having power to entertain the proceedings and exercising jurisdiction within the area of jurisdiction of such Subordinate Court. Before making any such order the Subordinate Court shall satisfy itself that the making of such order will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record its reasons for ordering such transfer. The fact of such transfer shall be recorded in the court register. Power to transfer to Local Courts
- (2) For the purposes of this section, "Local Court" means a court recognised under the Local Courts Act. Cap. 29
- (No. 6 of 1944)
- 14.** All British Acts declared by any Act to extend or apply to Zambia shall be in force so far only as the circumstances of Zambia permit; and, for the purpose of facilitating the application of the said British Acts, it shall be lawful for a Subordinate Court to construe the same with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before the court; and every magistrate or officer of court, having or exercising functions of the like kind or analogous to the functions of a magistrate Rules as to application of British Acts

or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned magistrate or officer.

(As amended by S.I. No. 63 of 1964)

15. In every civil cause or matter which shall come in dependence in a Subordinate Court, law and equity shall be administered concurrently; and a Subordinate Court, in the exercise of the jurisdiction vested in it by this Act, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter; so that, as far as possible, all matters in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and, in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Law and equity to be concurrently administered

16. Subject as hereinafter in this section provided, nothing in this Act shall deprive a Subordinate Court of the right to observe and to enforce the observance of, or shall deprive any person of the benefit of, any African customary law, such African customary law not being repugnant to justice, equity or good conscience, or incompatible, either in terms or by necessary implication, with any written law for the time being in force in Zambia. Such African customary law shall, save where the circumstances, nature or justice of the case shall otherwise require, be deemed applicable in civil causes and matters where the parties thereto are Africans, and particularly, but without derogating from their application in other cases, in civil causes and matters relating to marriage under African customary law, and to the tenure and transfer of real and personal property, and to inheritance and testamentary dispositions, and also in civil causes and matters between Africans and non-Africans, where it shall appear to a Subordinate Court that substantial injustice would be done to any party by a strict adherence to the rules of any law or laws other than African customary law:

Application of African customary law

Provided that-

(i) no party shall be entitled to claim the benefit of any African customary law, if it shall appear, either from express contract or from the nature of the transactions out of which any civil cause, matter or question shall have arisen, that such party agreed or must be taken to have agreed that his obligations in connection with all such transactions should be regulated exclusively by some law or laws other than African customary law;

(ii) in cases where no express rule is applicable to any matter in issue, a Subordinate Court shall be guided by the principles of justice, equity and good conscience.

17. Every magistrate shall have power to issue writs of summons for the commencement of actions in a Subordinate Court, to administer oaths, and take solemn affirmations and declarations, and to make such decrees and orders, and issue such process and exercise such powers, judicial and ministerial, in relation to the administration of justice, as shall, from time to time, be prescribed by any written law or by rules of court. General power of magistrates

(As amended by No. 58 of 1966)

18. No writ of *habeas corpus* or order in the nature thereof for the production before the court of any person alleged to be wrongfully imprisoned or detained shall be issued by any Subordinate Court. No power to issue writs of *habeas corpus*

(As amended by No. 30 of 1956)

19. In the exercise of their criminal jurisdiction, Subordinate Courts shall have all the powers and jurisdiction conferred on them by the Criminal Procedure Code, this Act or any other law for the time being in force. Criminal jurisdiction
Cap. 88

20. (1) In civil causes and matters a Subordinate Court of the first class shall, subject to this Act and in addition to any jurisdiction which it may have under any other written law, within the territorial limits of its jurisdiction, have jurisdiction- Civil jurisdiction of Subordinate Courts of the first class

(a) in all personal suits, whether arising from contract, or from tort or from both, where the value of the property, debt or damage claimed, whether as balance of accounts or otherwise is-

(i) where the court is presided over by a principal resident

magistrate, not more than thirty million kwacha;

(ii) where the court is presided over by a senior resident magistrate, not more than twenty-five million kwacha;

(iii) where the court is presided over by a resident magistrate, not more than twenty million kwacha; and

(iv) where the court is presided over by a magistrate of the first class, not more than ten million kwacha;

(b) to enforce by attachment any order made by the court;

(c) to hear and determine any action for the recovery of land where the value of the land in question or the rent payable per annum is, in case of a Subordinate Court presided over by-

(i) a magistrate of the first class a value of up to five million kwacha or rent for one million, two hundred thousand kwacha;

(ii) a resident magistrate, a value of up to twenty million kwacha or rent for four million kwacha;

(iii) a senior magistrate, a value of up to twenty-five million kwacha or rent for five million kwacha; or

(iv) a principal resident magistrate, a value of up to thirty million kwacha or rent for six million kwacha

(d) to make any order which may be made by a court of summary jurisdiction under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 and section *eleven* of the Matrimonial Causes Act, 1937, of the United Kingdom:

Provided that for the purposes of this section-

(i) paragraph (c) of section *five* of the Summary Jurisdiction (Married Women) Act, 1895, of the United Kingdom shall be read as if for the expression "such weekly sum not exceeding one thousand kwacha or such monthly sum not exceeding four thousand kwacha" there were substituted the expression "such weekly sum not exceeding twenty thousand kwacha or monthly sum not exceeding one hundred thousand kwacha"; and

(ii) any reference to the term "married woman" or "wife" in the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, Matrimonial Causes Act, 1937, and Married Women Maintenance Act, 1920 shall be read as a reference to "spouse";

Provided further, that the allowance payable in respect of the spouse may be increased by fifty per centum of the amount by which the earnings or other income of the other spouse exceed two hundred thousand kwacha per month so that the total allowance shall not in any event exceed one hundred thousand kwacha per month:

Provided that a Subordinate Court of the first class shall not have jurisdiction in or cognizance of any suit or matter of the nature following, that is to say where:

- (i) the title to any right, duty or office is in question;
- (ii) the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question;
- (iii) the legitimacy of any person is in question; or
- (iv) the validity or dissolution of any marriage is in question.

(2) In addition to the jurisdiction conferred by subsection (1), a Subordinate Court presided over by a senior resident magistrate or a resident magistrate shall, within the local limits of its jurisdiction, have jurisdiction to enforce any judgment of the High Court for the payment of any money to a person where such judgment or order has been transferred by the High Court to such court as if it were a judgment of such court, and the provisions relating to the execution of judgments in Subordinate Courts (including the provisions relating to the staying of execution) shall have effect accordingly.

(As amended by No. 29 of 1949, No. 20 of 1954, No. 25 of 1956, No. 17 of 1959, No. 39 of 1960, No. 28 of 1965, No. 58 of 1966, Act No. 11 of 1990, No. 41 of 1994, No. 5 of 1995 and Act No.25 of 1998)

21. In civil causes and matters, a Subordinate Court of the second class shall, within the territorial limits of its jurisdiction, have all the jurisdiction conferred by section *twenty* upon a Subordinate Court of the first class, subject to the limitations contained in that Section:

Civil jurisdiction of Subordinate Courts of second class

Provided that in personal suits whether arising from contract or from tort, or from both, the value of the property, debt or damage claimed whether as a balance of account or otherwise, shall not be more than one million kwacha.

(As amended by Act No. 11 of 1990, No.41 of 1994 and No.25 of 1998).

22. In civil causes and matters, a Subordinate Court of the third class shall, subject to the provisions hereinafter contained, and in addition to any jurisdiction which it may have under any other written law, within the territorial limits of its jurisdiction, have jurisdiction-

Civil jurisdiction of Subordinate Courts of third class

(a) in all personal suits, whether arising from contract or from tort or from both, where the value of property or the debt or damage claimed, whether as balance of account or otherwise, is not more than four million kwacha.

Debt or damage

(b) to appoint guardians of infants and to make orders for the custody of infants;

Infants

(c) to enforce by attachment any order made by the court:

Attachment

Provided that a Subordinate Court of the third class shall not have jurisdiction in or cognizance of any suit or matter of the nature following, that is to say:

(i) wherein the title to any right, duty or office is in question; or

Title to office

(ii) wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or

Wills

(iii) where the legitimacy of any person is in question; or

Legitimacy

(iv) wherein the validity or dissolution of any marriage (other than a polygamous marriage contracted under African customary law) is in question.

Marriage

(As amended by No. 58 of 1966, 11 of 1990, No.41 of 1994 and No. 25 of 1998)

23. If, in any civil cause or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon, if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the High Court to transfer such cause or matter to itself.

Where question of title to land is in issue

24. The Chief Justice may, by order under his hand and the seal of the High Court, authorise an increased jurisdiction in civil causes and matters to be exercised by the magistrate named in the order, within the District prescribed in the order, and to the extent specified in the order. Such order may, at any time, be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

Extension of
jurisdiction

*(As amended by No. 16 of 1937, G.N. No. 444 of 1964
and No. 28 of 1965)*

PART IV

SITTINGS AND DISTRIBUTION OF BUSINESS

25. Subordinate Courts shall ordinarily be held at such places as the Chief Justice may direct, but, should necessity arise, they may also legally be held at any other place within the limits of their jurisdiction.

Sittings

(As amended by G.N. No. 303 of 1964)

26. In case the magistrate before whom any cause or matter is to be heard shall, for any reason, be unable or fail to attend on the day appointed, and no other magistrate shall attend in his stead, the court shall stand adjourned *de die in diem* until a magistrate shall attend, or until the court shall be adjourned or closed by order under the hand of a magistrate.

Adjournment in
absence of magistrate

27. Any civil cause or matter may at any time before or after the hearing thereof, either with or without application from any of the parties thereto, be transferred from a court presided over by a magistrate of the first class and having jurisdiction to entertain such civil cause or matter to another court presided over by a magistrate having such jurisdiction, by an order of the magistrate before whom such cause or matter has come or been set down or in the court where the same is pending, whether on a previous transfer under this section or otherwise:

Power of courts
to transfer cases

Provided that any party to such cause or matter may at any time within fourteen days of the making of such order make application to the magistrate who made the same or to the court for an order setting aside the transfer, and the magistrate or court shall upon such application

make such order as in the circumstances may be just and reasonable.

(No. 22 of 1958)

27A. (1) Where the presiding magistrate is, on account of illness, death, relinquishment or cesser of jurisdiction or any other similar cause, unable to deliver a judgment already prepared by him, then the Chief Justice may direct that another magistrate of co-ordinate jurisdiction shall deliver in open court the judgment prepared by the presiding magistrate and shall, thereafter, complete the proceedings of the case as if he had himself heard and determined the case:

Completion of proceedings

Provided that the judgment shall be dated and signed by the magistrate at the time of delivering it.

(2) In any case where a magistrate has been appointed (whether before or after the *commencement of Act No. 4 of 1972) to be a magistrate of a higher class or to be or to act as a Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.

*30th March, 1972.

(3) Where a magistrate is transferred to another District, he shall complete any proceedings already commenced before him.

(No. 4 of 1972)

PART V

APPEALS

A-Appeals in Civil Cases

28. (1) An appeal shall lie to the High Court from any judgment, order or decision of a Subordinate Court whether interlocutory or final:

Civil appeals

* 30th March, 1972.

Provided that no appeal shall lie except by special leave of the Subordinate Court, or of the High Court, from an order made *ex parte* or by consent, or as to costs only.

Ex parte consent
or costs orders

(2) Appeals from Subordinate Courts shall be heard by one Judge of the High Court, except where in any particular case the Chief Justice shall direct that the appeal be heard by two Judges.

Appeal before
one Judge

(3) Where an appeal is heard by a Bench of two Judges and they are divided in opinion, the appeal shall be dismissed.

Division of
opinion between
Judges

(*G.N. No. 444 of 1964*)

29. The High Court shall not grant a new trial or reverse any judgment, by reason of the ruling of any Subordinate Court that the stamp upon any document is sufficient, or that the document does not require a stamp.

Wrong ruling as
to sufficiency of
stamp

30. In addition and without prejudice to the right of appeal conferred by this Act, a Subordinate Court may reserve for consideration by the High Court, on a case to be stated by it, any question of law which may arise on the trial of any suit or matter, and may give any judgment or decision, subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

Power to reserve
question of law
for opinion of
High Court

31. Subject to the provisions of the next succeeding section, the High Court shall not entertain any appeal, unless the appellant has fulfilled all the conditions of appeal imposed by the Subordinate Court or by the High Court, as prescribed by rules of court.

Conditions
precedent to
appeal

32. Notwithstanding anything hereinbefore contained, the High Court may entertain any appeal from a Subordinate Court, on any terms which it thinks just.

Discretionary
power of High
Court

B-Appeals in Criminal Cases

33. Appeals in criminal cases shall lie from Subordinate Courts in accordance with the provisions contained in the Criminal Procedure Code.

Right of appeal in criminal cases.
Cap. 88

PART VI

OFFICERS OF SUBORDINATE COURTS

34. The clerk of the court attached to a Subordinate Court shall perform such duties in execution of the powers and authorities of the court as may, from time to time, be assigned to him by rules of court, or, subject thereto, by any special order of the court.

Clerk of the court

35. Subject to any rules of court or special orders of the court, every clerk of the court shall issue all summonses, warrants and writs of execution, and shall register all orders and judgments, and shall keep a record of all proceedings of the Subordinate Court to which he is attached, and shall have the custody and keep an account of all fees and fines payable or paid into court, and of all moneys paid into or out of court, and shall keep proper accounts thereof, and shall, from time to time, submit his accounts to be audited, and shall pay over to the Government the amount of fines and fees in his custody, as and when directed by any rules of court, or as specially directed by the court.

Duties of clerk of the court

36. Every clerk of the court shall be Taxing Master for the Subordinate Court to which he is attached, and shall tax all bills of costs, in accordance with the scale of fees for the time being in force and any rules of court, subject to the review of such taxation by such court.

Taxing Master

37. Every clerk of the court shall, before entering upon the duties of his office, take an oath for the faithful performance of his duty in the form following:

"I do swear I will truly, faithfully and honestly execute the office of clerk of the court without fear, favour or affection for anyone. So help me God."

PART VII

CONTEMPT OF COURT

38. The power and jurisdiction of the High Court, in dealing with cases of contempt of its authority, shall extend to the up-holding of the authority of Subordinate Courts. Power of High Court

39. Whenever any punishment as for a contempt of court shall be imposed by a magistrate, he shall make and keep a minute recording the facts of the offence and the extent of the punishment; and he shall, forthwith, send a copy of such minute to the High Court, which may, thereupon, without hearing any argument, vary or set aside the order of the magistrate. When punishment imposed by magistrate

40. (1) If any person shall wilfully insult a magistrate during his sitting in court, or any clerk, court messenger or any other officer of a Subordinate Court during his attendance therein, or shall wilfully interrupt the proceedings of such court, or otherwise misbehave in court, any police officer or private person may, by order of the magistrate, take the offender into custody and detain him till the rising of the court. Misconduct in court

(2) The magistrate is hereby empowered, if he shall think fit, by warrant under his hand, to commit any person so offending to prison for a period not exceeding seven days, or to impose upon such person a fine not exceeding one hundred and fifty penalty units, for each offence, and, in default of payment thereof, to commit the offender to prison for any time not exceeding seven days, unless the fine be sooner paid, in each such case as for a contempt of court.

(3) Whenever any order is made by a magistrate under this section, the provisions of the last preceding section shall apply thereto.

(As amended by Act No. 13 of 1994)

PART VIII

EVIDENCE

- 41.** In any suit or matter, and at any stage thereof, a Subordinate Court, either of its own motion or on the application of any party, may summon any person within Zambia to attend to give evidence, or to produce any document in his possession or power, and may examine such person as a witness, and require him to produce any document in his possession or power, subject to just exceptions. Summoning witnesses
- 42.** If the person summoned as in the last preceding section provided, having reasonable notice of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from the Subordinate Court, fails to attend accordingly, and does not excuse his failure to the satisfaction of the court, he shall, independently of any other liability, be guilty of a contempt of court, and may be proceeded against by warrant to compel his attendance. Compelling attendance-
Penalty on non-attendance
- 43.** If, in any suit or matter, any person, whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath, or to answer any question lawfully put to him, or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of a Subordinate Court, he shall, independently of any other liability, be guilty of a contempt of court, and the court may, by warrant, commit him to prison, without hard labour, there to remain for not more than one month, unless he, in the meantime, consents to take an oath, or to answer duly, or to produce any such document, as the case may be; and he shall also be liable to a fine not exceeding seven hundred and fifty penalty units. Refusal to be sworn or to give evidence
- (As amended by Act No. 13 of 1994)*
- 44.** Any person present in court, whether a party or not in a cause or matter, may be compelled by a Subordinate Court to give evidence, or produce any document in his possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the court. Bystander may be required to give evidence
- 45.** A magistrate may issue a warrant under his hand to bring up any person confined as a prisoner under any sentence or otherwise, to be Prisoner may be brought up by

examined as a witness in any suit or matter depending in any Subordinate Court, and the gaoler, or person in whose custody such prisoner shall be, shall obey such warrant, by bringing such prisoner in custody and delivering him to an officer of the court. warrant to give evidence

46. It shall be lawful for the presiding magistrate, in civil as well as criminal proceedings, to order and allow to all persons required to attend, or examined, as witnesses, such sum or sums of money as shall seem fit, as well as for defraying the reasonable expenses of such witnesses as for allowing them a reasonable compensation for their trouble and loss of time. But it shall not be lawful, in any criminal proceeding, for any person to refuse to attend as a witness or to give evidence, when so required by process of the court, on the ground that his expenses have not been first paid or provided for. Allowances to witnesses

47. All sums of money allowed under the provisions of the last preceding section shall be paid, in civil proceedings, by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit, if a Subordinate Court shall so order, and, in criminal proceedings, they shall, where not ordered to be paid by the party convicted or the prosecution, be paid out of the general revenues of the Republic. How defrayed

48. In any cause or matter, a Subordinate Court may make such order for the inspection by the court, the parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the court may seem fit. Inspection

49. A Subordinate Court may, in any cause or matter in which questions of African customary law may be material to the issue, call as witnesses thereto chiefs or other persons whom the court considers to have special knowledge of African customary law. Witnesses as to African customary law

50. A person shall not be entitled, as of right, at any time or for any purpose, to inspection or a copy of the record of evidence given in any case before any Subordinate Court, or to a copy of the notes of such court, save as may be expressly provided by any rules of court. A person not entitled to inspection or copy of record of evidence

51. (1) In every case heard before a Subordinate Court, and at every Evidence before stage thereof, the presiding magistrate shall, save as hereinafter Subordinate provided, take down in writing the oral evidence given before the court: Courts, recording of

Provided that, should the presiding magistrate, in any case, find himself temporarily incapacitated from taking down such evidence, it shall be lawful for the magistrate to direct that such evidence shall be taken down by the clerk of the court or officer performing his duties in court.

(2) Before any clerk of the court or other officer shall take down in writing any oral evidence as aforesaid, an oath shall be tendered to and taken by such clerk of the court or officer for the accurate and faithful recording of such oral evidence, according to the true purport and meaning thereof; and such oath shall be in such terms as to such presiding magistrate may seem apt and sufficient:

Provided always that a clerk of the court or officer performing his duties in court, who shall once have duly taken such oath, shall not again be required to take such oath in respect of the same or of any subsequent case.

(3) After taking such oath as aforesaid, the clerk of the court or other officer shall take down in writing such oral evidence in manner as aforesaid, under the supervision and control of the presiding magistrate, who may, at any time before appending his signature to such writing, amend anything therein which he may consider requires to be amended; and, before so appending his signature, such magistrate shall peruse and examine such writing, and satisfy himself that it is, in substance, an accurate and faithful record of the oral evidence given.

(4) Notwithstanding the foregoing provisions of this section, the Chief Justice may authorise that the oral evidence given before a specified Subordinate Court, either generally or in a particular case, may be recorded in shorthand or by any other system of verbatim reporting and afterwards transcribed into longhand. Any such authority given by the Chief Justice shall be subject to the following conditions:

(a) no person shall be employed for the purpose of so recording or transcribing unless the magistrate is satisfied that such person is

competent, reliable and suitable for the purpose;

(b) before any person so records and transcribes, or so records or transcribes, he shall take an oath for the faithful and accurate recording and transcription, or recording or transcription, according to the true purport and meaning of the evidence. Such oath shall be in such terms as the Chief Justice may direct.

(As amended by No. 24 of 1952)

52. (1) A Subordinate Court of the first or second class, if it appears Perjury to it that a person has been guilty of perjury in any proceeding before it, may-

(a) after calling upon such person to show cause why he should not be punished as for a contempt of court, commit him to prison for any term not exceeding six months, with or without hard labour, or fine him any sum not exceeding one thousand five hundred penalty units, or impose both such penalties upon him, in each such case as for a contempt of court; or

(b) after preliminary inquiry, commit him for trial upon information for perjury, and bind any person by recognizance to give evidence at such trial.

(2) On imposing any penalty as for a contempt of court under this section, a Subordinate Court shall, forthwith, send a copy of the proceedings to the High Court. The High Court may, thereupon, without hearing any argument, vary or set aside the order of the Subordinate Court.

(3) Except where the order of the Subordinate Court is set aside by the High Court, any penalty imposed under this section shall be a bar to any other criminal proceedings in respect of the same offence.

(As amended by Act No. 13 of 1994)

PART IX

COMPOSITION ORDERS

53. (1) Where a judgment has been obtained in a Subordinate Court of the first or second class, and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding eight hundred kwacha, inclusive of the debt for which the judgment is obtained, the Subordinate Court may make an order, to be called a composition order, providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the Subordinate Court, in the circumstances of the case, appears practicable, and subject to any conditions as to his future earnings or income which the court may think just:

Power of
Subordinate
Courts of first
and second class
to make
composition
orders

Provided that instalments shall not be ordered so as to be payable for a longer period than three years.

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed eight hundred kwacha, but, in such case, the Subordinate Court may, if it thinks fit, set aside the order.

(3) Where, in the opinion of the Subordinate Court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the Subordinate Court in the District in which the debtor or the majority of the creditors resides or reside, and, thereupon, the last-named court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4) If a debtor against whom a composition order has been made should leave Zambia before he has fully complied with such order, then the Subordinate Court administering his estate under this section may, if it thinks fit, set aside the order.

(5) When the composition order is made, no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a Subordinate Court, except with the leave of that court, and on such terms as that court may impose; and any Subordinate Court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt

notified.

(6) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

(7) The order shall be carried into effect in such manner as may be prescribed by rules of court.

(8) Money paid into court under the order shall be appropriated, first, in satisfaction of the costs of the plaintiff in the action, next, in satisfaction of the costs of administration (which shall not exceed ten ngwee in the kwacha on the total amount of the debts), and then in liquidation of debts in accordance with the order.

(9) Notice of the order shall be posted in the office of the Subordinate Court of the District in which the debtor resides, and sent to every creditor notified by the debtor or who has proved. Such order shall also be published in the *Gazette*.

(10) Any creditor of the debtor, on proof of his debt before the clerk of the court of the Subordinate Court, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11) Any creditor may, in the prescribed manner, object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12) Any person who, after the date of the order, becomes a creditor of the debtor, shall, on proof of his debt before the clerk of the court, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13) When the amount received under the order is sufficient to pay

each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14) If a debtor, subsequent to the date of a composition order and while such order remains in force, obtains credit without informing the creditor or creditors that a composition order has been made in respect to his estate, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding seven hundred and fifty penalty units, or to imprisonment with or without hard labour for a period not exceeding three months, or to both.

(15) A composition order shall be deemed to be an act of bankruptcy within the meaning of the Bankruptcy Act. Cap. 82

(As amended by No. 12 of 1952 and Act No. 13 of 1994)

PART X

MISCELLANEOUS

54. Every magistrate and every officer attached to a magistrate shall be subject to the orders and directions of the High Court; and every proceeding before a magistrate shall be subject to the directions and control of the High Court. Magistrates subject to directions of High Court

55. No action shall be brought against any magistrate in respect of any act done or order made by him in good faith in the execution or supposed execution of the powers and jurisdiction vested in him. Protection from actions

56. At the end of every month, every Subordinate Court shall forward to the High Court, in such form as the High Court may, from time to time, direct, a complete list of all criminal cases decided by or brought before such court during that month. Return of criminal cases

PART XI

RULES OF COURT

***57.** The Chief Justice may, from time to time, by statutory instrument, make rules of court for regulating the procedure and practice of Subordinate Courts, the forms to be used therein, the fees payable, and the costs and charges to be allowed to legal practitioners practising therein, for regulating the procedure and practice relating to appeals from Subordinate Courts and, generally, for making any provisions proper or necessary for the proper or effectual exercise of jurisdiction by such courts; and may, from time to time, alter, amend or revoke all or any of such rules, as occasion may require.

Rules of court

* See section 8 of the Evidence Act (Cap. 43)

(As amended by No. 41 of 1960)

SUBSIDIARY LEGISLATION

SUBORDINATE COURTS

SECTION 4-LIMITS OF JURISDICTION OF SUBORDINATE COURTS PRESIDED OVER BY SENIOR RESIDENT MAGISTRATES

Government Notices

20 of 1959

179 of 1959

8 of 1961

116 of 1962

357 of 1964

477 of 1964

478 of 1964

497 of 1964

Directions by the Chief Justice

(1) *The Subordinate Court presided over by the Senior Resident Magistrate, Lusaka.*

Within all Districts within the Central Province, the Eastern Province, the Southern Province and the Western Province.

(2) *The Subordinate Court presided over by the Senior Resident Magistrate, Ndola.*

Within all Districts within the Copperbelt Province, the Northern Province and the Luapula Province.

(3) *The Subordinate Court presided over by the Senior Resident Magistrate, Kitwe.*

Within all Districts within the Copperbelt Province, the North-Western Province, the Northern Province and the Luapula Province.

(4) *The Subordinate Court presided over by the Senior Resident Magistrate, Livingstone.*

Within all Districts within the Southern Province and the Western Province.

(5) *The Subordinate Court presided over by the Senior Resident Magistrate, Mansa.*

Within all Districts within the Luapula Province, the Northern Province and the Copperbelt Province.

(6) *The Subordinate Court presided over by the Senior Resident Magistrate, Mongu.*

Within all Districts within the Western Province, the Southern Province and the North-Western Province.

(7) *The Subordinate Court presided over by the Senior Resident Magistrate, Kasama.*

Within all Districts within the Luapula Province and the Northern Province.

**SECTION 4-LIMITS OF JURISDICTION OF
SUBORDINATE COURTS PRESIDED OVER BY
RESIDENT MAGISTRATES
Directions by the Chief Justice**

Government Notices
184 of 1957
34 of 1958
131 of 1958
307 of 1958
73 of 1959
168 of 1960
368 of 1961
497 of 1964

(1) *The Subordinate Court presided over by the Resident Magistrate, Livingstone.*

Within all Districts within the Southern Province, the Central Province

and the Western Province.

(2) *The Subordinate Court presided over by the Resident Magistrate, Lusaka.*

Within all Districts within the Central Province, the Southern Province and the Eastern Province.

(3) *The Subordinate Court presided over by the Resident Magistrate, Kabwe.*

Within all Districts within the Central Province, the Eastern Province, the Copperbelt Province, the Northern Province and the Luapula Province.

(4) *The Subordinate Court presided over by the Resident Magistrate, Ndola.*

Within all Districts within the Copperbelt Province, the Northern Province, the Luapula Province, the North-Western Province and the Central Province.

(5) *The Subordinate Court presided over by the Resident Magistrate, Luanshya.*

Within all Districts within the Copperbelt Province, the Northern Province, the Luapula Province, the North-Western Province and the Central Province.

(6) *The Subordinate Court presided over by the Resident Magistrate, Kitwe.*

Within all Districts within the Copperbelt Province, the Northern Province, the Luapula Province, the North-Western Province and the Central Province.

(7) *The Subordinate Court presided over by the Resident Magistrate, Mufulira.*

Within all Districts within the Copperbelt Province, the Northern Province, the Luapula Province, the North-Western Province and the Central Province.

(8) *The Subordinate Court presided over by the Resident Magistrate, Chingola.*

Within all Districts within the Copperbelt Province, the North-Western Province, the Northern Province and the Luapula Province.

(9) *The Subordinate Court presided over by the Resident Magistrate, Chipata.*

Within all Districts within the Eastern Province and the Central Province.

(10) *The Subordinate Court presided over by the Resident Magistrate, Choma.*

Within all Districts within the Southern Province and the Western Province.

(11) *The Subordinate Court presided over by the Resident Magistrate, Mansa.*

Within all Districts within the Luapula Province, the Northern Province and the Copperbelt Province.

SECTION 9-SEALS

Government Notice
322 of 1961

Direction by the Chief Justice

Subordinate Courts shall use seals which are round in shape and which produce on paper a raised impression of the words "Subordinate Court" followed by the name of a place within the jurisdiction of each respective Court.

SECTION 10-COURT HOUSES

Notices by the Chief Justice

Government Notices
27 of 1934
84 of 1958
371 of 1958
21 of 1959
82 of 1961
161 of 1961
3 of 1962

41 of 1962
86 of 1962
382 of 1964
Statutory Instruments
421 of 1965
381 of 1967
303 of 1968

The buildings hitherto used as Subordinate Courts.

Court House, Chililabombwe.

The building situate on Plot No. 25, Chililabombwe.

Court House, Chingola.

The building known as the Subordinate Court situate on Plot No. 377, Kitwe Road, Chingola.

Court House, Chinsali.

The building known as the Subordinate Court situate at the rear of the buildings erected on Plot No. P.2, Chinsali.

Court House, Choma.

The Subordinate Court situate on the north-east corner of Plot No. 14, Choma.

Court House, Isoka.

The building known as the Subordinate Court situate within the precincts of the Boma, Isoka.

Court House, Kabwe.

Plot No. 1229, Broadway, Kabwe.

Court House, Kalulushi.

The building known as the Subordinate Court adjoining the precincts of the Boma, Kalulushi.

Court House, Kasama.

Within the precincts of the new Boma, Kasama.

Court House, Kawambwa.

The building known as the Subordinate Court situate on Plot No. U.23 adjacent to the Boma, Kawambwa.

Court Houses, Kitwe.

Court No. 1 and Court No. 2 situate at the Subordinate Court building, Drury Lane, Kitwe. Court No. 3 and Court No. 4 situate in the precincts of the old Boma building, Canberra Avenue, Kitwe.

Court Houses, Lusaka.

The Subordinate Courts situate in Jubilee Drive, Lusaka, and at the Boma, Lusaka.

Court House, Mansa.

Adjacent to the new Boma, Mansa.

Court House, Mbala.

The building known as the Subordinate Court situate at the rear of the buildings erected on Plot No. 215, Mbala.

Court House, Mongu.

Situated on an unnumbered plot in Mongu Township between the Post Office and the Old Parade Ground.

Court House, Sesheke.

The building known as the Subordinate Court situate within the precincts of the Boma, Sesheke.

Court House, Solwezi.

The building known as the Subordinate Court adjoining the Boma, Solwezi.

Court House, Zambezi.

The building known as the Subordinate Court situate within the precincts of the Boma, Plot No. 3411, Zambezi.

SECTION 25-SITTINGS

Direction by the Chief Justice

Ordinarily at the Headquarters of the Provinces and Districts of Zambia.

Government Notices
26 of 1934
497 of 1964

SECTION 57-THE SUBORDINATE COURTS (CIVIL JURISDICTION) RULES

Rules by the Chief Justice

Government Notices
212 of 1940
141 of 1943
244 of 1944
166 of 1950
175 of 1950
313 of 1952
314 of 1952
253 of 1954
23 of 1958
81 of 1958
94 of 1958
135 of 1959
306 of 1959
137 of 1960
323 of 1960
247 of 1961
341 of 1962
180 of 1964
208 of 1964
445 of 1964
497 of 1964
Statutory Instruments
22 of 1964
63 of 1964
155 of 1968
342 of 1968
91 of 1980

104 of 1986
175 of 1990
48 of 1995
87 of 1997
Act No.
57 of 1964

1. These Rules may be cited as the Subordinate Courts (Civil Jurisdiction) Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"appellate court" means the High Court;

"court" means a Subordinate Court;

"legal representative" means any person who is authorised by any written law to represent or appear on behalf of any party to a legal proceeding;

"prescribed" means prescribed by these Rules;

"the Registrar" means the Registrar of the High Court and includes any District Registrar or Assistant Registrar of the High Court.

(As amended by No. 445 of 1964)

3. These Rules are divided into the following Orders:

Orders

- Order I. General Forms of Process, Fees, etc.
- Order II. Computation of Time.
- Order III. Miscellaneous Provisions.
- Order IV. Employment of Barristers and Solicitors.
- Order V. Evidence.
- Order VI. Form and Commencement of Suit.
- Order VII. Service of Process.
- Order VIII. Parties.
- Order IX. Particulars of Claim.
- Order X. Guardian for Purposes of Suit.

- Order XI. Alteration of Parties.
- Order XII. Third Party Procedure.
- Order XIII. Discontinuance of Suits.
- Order XIV. Place of Trial and Institution of Suits.
- Order XV. Amendment.
- Order XVI. Admissions.
- Order XVII. Settlement of Issues.
- Order XVIII. Pleadings.
- Order XIX. Inquiries and Accounts.
- Order XX. Appearance of Parties.
- Order XXI. Arrest of Absconding Defendant.
- Order XXII. Interim Attachment of Property.
- Order XXIII. Interim Injunctions, etc.
- Order XXIV. Equitable Relief, Counter-claim, Set-off.
- Order XXV. Tender and Payment into Court.
- Order XXVI. Interrogatories. Discovery and Production of Documents.
- Order XXVII. Motions.
- Order XXVIII. Listing of Causes for Hearing.
- Order XXIX. Postponement of Hearing.
- Order XXX. Sittings of Court.
- Order XXXI. Non-attendance of Parties at Hearing.
- Order XXXII. Proceedings on the Return Day.
- Order XXXIII. Default Procedure
- Order XXXIV. Proceedings at the Hearing.
- Order XXXV. Judgment.
- Order XXXVI. Recording of Judgments.
- Order XXXVII. Maintenance Orders Act.
- Order XXXVIII. Review.
- Order XXXIX. Costs.
- Order XL. Enforcement of Orders.
- Order XLI. Execution.
- Order XLII. Composition Orders.
- Order XLIII. Reference to Arbitration.

Order XLIV. Appeals.

Order XLV. Recovery of Costs by Legal Practitioners.

ORDER I
GENERAL FORMS OF PROCESS, FEES, ETC.

O.1

1. In this Order, "proper officer of the court" means any magistrate exercising jurisdiction in that court, any clerk of the court acting under the provisions of section *thirty-four* of the Act or any officer appointed in writing as such by any magistrate exercising jurisdiction in the particular court.

Interpretation

(No. 81 of 1958)

2. The sealing of any writ or process shall not be necessary in addition to the signature of a magistrate or clerk of the court, as the case may be, unless sealing is particularly prescribed by some written law or rule of court.

O.1
Sealing writs

3. The forms in the First Schedule, or forms to the like effect, may be used in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

Forms

4. In proceedings for which forms are not provided in the First Schedule or prescribed by any Act or rules or orders of court, the Registrar may, subject to the approval of the Chief Justice, from time to time, frame the forms required, using as guides those which may have been provided.

Provision for
additional forms

5. The fees prescribed in the Second Schedule shall be paid by the party at whose instance they are incurred, and may afterwards be recovered as costs of cause if the court shall so order. The court may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, or for other sufficient reasons, dispense, if it sees fit, with the payment of any fees. Where the court so dispenses with the payment of fees, a note to the effect shall be made and signed by the magistrate and filed by the clerk of the court.

Fees

6. All court fees or any other fees payable under these Rules shall be paid by stamps, cash, postal order or bank certified cheque.

Mode of payment
of fees

(As amended by S.I. No. 48 of 1995 and S.I. No. 87 of 1997)

7. The document to be stamped shall be the document indicated in the third column of the Second Schedule. Such document shall be stamped before presentation at the office of the court and, unless so stamped, such document shall not, except as aforesaid, be accepted. Document to be stamped
(No. 81 of 1958)

8. Upon receipt of any such document, the proper officer of the court shall forthwith cancel such revenue stamps by means of impressing with indelible ink partly upon each and every such stamp and partly upon the document to which they are affixed, the stamp of the court with the true date of such impression and by writing his initials across or within the impression in such a manner that the stamps are clearly defaced. Cancellation of stamps
(No. 81 of 1958)

9. No receipt shall be issued by the court or any officer thereof in respect of revenue stamps required to be affixed under these Rules. No receipt to be issued
(No. 81 of 1958)

10. The proper officer of the court, whose duty it is to receive any document requiring to be stamped hereunder, shall ensure that each and every such document is sufficiently and properly stamped before accepting the same. O.1, 2 Duty of officers
(No. 81 of 1958)

11. (1) When any document not requiring to be stamped is inadvertently stamped or when stamps to a value in excess of those laid down in the Second Schedule are inadvertently affixed or such document is not presented to or is not accepted for filing by the court, the document may, at the instance of the party by whom it was so stamped, be cancelled and substituted by one bearing the correct value of stamps. Refund of value in certain cases

(2) Refunds to the value of the stamps affixed to any document cancelled under the provisions of sub-rule (1) may be made by the proper officer of the court to the party responsible for the stamping thereof:

Provided that-

- (i) application is made to the proper officer of the court within thirty days of the date of cancellation of such document; and
- (ii) the application is accompanied by the cancelled document which shall be attached by the proper officer of the court to the voucher in support of the refund and shall thenceforth be the property of the Government.

(No. 81 of 1958 as amended by S.I. No 63 of 1964)

12. Allowances and expenses of witnesses and assessors shall be as set forth in the Third Schedule. Witnesses' and assessors' allowances and expenses

13. Except as otherwise provided by these Rules, costs shall be allowed to legal practitioners and taxed in accordance with the scale of costs set forth in the Fourth Schedule. Scale of costs

(No. 166 of 1950 as amended by No. 208 of 1964)

ORDER II COMPUTATION OF TIME

1. Where, by any section of the Act, or any order or rule of court, or any special order, or the course of the court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply: How to be made

(a) The limited time shall not include the day of the date or of the happening of the event, but shall commence at the beginning of the day of a limited time next following that day. Commencement

(b) The act or proceeding must be done or taken at latest on the last day of the limited time. O.2, 3 When act to be done

(c) When the limited time is less than six days, the following days shall not be reckoned as part of the time, namely, Saturdays, Sundays and any public holidays. Saturdays, Sundays and holidays

(d) When the time expires on one of those days, the act or proceedings shall be considered as done or taken in due time, if it is done or taken on the next day afterwards, not being one of those days. Time expiring on Saturday, Sunday or holiday

(As amended by S.I. No. 22 of 1964)

2. Parties may, by consent, enlarge or abridge any of the times fixed for taking any step, or filing any document, or giving any notice, in any suit. Where such consent cannot be obtained, either party may apply to the court for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed. Enlargement or abridgement of time

ORDER III MISCELLANEOUS PROVISIONS

1. The sittings of the court for the hearing of causes and matters shall ordinarily be public; but the court may, for reasons to be recorded in writing, hear any particular cause or matter in the presence only of the parties, with their legal advisers, if any, and the officers of the court. Public or private sittings of court

2. Subject to any particular rules, the court may, in all causes and matters, make any interlocutory order which it considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not. What orders to be made

3. Causes or matters pending in the court may, by order of the court, be consolidated, and the court shall give any directions that may be necessary as to the conduct of the consolidated actions. Consolidation of causes

4. If, in any cause or matter, any party, witness or other person is unable to speak or understand the English language, the court may direct a fit and proper person to attend and interpret the proceedings so far as may be necessary. Before so interpreting, such person shall swear an oath in the following form: Interpreter

"I swear that I will well and truly interpret and explanation make of all such matters and things as shall be required of me to the best of my skill and understanding. So help me God."

5. Save where any fee is required to be taken hereunder by means of O.3, 4 Receipts adhesive revenue stamps-

(a) when any fee is payable in respect of a document, the officer of the court authorised to receive such fee shall make and initial upon the document an endorsement showing the fee paid and the number of the receipt recording the payment;

(b) the officer whose duty it is to receive any fee for any matter or thing done or performed shall, before doing or performing such matter or thing, ensure that the proper fee is paid or a sufficient sum of money provided.

(No. 81 of 1958)

ORDER IV

EMPLOYMENT OF BARRISTERS AND SOLICITORS

1. A party suing or defending by a barrister or solicitor in any cause or matter shall be at liberty to change his solicitor in such cause or matter, without an order for that purpose, upon notice of such change being filed in the office of the clerk of the court in which such cause or matter may be proceeding. But, until such notice is filed and a copy served, the former solicitor shall be considered the solicitor of the party until final judgment, unless allowed by the court, for any special reason, to cease from acting therein; but such solicitor shall not be bound, except under express agreement or unless re-engaged, to take any proceedings in relation to any appeal from such judgment.

Change of practitioners during the hearing of a cause or matter

2. (1) When it shall appear to the court that any civil cause or matter has been commenced or carried on maliciously or without probable grounds, and the party by whom or on whose behalf such cause or matter has been so commenced or carried on has been represented therein by a barrister or solicitor who had knowledge of such malice or lack of probable grounds, or if it shall appear that any barrister or solicitor has, by any sort of deceit, induced his client to enter into or continue any litigation, every such barrister or solicitor shall, on failure of his client to pay any costs which he may be ordered to pay, be liable, if the court so orders, to pay the amount thereof to the party to whom costs are given. Such failure shall be deemed to have taken place if the client shall have refused or neglected to make payment after a demand has been made on him, although no process of execution may have been issued against him.

Liability to pay costs

(2) This rule shall not be construed to restrict the liability of any barrister or solicitor in respect of the misconduct referred to in sub-rule (1) or any other misconduct for which he would otherwise be punishable or in respect of which he would otherwise be subject to any liability.

ORDER V
EVIDENCE

0.5

I-Exclusion of Witnesses

1. On the application of either party, or on its own motion, the court may order witnesses on both sides to be kept out of court; but this rule does not extend to the parties themselves or to their professional representatives, although intended to be called as witnesses.

Ordering
witnesses out of
court

2. The court may, during any trial, take such means as it considers necessary and proper for preventing communication with witnesses who are within the Court House or its precincts awaiting examination.

Preventing
communication
with witnesses

II-Documentary Evidence

3. Entries in books of account, kept in the course of business with such a reasonable degree of regularity as shall be satisfactory to the court, shall be admissible in evidence whenever they refer to a matter into which the court has to inquire, but shall not alone be sufficient evidence to charge any person with liability.

Entries in books
of account

4. Any Government *Gazette* of any British Dominion, colony or protectorate or any territory in respect of which Her Britannic Majesty has accepted a mandate may be proved by the bare production thereof before the court.

Government
Gazettes

(As amended by S.I. No. 63 of 1964)

5. All Proclamations, Acts of State, whether legislative or executive, nominations, appointments, and other official communications of the Government, appearing in any *Gazette* referred to in the last preceding rule, may be proved by the production of such *Gazette*, and shall be *prima facie* proof of any fact of a public nature which they were intended to notify.

Proof of
Proclamations,
etc.

6. On matters of public history, literature, science or art, the court may refer, if it shall think fit, for the purposes of evidence, to such published books, maps or charts as the court shall consider to be of authority on the subject to which they relate. Books of science, maps, charts, etc.

7. Books printed or published under the authority of the government of a foreign country and purporting to contain the statutes, code or other written law of such country, and also printed and published books of reports of the decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible as evidence of the law of such country. Foreign law

8. All maps made under the authority of any government or of any public municipal body, and not made for the purpose of any litigated question, shall *prima facie* be deemed to be correct, and shall be admitted in evidence without further proof. O.5 Public maps

9. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Act or statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. Examined or certified copies of documents admissible in evidence

10. Any person, whether a party or not in a cause or matter, may be summoned to produce a document without being summoned to give evidence; and, if he cause such document to be produced in court, the court may dispense with his personal attendance. Production of documents without giving evidence

III-Affidavits

11. Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognised for any purpose in the court. Affidavits to be filed

12. An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his solicitor, or before a partner or clerk of his solicitor. Not to be sworn before certain persons

13. The court may permit an affidavit to be used, notwithstanding it is defective in form according to these Rules, if the court is satisfied that it has been sworn before a person duly authorised. Defective in form

14. A defective or erroneous affidavit may be amended and re-sworn, by leave of the court, on such terms as to time, costs or otherwise as seem reasonable. Amendment and reswearing

15. An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion. No extraneous matter

16. Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true. Contents of affidavits

17. When a witness deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief. Grounds of belief to be stated

18. When the belief of a witness is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstances of the information. Informant to be named O.5

19. Where any document referred to in an affidavit and exhibited thereto is a hand-written document, other than a statement of account, book of account or extract therefrom, there shall also be exhibited therewith a typewritten or printed copy thereof certified in such affidavit to be a true and correct copy of the original. Copies of exhibits

(No. 135 of 1959)

20. The following rules shall be observed by Commissioners and others before whom affidavits are taken: Rules in taking affidavits

(a) Every affidavit taken in a cause or matter shall be headed in the To be properly

court and in the cause or matter.	entitled
(b) It shall state the full name, trade or profession, residence and nationality of the witness.	Description of witness
(c) It shall be in the first person and divided into convenient paragraphs, numbered consecutively.	In first person
(d) Any erasure, interlineation or alteration made before the affidavit is sworn shall be attested by the Commissioner, who shall affix his signature or initials in the margin immediately opposite to the interlineation, alteration or erasure.	Erasures, etc., to be attested
(e) Where an affidavit proposed to be sworn is illegible or difficult to read, or is, in the judgment of the Commissioner, so written as to facilitate fraudulent alteration, he may refuse to swear the witness and require the affidavit to be re-written in an unobjectionable manner.	If improperly written
(f) The affidavit shall be signed by the witness (or, if he cannot write, marked by him with his mark) in the presence of the Commissioner.	Witness to sign
(g) The jurat shall be written, without interlineation, alteration or erasure (unless the same be initialed by the Commissioner), immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the Commissioner.	Form of jurat
It shall state the date of the swearing and the place where it is sworn.	Date and place
It shall state that the affidavit was sworn before the Commissioner or other officer taking the same.	In presence of Commissioner
Where the witness is illiterate or blind, it shall state the fact, and that the affidavit was read over (or translated into his own language in the case of a witness not having sufficient knowledge of English), and that the witness appeared to understand it.	Illiterate or blind witness
Where the witness makes a mark instead of signing, the jurat shall state that fact, and that the mark was made in the presence of the Commissioner.	Marksmen O.5

Where two or more persons join in making an affidavit, their several names shall be written in the jurat, and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit. Joint affidavit

(h) The Commissioner shall not allow an affidavit, when sworn, to be altered in any manner without being re-sworn. If affidavit altered, to be re-sworn

(i) If the jurat has been added and signed, the Commissioner shall add a new jurat on the affidavit being re-sworn; and, in the new jurat, he shall mention the alteration. New jurat

(j) The Commissioner may refuse to allow the affidavit to be re-sworn, and may require a fresh affidavit. New affidavit

(k) The Commissioner may take, without oath, the declaration of any person affirming that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who, by reason of immature age or want of religious belief, ought not, in the opinion of the Commissioner, to be admitted to make a sworn statement. The Commissioner shall record in the attestation the reason of such declaration being taken without oath. Declarations without oath

(l) Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter. Certificate on exhibit

(As amended by No. 135 of 1959)

IV-Objections to Evidence

21. In every cause or matter, and at every stage thereof, any objection to the reception of evidence by a party affected thereby shall be made at the time the evidence is offered: When to be made

Provided that an appellate court may, in its discretion, entertain any objection to evidence received in the court below, though not objected to at the time it was offered.

22. Where a question proposed to be put to a witness is objected to, Where question

the court, unless the objection appears frivolous, shall, if required by either party, take note of the question and objection, and mention on the notes whether the question was allowed to be put or not and, if put, the answer to it. objected to

23. Where a document is produced and tendered in evidence and rejected by the court, the document shall be marked as having been so tendered and rejected. Marking of rejected documents

V-Taking of Evidence

O.5

24. In the absence of any agreement between the parties, and subject to these Rules, the witnesses at the trial of any suit shall be examined *viva voce* and in open court; but the court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court may think reasonable, or that any witness whose attendance in court ought, for some sufficient cause, to be dispensed with be examined by interrogatories or otherwise before an officer of the court or other person: Evidence of witnesses, how taken

Provided that, where it appears to the court that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

25. In any suit, the court may, in its discretion, if the interests of justice appear so to require (for reasons to be recorded in the minutes of the proceedings), admit an affidavit in evidence, although it is shown that the party against whom the affidavit is offered in evidence has had no opportunity of cross-examining the person making the affidavit. Admission of affidavits

26. The court may, in any suit where it shall appear necessary for the purpose of justice, make any order for the examination, before any officer of the court or other person, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any such suit to give such deposition in evidence therein on such terms, if any, as the court may direct. Evidence on commission

27. Evidence on commission, when not directed to be taken upon interrogatories previously settled, shall be taken, as nearly as may be, as evidence at the hearing of a suit, and then the notes of the evidence shall be read over to the witness and be signed by him. If the witness refuses to sign the notes of evidence, the officer of the court or other person shall add a note of his refusal, and the statement may be used as if he had signed it. How to be taken

28. Evidence may be taken in like manner, on the application of any person, before suit instituted, where it is shown to the satisfaction of the court on oath that the person applying has good reason to apprehend that a suit will be instituted against him in the court, and that some person within the jurisdiction at the time of the application can give material evidence respecting the subject of the apprehended suit, but that he is about to leave the jurisdiction, or that, from some other cause, the person applying will lose the benefit of his evidence if it be not at once taken; and the evidence so taken may be used at the hearing, subject to just exceptions: Evidence before suit instituted

Provided always that the court may impose any terms or conditions with reference to the examination of such witness, and the admission of his evidence, as to the court may seem reasonable. O.5, 6

29. Any party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed may deliver to the opposite party, not less than four clear days before the return date, a notice in writing specifying the date and nature of and the parties to such deed or instrument, and requiring the opposite party to admit that the same was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents; and if, at or before the hearing of the suit, the party so notified shall neglect or refuse to give such admission, the court may adjourn the hearing in order to enable the party tendering such deed or instrument to obtain proof of the due execution thereof, and, upon production of such proof, the court may order the costs of such proof to be paid by the party so neglecting or refusing, whether he be the successful party or not. Facilities for proving deed, etc.

ORDER VI
FORM AND COMMENCEMENT OF SUIT

**Commencement
by writ of
summons**

1. Except where otherwise by law provided, every suit shall be commenced by writ of summons issued by the clerk of the court.

2 (1) The writ shall be prepared by the plaintiff or his legal representative save that where the plaintiff is-

Preparation of writ of summons

(a) illiterate or for some other good reason unable to prepare the writ himself; and

(b) unable from lack of means or other good cause to instruct a legal representative;

the clerk of the court or the magistrate or any District Secretary or Assistant District Secretary may prepare the writ on payment by the plaintiff of the prescribed fee.

(2) The writ shall be signed by the plaintiff or by his legal representative as such:

Provided that, if the plaintiff be unable to sign his name, it shall be sufficient if he shall affix his mark to the writ in the presence of the magistrate or the clerk of the court who shall thereupon certify the said mark as being that of the plaintiff made in his presence.

(As amended by No. 445 of 1964)

3. (1) Every writ of summons shall be in such one of the prescribed forms in the First Schedule or forms to the like effect as may be applicable to the case with such variations as circumstances may require.

Form and context of writ O.6 of summons.

(2) Every writ shall contain the full name and place of abode of the plaintiff and the name and address of his legal representative, if any, the full name and place of abode of the defendant so far as these be known to the plaintiff, and the nature of the plaintiff's claim, particulars of which shall be set out as nearly as may be in accordance with the provisions of Order IX; and if either the plaintiff or the defendant be a married woman, that fact shall be stated in the writ.

First Schedule, Form 2 or 3

(As amended by No. 155 of 1968)

4. (1) When the claim is in respect of a debt or liquidated demand, Affidavit. First
the plaintiff may file a *default* writ of summons in the prescribed form, Schedule, Form 3
or a form to the like effect, and at the time of the filing of such default
writ of summons shall file an affidavit verifying such debt or demand
and thereupon such affidavit shall, for the purpose of service upon the
defendant, be treated in all ways as part of such default writ of
summons.

(2) There shall be attached to every default writ of summons a form of First Schedule,
Admission Defence and Counter-claim in the prescribed form and such Form 5
form shall for the purposes of service upon the defendant be treated in
all ways as part of such *default* writ of summons.

(No. 155 of 1968)

5. (1) Every writ shall be issued by the clerk of the court who shall Issue of writ of
sign the same and endorse thereon the date of issue. summons

(2) Except in the case of a default writ of summons the clerk of the
court shall, before issuing the writ, endorse thereon the place of
hearing, the time of hearing and the date of hearing (hereinafter called
the "return day").

(As amended by No. 155 of 1968)

6. (1) The return day shall be fixed by the clerk of the court, subject Return day
to any directions of the magistrate in that behalf, and shall be such as to
permit of personal service being effected on the defendant and as to
permit further of the defendant having a reasonable time within which
to comply with the provisions of these Rules in the event of his wishing
to defend the suit.

(2) The clerk of the court shall inform the plaintiff in writing of the First Schedule,
date of the return day: Form 9

Provided that it shall be deemed to be sufficient compliance with this
requirement if he shall endorse the return day on any copy of the writ
retained by the plaintiff and shall initial the same.

7. (1) Where the court messenger shall have in his custody any writ O.6, 7 Alteration

of summons of which he is required to effect personal service and shall fail to effect service not less than five clear days before the return day, he shall forthwith return the writ to the clerk of the court who shall, subject to any directions by the magistrate in this behalf, fix another return day and endorse the same on the writ.

(2) Where in pursuance of this rule the clerk of the court shall fix another return day, he shall forthwith inform the plaintiff or his legal representative of the same in writing and of the reasons therefor so far as the same be known to him and shall forthwith take such steps as he may consider fit to have the writ served. First Schedule,
Form 10

(3) If the writ be not served not less than five clear days before the new return day, the court messenger in whose custody it is shall again return it to the clerk of the court who shall fix yet another return day and endorse the same on the writ and this shall be done from time to time, so often as may be necessary, until service be effected not less than five clear days before the last fixed return day:

Provided that on every occasion on which he shall alter the return day, the clerk of the court shall so inform the plaintiff or his legal representative in writing.

(As amended by No. 155 of 1968)

8. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions, but any plaintiff having a cause of action in excess of the amount for which an action might be brought in any court may abandon the excess and, on proving his case, recover such amount; and the judgment of the court in respect of that amount shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly. Division of
causes of action

ORDER VII

SERVICE OF PROCESS

1. (1) Personal service of a petition, notice, summons, order or other document of which service is required may be made by any person. Service may be
effected by any
person

(2) Any person serving any document shall, on the request of the party served, explain to such party the contents of such document. Document to be explained

2. Except where service is effected by a court messenger, proof of service shall be oral or by affidavit, and the court, if not satisfied that service has been properly effected, may direct that it be effected by a court messenger before proceeding further with the hearing of the cause or matter: When proof shall be oral or by affidavit. O.7 First Schedule, Form 11

Provided that, where it shall have been ordered that service be by registered post, such service shall, in the absence of anything to the contrary, be deemed to have been effected on production to the court of a certificate purporting to be under the hand of the defendant and obtained in terms of the regulations made under the Postal Services Act that the letter containing the document has been received by him. Cap. 470

3. Unless, in any case, the court thinks it just and expedient otherwise to direct, service shall be personal; that is, the document to be served shall be delivered to the person to be served himself. Service to be personal

4. Service shall be completely effected by the delivery of a duplicate or attested copy of any document, without the exhibition of any original: Original need not be shown

Provided that the person serving any document shall, if so required by the person to be served, exhibit to him the original of the document in question.

5. Where it appears to the court (either after or without an attempt at personal service) that, for any reason, personal service cannot be conveniently effected, the court may order that service be effected either- Service other than personal

(a) by delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served; or Delivery to inmate

(b) by delivery thereof to some person being an agent of the person to be served, or to some other person, on it being proved that there is To agent

reasonable probability that the document will, through that agent or other person, come to the knowledge of the person to be served; or

(c) by advertisement in the *Gazette*, or in some newspaper circulating within the jurisdiction of the court; or By advertisement

(d) by notice up at the Court House, or some other place of public resort, of the Province or District wherein the proceeding in respect of which the service is to be made is instituted, or at the usual or last known place of abode or of business of the person to be served; or By notice

(e) by placing the document in an envelope and addressing and posting the same by prepaid registered post to the party to be served at his usual place of abode or of business.

6. An order for service may be varied from time to time with respect to the mode of service directed by the order. Varying order of service

7. Service of any process shall not be made on a Sunday, Good Friday or Christmas Day. *Dies non*

8. When the party to be served is in the service of the Government, the clerk of the court may transmit the document to be served to the head officer of the department in which such party is employed, for the purpose of being served on him, if it shall appear to the court that it may be most conveniently so served, and such head officer shall cause the same to be served on the proper party accordingly, and the person effecting such service shall be deemed to be a court messenger for the purposes of these Rules. O.7 Service on Government officers

9. (1) Where partners are sued in the name of their firm, the writ or other document shall be served either upon any one or more of the partners, or at the principal place of business of the partnership upon any person having, at the time of service, the control or management of the partnership business there; and such service shall be deemed good service upon the firm. On partners

(2) Where a writ is issued against a firm, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both

characters. In default of such notice, the person served shall be deemed to be served as a partner.

10. Where the person on whom service is to be effected is a prisoner On prisoner in a prison, it shall be sufficient service to deliver the writ or document at the prison to the gaoler or person appearing to be the head officer in charge thereof, who shall cause the same to be served on such prisoner.

11. Where the person on whom service is to be effected is employed On person in and dwells in any lunatic or other public asylum or in any prison, it shall be sufficient service to deliver the writ or document to the gatekeeper or lodgekeeper of such asylum or prison, who shall cause the same to be served on such person.

12. Where the suit is against a defendant residing out of but carrying on business within Zambia in his own name, or under the name of a firm, through an authorised agent, and such suit is limited to a cause of action which arose within the jurisdiction of the court, the writ or document may be served by giving it to such agent, and such service shall be equivalent to personal service on the defendant. Where defendant resides out of but carries on business within Zambia

13. Service out of Zambia may be allowed by the court whenever the whole or any part of the subject-matter of the suit is land or stock or other property situate within its jurisdiction, or any act, deed or thing affecting such land, stock or property; and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into within its jurisdiction; and whenever there has been a breach within its jurisdiction of any contract, wherever made; and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within its jurisdiction. When court may direct service out of Zambia O.7

14. Every application for an order for leave to serve a writ or document on a defendant out of Zambia shall be supported by evidence, by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and the grounds upon which the application is made. Application for leave to serve out of Zambia

15. Any order giving leave for service out of Zambia shall prescribe the mode of service and the date of hearing, and the court may receive an affidavit of such service having been effected as *prima facie* evidence thereof. Order to prescribe mode of service

16. Where a writ or other document is required to be served in a District in which the court has no jurisdiction, the clerk of the court from whose office the writ or other document is issued shall, unless the magistrate sees fit to direct otherwise, transmit the same and a copy thereof together with any other documents annexed thereto and copies thereof, to the clerk of the court having jurisdiction in the District in question for service. Service in another District

17. Where the officer of court or person charged with the service of any writ or document on any person is prevented by the violence or threats of such person, or any other person in concert with him, from personally serving the writ or document, it shall be sufficient to inform the person to be served of the nature of the writ or document, and to leave the writ or document as near such person as is practicable. Where violence threatened

18. In all cases where service of any writ or document shall have been effected by a court messenger, a certificate of service signed by such officer shall, on production, without proof of signature, be *prima facie* evidence of service. Certificate of service

19. In all cases the bailiff or other officer of court charged with the service of any particular process shall, not later than fourteen days after the receipt of the process, render a return in the prescribed form to the court in duplicate and the duplicate thereof shall thereupon be despatched by the clerk of the court to the party requiring the same to be served, or his solicitors, specifying whether the same has been served and, if not, giving reasons why the same has not been so served. Returns of service. First Schedule, Form 12

(No. 135 of 1959)

ORDER VIII PARTIES

0.8

1. If any plaintiff sues, or any defendant is sued, in any representative capacity, it shall be expressed on the writ. The court may order any of the persons represented to be made parties either in lieu of Suit on behalf of others

or in addition to the previously existing parties.

2. Where a person has jointly with other persons an alleged ground for instituting a suit, all those other persons ought ordinarily to be made parties to the suit. Joint ground of suit

3. Where more persons than one have the same interest in one suit, one or more of such persons may be authorised to sue or to defend in such suit for the benefit of or on behalf of all parties so interested. Where joint interest, parties may be authorised to sue or defend for others

4. Where a person has a joint and several demand against two or more persons, either as principals or sureties, it is not necessary for him to bring before the court as parties to a suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of the persons severally or jointly and severally liable. Where a defendant claims contribution, indemnity or other remedy or relief over against any other person, he may apply to have such person made a party to the suit. Joint and several demand

5. (1) If it shall appear to the court, at or before the hearing of a suit, that all the persons who may be entitled to, or who claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the court may adjourn the hearing of the suit to a future day, to be fixed by the court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case, the court shall issue a notice to such persons, which shall be served in the manner provided by these Rules for the service of a writ of summons, or in such manner as the court thinks fit to direct; and, on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause: Non-joinder

Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may, at any time before judgment in the suit, apply to the court for leave to appear, and such leave may be given upon such terms (if any) as the court shall think fit.

(2) The court may, at any stage of the proceedings, and on such terms as appear to the court to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out. Misjoinder

(3) No suit shall be defeated by reason of non-joinder or misjoinder of parties. O.8, 9

6. Claims by the Government against any person may be brought by the Attorney-General or by any officer authorised by law to prosecute such claims on behalf of the Government, as the case may be. Claims by the Government

7. Any persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms (if any); and any party to an action may, in such case, apply to the court for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the court may direct. Proceeding by or against partners

8. In case a writ states two or more distinct causes of action by and against the same parties, and in the same rights, the court may, either before or at the hearing, if it appears inexpedient to try the different causes of action together, order that the trials be had separately, and make such order as to adjournment and costs as justice requires. Distinct causes of action in one writ

9. In case a writ states two or more distinct causes of action, but not by and against the same parties, or by and against the same parties but not in the same rights, the writ may, on the application of any defendant, be amended or dismissed, as justice may require. Misjoinder of actions

ORDER IX PARTICULARS OF CLAIM

1. The particulars of claim to be entered on or attached to the writ of summons shall set out the nature and extent of the relief asked for and shall be such as to give the defendant reasonably sufficient information as to the details of the claim, and the amount claimed for costs and court fees shall be shown on the writ. Particulars

- | | |
|---|--|
| <p>2. Where part of the claim has been abandoned in accordance with Order VI, rule 8, or where a set-off is admitted by the plaintiff, the particulars of claim shall show such abandonment or set-off as the case may be.</p> | <p>Abandonment or set-off</p> |
| <p>3. Where more than one claim is contained in the same writ of summons, the particulars of each claim or the relief sought in respect thereof shall be shown separately.</p> | <p>More than one claim</p> |
| <p>4. Where the plaintiff sues as an assignee, the particulars shall show the date of the assignment and the name and description of the assignor.</p> | <p>Assignee</p> |
| <p>5. Where the plaintiff sues upon an instrument which is required by law to have been presented before it can be sued upon, the particulars shall state that it was in fact presented and upon what date it was so presented.</p> | <p>O.9, 10
Instrument required to be presented</p> |
| <p>6. The court may, on the application of the defendant or on its own motion, order further and better particulars.</p> | <p>Further and better particulars</p> |
| <p>7. Particulars of claim shall not be amended except by leave of the court, but the court may, on any application for leave to amend, grant the same, on it appearing that the defendant will not be prejudiced by the amendment. Otherwise, the court may refuse leave or grant the same, on such terms as to notice, adjournment or costs as justice requires.</p> | <p>Amendment of particulars</p> |
| <p>8. The plaintiff shall not, at the hearing, obtain a judgment for any sum exceeding that stated in the particulars except for subsequent interest and for costs.</p> | <p>Amount of judgment not to exceed claim</p> |
| <p>9. Any variance between the items contained in the particulars and the items proved at the hearing may be amended at the hearing, either at once or on such terms as to notice, adjournment or costs as justice requires.</p> | <p>Amendment at hearing</p> |

ORDER X
GUARDIAN FOR PURPOSES OF SUIT

1. Where, on default of a defendant in answering or otherwise defending the suit, after service of the writ, it appears to the court that he is an infant, or a person of weak or unsound mind, so that he is unable by himself to defend the suit, the court may, if it thinks fit, on the application of the plaintiff or of its own motion, appoint, by order, some fit person to be guardian of the defendant for the purposes of the suit by whom he may defend it. Court may appoint guardians to infant defendants and persons of weak mind

2. Before such an order is made, the court shall cause such notice as it thinks reasonable to be served on or left at the dwelling-house of the person with whom or under whose care the defendant is, and also, unless the court sees good reason to the contrary, in the case of an infant not residing with or under the care of his guardian, to be served on or left at the dwelling-house of his guardian. Notice and service thereof

3. Infants or persons of weak or unsound mind may sue as plaintiffs by their committees or next friends on such terms as to the liability for costs and otherwise of such committees or next friends as the court shall consider just. Suits by infants and persons of weak mind

ORDER XI
ALTERATION OF PARTIES

O.11

1. Where, after the institution of a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings: Where change of interest, court may make order enabling suit to proceed

Provided that any person served with such an order may, within such time as the court in the order directs, apply to the court to discharge or vary the order.

2. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survive. Death of party not to abate suit, if cause of action survive

3. If there be two or more plaintiffs or defendants, and one of them die, and if the cause of action survive to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants. Cause of action surviving to surviving plaintiff or plaintiffs
4. If there be two or more plaintiffs and one of them die, and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone, but shall survive to them and the legal representative of the deceased plaintiff jointly, the court may, on the application of the legal representative of the deceased plaintiff, enter the name of such representative in the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such legal representative of the deceased plaintiff. If no application shall be made to the court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall, after notice to appear, be interested in, and shall be bound by, the judgment given in the suit in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs, unless the court shall see cause to direct otherwise. Cause of action surviving to surviving plaintiff and legal representative of deceased plaintiff
5. In case of the death of a sole plaintiff, or sole surviving plaintiff, the court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the suit, and the suit shall thereupon proceed; if no such application shall be made to the court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the court to make an order that the suit shall abate, and to award to the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the court may, if it thinks proper, on the application of the defendant, and upon such terms as to costs as may seem fit, make such order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to reach a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case. Death of sole or surviving plaintiff O, 11, 12
6. If any dispute arise as to who is the legal representative of a deceased plaintiff, it shall be competent to the court either to stay the Dispute as to legal

suit until the fact has been duly determined in another suit, or to decide, representative before the hearing of the suit, who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

7. If there be two or more defendants, and one of them die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the court specifying the name, description and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant, and whom he desires to be made the defendant in his stead; and the court shall thereupon enter the name of such representative in the suit in the place of such defendant, and shall issue an order to him to appear on a day to be therein mentioned to defend the suit; and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit.

Death of one of several defendants or of a sole surviving defendant

8. The bankruptcy of the plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the creditors, shall not be a valid objection to the continuance of such suit, unless the assignee or trustee shall decline to continue the suit and to give security for the costs thereof, within such reasonable time as the court may order; if the assignee or trustee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.

Bankruptcy of plaintiff

ORDER XII

THIRD PARTY PROCEDURE

1. (1) Where a defendant claims as against any person not already a party to the suit (in this Order called the third party)- Third-party notice

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

O.12

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them;

the defendant may on the return day apply to the court on notice for leave to issue and serve a "third-party notice" and shall file a copy of the third-party notice with the application.

(2) Notice of the application shall be served on the plaintiff and filed with the clerk of the court at any time before the time of hearing on the return day as shown on the writ of summons.

(3) The application shall be heard on the return day and on the hearing thereof the court may grant or refuse leave. If leave be granted the court shall give directions as to the time for service of the third-party notice and shall fix another return day on which the third party shall be required to appear.

(4) The notice shall be in the prescribed form and shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined, the nature and extent of any relief or remedy claimed and the return day fixed by the court.

First Schedule,
Form 66

(5) The notice shall be served on the third party personally, and shall be accompanied by a copy of the summons in the action and of the particulars annexed thereto.

(6) Where leave shall have been granted in accordance with this rule to issue and serve a third-party notice, the third party shall, in all respects, save as hereinafter in this Order provided, be deemed to be a defendant to the suit and the third-party notice with copy of writ and particulars annexed, save as hereinafter in this Order provided, be deemed in regard to the third party to be the writ of summons in the suit.

2. (1) If the third party disputes the plaintiff's claim as against the defendant by whom the notice has been given or his own liability to the party Default by third party

defendant, he shall do such things as are directed by these Rules to be done by a defendant who disputes the plaintiff's claim in any writ of summons served upon him.

(2) If the third party does not appear on the return day, he shall be deemed to admit the validity of and be bound by any judgment given in the suit, whether by consent or otherwise, and by any decision therein on any question specified in the notice, and when contribution or indemnity or some other relief or remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy. O.12

(3) If a third party does not appear on the return day and the defendant by whom the notice has been given suffers judgment by default, such defendant shall be entitled, at any time after satisfaction of the judgment against him, or before such satisfaction by leave of the court, to have judgment entered against the third party to the extent of any contribution or indemnity claimed in the third-party notice or by leave of the court have such judgment entered in respect of any other relief or remedy claimed as the court shall direct:

Provided that it shall be lawful for the court to set aside or vary such judgment against the third party upon such terms as it thinks just.

3. (1) Subject to any directions which may have been given by the court before the hearing, the court shall have full power at the hearing to direct what part the third party shall take in the hearing and generally how the trial shall be conducted. Conduct of trial

(2) As between the defendant by whom the third-party notice has been given and the third party, the court may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate suit and may give such judgment for either party against the other as may be just:

Provided that execution against the third party shall not be issued without leave of the court until the defendant has satisfied the judgment in the same suit against him.

4. (1) Where a third party makes as against any person not already a Fourth and third party to the suit such a claim as is defined in sub-rule (1) of rule 1, subsequent the provisions of this Order regulating the rights and procedure as parties between the defendant and the third party shall apply as between the third party and such other person, and "third-party notice" and "third party" shall apply to and include every notice issued against a fourth or subsequent party and every fourth or subsequent party served with such a notice respectively.

(2) Where a person served with a notice under this rule by a third party in turn makes such a claim as is defined in sub-rule (1) of rule 1 against another person not already a party to the suit, this Order as applied by this rule shall have effect as regards such further person and any other further person or persons so served and so on successively.

5. Where a defendant makes against any other defendant in the same suit such a claim as is defined in sub-rule (1) of rule 1, he may without any leave issue and serve on such other defendant a notice making such claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate under this Order if such other defendant were a third party: O.12, 13, 14 Co-defendants

Provided that nothing herein contained shall prejudice the rights of the plaintiff against any defendant.

6. In this Order, "plaintiff" and "defendant" respectively shall include a plaintiff and a defendant to a counter-claim. Counter-claim

ORDER XIII DISCONTINUANCE OF SUITS

1. If, before the date fixed for the hearing, the plaintiff desires to Discontinuance discontinue any suit against all or any of the defendants, or to withdraw of suit any part of his alleged claim, he shall give notice in writing of discontinuance or withdrawal to the clerk of the court and to every defendant as to whom he desires to discontinue or withdraw. After the receipt of such notice, such defendant shall not be entitled to any further costs, with respect to the matter so discontinued or withdrawn, than those incurred up to the receipt of such notice unless the court shall otherwise order; and such defendant may apply *ex parte* for an order against the plaintiff for the costs incurred before the receipt of

such notice and of attending the court to obtain the order. Such discontinuance or withdrawal shall not be a defence to any subsequent suit. If, in any other case, the plaintiff desires to discontinue any suit or to withdraw any part of his alleged claim, or if a defendant desires to discontinue or withdraw his counter-claim or any part thereof, such discontinuance or withdrawal may, in the discretion of the court, be allowed on such terms as to costs and as to any subsequent suit and otherwise as to the court may seem just.

2. If any subsequent suit shall be brought before payment of the costs of a discontinued suit, for the same or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs shall have been paid. Stay of subsequent suit

ORDER XIV
PLACE OF TRIAL AND INSTITUTION OF SUITS

1. Subject to the law respecting transference, the place for the trial of any suit or matter shall be regulated as follows: Place of trial, etc.

(a) All suits arising out of the breach of any contract may be commenced and determined in any court having jurisdiction in the District in which such contract ought to have been performed, or in which the defendant resides or carries on business. Suits upon contract O.14, 15

(b) All other suits may be commenced and determined in any court having jurisdiction in any District in which the defendant resides or carries on business. If there are more defendants than one, resident in different Districts, the suit may be commenced in any court having jurisdiction in any one of such Districts; subject, however, to any order which the court may, upon the application of any of the parties, or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of such suit. Other suits

(c) In case any suit shall be commenced in any other court than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the court in which it shall have been so commenced, unless the court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer to or to plead to such suit. Suits commenced in wrong District

(d) No proceedings which may have been taken previously to such Order by Judge

plea in objection shall be in any way affected thereby; but a Judge of the High Court may order that the suit be transferred to the court to which it may be proved to belong, or, failing such proof, that it be retained and proceed in the court in which it has been commenced.

ORDER XV
AMENDMENT

1. The court may, at any stage of the proceedings, either of its own motion or on the application of either party, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just.

ORDER XVI
ADMISSIONS

O.16, 17

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| 1. Any party to a suit may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the writ of summons, statement of claim, defence or other statement of any other party. | Notice of admissions |
| 2. Any party may call upon any other party to admit, saving just exceptions, any document or fact. | Notice to admit.
First Schedule,
Forms 15 and 16 |
| 3. In case of refusal or neglect to admit after notice, the costs of proof of the document or fact shall be paid by the party refusing or neglecting to admit, whatever be the result of the suit, unless the court is of opinion that the refusal or neglect to admit was reasonable. | Costs on refusal to make reasonable admissions |
| 4. If the plaintiff and defendant shall agree as to the terms and conditions on which judgment shall be entered, the court, unless it sees good reason to the contrary, shall enter judgment on such terms and conditions. | Judgment by consent |

ORDER XVII
SETTLEMENT OF ISSUES

1. At any time before or at the hearing, the court may, if it thinks fit, At or before
on the application of any party or of its own motion, proceed to hearing
ascertain and determine what are the material questions in controversy
between the parties, and may reduce such questions into writing and
settle them in the form of issues, which issues, when settled, may state
questions of law on admitted facts, or questions of disputed facts, or
questions partly of the one kind and partly of the other.
2. The court may, if it thinks fit, direct the parties to prepare issues, Court may direct
and the same shall be settled by the court. parties to prepare
issues
3. The issues may be settled, without any previous notice, at any When to be
stage of the proceedings at which all the parties are actually present, or settled
at the hearing. If otherwise, notice shall be given to the parties to attend
at the settlement of the issues.
4. At any time before the decision of the case, if it shall appear to The court may
the court necessary for the purpose of determining the real question or amend or frame
controversy between the parties, the court may amend the issues or additional issues
frame additional issues, on such terms as to it shall seem fit.

ORDER XVIII
PLEADINGS

0.18

1. Suit shall ordinarily be heard and determined in a summary Written
manner without pleadings; but, where it appears to the court (for statements; in
reasons recorded in the minutes) that the nature and circumstances of what cases
any case render it expedient in the interests of justice to do so, the court
may order the plaintiff to file a written statement of his claim, and may
likewise order the defendant to file a written statement of his defence.
The filing of a statement of claim shall not necessitate, unless the court
so directs, that a statement of defence shall also be filed. The order may
be made at any stage of a suit, either before or at the hearing.
2. In making any such order, the court shall have regard to the Illiterate parties
condition of the parties, and shall not require any party to file a written
statement who, from want of education, is incapable of preparing or

understanding the same. If in any case the court considers it necessary in the interests of justice that any statement of such party should be reduced into writing prior to the hearing, the court may direct that the same be taken down in writing by the clerk of the court, and, after verifying the statement so prepared by oral examination of the party, where necessary, may direct, if it thinks fit, that such statement be filed as a pleading.

3. Whenever any pleading is ordered to be filed, the provisions of the following rules shall be observed: Where pleadings ordered

(a) Every pleading shall contain a statement of all the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. The pleading to state all material facts

(b) The facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement. How facts to be stated

(c) Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief, and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his statement of defence. The relief claimed to be stated

(d) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate and distinct facts. Grounds of claim founded on separate facts to be separately stated

(e) The defendant's pleadings shall deny all such material allegations in the statement of claim as the defendant intends to deny at the hearing. Every allegation of fact, if not denied specifically or by necessary implication or stated to be not admitted, shall be taken as established at the hearing. Defendant's pleading to O.18 meet allegations in statement of claim

(f) It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant must deal specifically therewith, either admitting or denying the truth of each allegation of fact *seriatim*, as the truth or falsehood of each is within his knowledge, Allegations shall not be met generally but specifically

or (as the case may be) stating that he does not know whether such allegation or allegations is or are true or otherwise.

(g) When a party denies an allegation of fact, he must not do so evasively, but answer the point of substance. And when a matter of fact is alleged with divers circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given. Denial of fact must answer point of substance

(h) The statement of defence shall admit such material allegations in the statement of claim as the defendant knows to be true or desires to be taken as admitted, and such allegations may be taken as established without proof thereof. Admissions: their effect

(i) The statement of defence must allege any fact not stated in the statement of claim on which the defendant relies in defence, as establishing, for instance, fraud on the part of the plaintiff, or showing that the plaintiff's right to recover, or to any relief capable of being granted on the statement of claim, has not yet accrued, or is released or barred or otherwise gone. Allegation of new facts in defence

(j) Where any defendant seeks to rely upon any facts, as supporting a right of set-off or counter-claim, he shall in his statement of defence, state specifically that he does so by way of set-off or counter-claim, and the particulars of such set-off or counter-claim shall be given. Set-off or counter-claim to be pleaded

(k) The statement of defence of a defendant shall not debar him, at the hearing, from disproving any allegation of the plaintiff not admitted in the statement of defence, or from giving evidence in support of a defence not expressly set up in the statement of defence except where the defence is such as, in the opinion of the court, ought to have been expressly set up in the statement of defence, or is inconsistent with the statements thereof, or is, in the opinion of the court, likely to take the plaintiff by surprise and to raise new issues not fairly arising out of the pleadings as they stand and such as the plaintiff ought not to be then called upon to meet. Evidence in denial of allegation or in support of defence not set up in pleading

(l) Where the court shall be of opinion that any allegations of fact, denied or not admitted by any pleading, ought to have been admitted, the court shall make such order as may be just with respect to costs. Costs in certain cases

(m) The court may order any plaintiff or defendant to verify his statement, or any part thereof, on oath or affidavit. O.18, 19 Verification of

pleadings

(n) Every pleading shall be filed at such time as the court directs, and be served on the opposite party, if the court thinks fit, at such time and in such manner as it directs. Filing and service of pleadings

ORDER XIX INQUIRIES AND ACCOUNTS

1. In any cause or matter in which all parties interested who are under no disability consent thereto, and also, without such consent, in any cause or matter requiring any prolonged examination of documents or accounts or any scientific or local examination which cannot, in the opinion of the court, conveniently be made by the court in the usual manner, the court may, at any time, on such terms as it may think proper, order any question or issue of fact, or any question of account arising therein, to be investigated or tried before a referee, to be agreed on between the parties or appointed by the court. Questions of fact or of account may be investigated by referee

2. Where an order has been made under the last preceding rule, the court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry. The instructions shall specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. Instructions to referee

3. The court may, at any stage of the proceedings, direct any necessary inquiries or accounts described in rule 1 to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. Interim inquiries or accounts

4. The referee may, subject to the order of the court, hold the inquiry at or adjourn it to any place which he may deem most convenient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him. He shall, so far as practicable, proceed with the inquiry *de die in diem*. General powers of referee

5. Subject to any order to be made by the court ordering the inquiry, Evidence

evidence shall be taken at any inquiry before a referee, and the attendance of witnesses may be enforced by *subpoena*; and every such inquiry shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a magistrate, but not so as to make the tribunal of the referee a public court of justice.

6. Subject to any order as mentioned in the last preceeding rule, the referee shall have the same authority in the conduct of any inquiry as a magistrate when presiding at any trial. O.19, 20, 21 Referee's authority in the inquiry

7. The referee may, before the conclusion of any inquiry before him, or by his report under the reference, submit any question arising therein for the decision of the court, or state any facts specially. Referee may report questions or facts specially

8. The proceedings and report in writing of the referee shall be received in evidence in the case, unless the court may have reason to be dissatisfied with them, and the court shall have power to draw such inferences from the proceedings or report as shall be just. Effect of report by referee

9. The court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for further inquiry or consideration to the same or any other referee, as often as may be necessary, and shall pass such ultimate judgment or order as may appear to be right and proper in the circumstances of the case. Powers of court

ORDER XX APPEARANCE OF PARTIES

1. In every cause or matter pending before the court, in case it shall appear to the satisfaction of the court that any plaintiff or defendant who may not be represented by barrister or solicitor is prevented by some good or sufficient cause from attending the court in person, the court may, in its discretion, permit any other person who shall satisfy the court that he has authority in that behalf to appear for such plaintiff or defendant. Court may permit party to appear by proxy

2. Any person doing any act or taking any proceeding in the name or on behalf of another person, not being lawfully authorised thereunto, Proceeding without authority

and knowing himself not to be so authorised, shall be guilty of contempt of court.

ORDER XXI
ARREST OF ABSCONDING DEFENDANT

1. The court may make an order for the arrest of any person in pursuance of section *ten* of the Debtors Act, where proof of the matters therein mentioned shall be made by affidavit in the prescribed form: Issue of order on affidavit.
First Schedule,
Form 17.
Cap. 77

Provided that the court in any case, if it shall see fit, may require evidence otherwise than by affidavit.

2. Where the court makes an order for the arrest of any person in pursuance of section *ten* of the Debtors Act, it shall issue a warrant in the prescribed form. O.21, 22 Form of warrant.
First Schedule,
Form 18.
Cap. 77

3. (1) Subject to the limitation mentioned in section *ten* of the Debtors Act, the security to be given by a person so arrested shall be in such amount as the court may consider just and may be given by deposit of money or valuable property or by way of bond to be executed by himself with or without such surety or sureties as to the court may seem fit. Security.
First Schedule,
Forms 19 and 20.
Cap. 77

(2) Such security may be given at any time.

4. It shall be lawful for a court, before issuing the warrant, to require the plaintiff to deposit in court such sum as the court may think sufficient for the costs of executing the warrant and of bringing the defendant before the court and, where necessary, of sending him in custody to the court in which the suit is depending. Deposit by plaintiff

5. The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action in advance. The Subsistence of person arrested

court shall fix whatever allowance it shall think sufficient for such subsistence, not exceeding seventy-five ngwee per diem. The amount so disbursed may be recovered by the plaintiff as costs in the suit, unless the court shall otherwise order. The court may release the person so imprisoned on failure by the plaintiff to pay the subsistence money, or in the case of serious illness, order his removal to hospital. During the period of such person's stay in hospital, the subsistence allowance shall be paid by the plaintiff, unless the court shall see fit, in any case, to order otherwise.

(As amended by No. 208 of 1964)

ORDER XXII

INTERIM ATTACHMENT OF PROPERTY

- 1.** If the defendant, in any suit for an amount or value of twenty kwacha or upwards, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from Zambia, the plaintiff may apply to the court, either at the time of the institution of the suit, or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant, shall be attached until the further order of the court. In what cases
- 2.** The application shall contain a specification of the property required to be attached and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same; and the plaintiff shall, at the time of making the application, declare that, to the best of his information and belief, the defendant is about to dispose of or remove his property with such intent as aforesaid. Application for attachment O.22
- 3.** If the court, after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the court to order the defendant, within a time to be fixed by the court, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property, or the value of the same, or Form of order

such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security. The court may also, in the order, direct the attachment, until further order, of the whole or any portion of the property specified in the application.

4. If the defendant fails to show such cause, or to furnish the required security within the time fixed by the court, the court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant shows such cause, or furnishes the required security, and the property specified in the application, or any portion of it, shall have been attached, the court shall order the attachment to be withdrawn.

Where defendant fails to show cause or give security. First Schedule, Form 21

5. The attachment shall not affect the rights of persons not parties to the suit, and, in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

Rights of third parties not to be affected

6. In all cases of attachment before judgment, the court shall, at any time, remove the same on the defendant furnishing security as hereinbefore required together with security for the costs of the attachment.

Removal of attachment

7. The application may be made to any court having jurisdiction in the District where the defendant or, in case of emergency, where the property proposed to be attached may be, and such court shall make such order as shall seem just. In case an order for the attachment of property shall be issued by a different court from that in which the suit is depending, such court shall, on the request of either of the parties, transmit the application and evidence therein to the court in which the suit is so depending, retaining the property in the meantime when attached, or taking sufficient security for its value, and the court in which the suit is depending shall thereupon examine into and proceed in the application in accordance with the foregoing provisions, in such manner as shall seem just.

In what courts proceedings may be taken

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| <p>1. In any suit in which it shall be shown, to the satisfaction of the court, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the court to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the court may seem meet, and, in all cases in which it may appear to the court to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the court to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the court may seem proper.</p> | <p>To stay waste,
damage or
alienation
Appointment of
receiver</p> |
| <p>2. It shall be lawful for the court, on the application of any party to a suit, to make any order for the sale by any person named in such order, and in such manner and on such terms as to the court may seem desirable, of any goods, wares or merchandise, the right to which is in dispute in the suit, which may be of a perishable nature or likely to depreciate from keeping, or which, for any other just and sufficient reason, it may be desirable to have sold at once.</p> | <p>Orders for sale of
perishable goods</p> |
| <p>3. It shall be lawful for the court, upon the application of any party to a suit, and upon such terms as may seem just, to make any order for the detention, preservation or inspection of any property being the subject of such suit, and, for all or any of the purposes aforesaid, to authorise any person or persons to enter upon or into any land or building in the possession of any party to such suit, and, for all or any of the purposes aforesaid, to authorise any samples to be taken, or any observations to be made or experiments to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.</p> | <p>Detention and
inspection of
property in
dispute</p> |
| <p>4. In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied by any claim for damage or not, it shall be lawful for the plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the court for an injunction to</p> | <p>Orders to restrain
breaches of
contract or torts
O.23, 24</p> |

restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right, and such injunction may be granted by the court on such terms as to the duration of the injunction, keeping an account, giving security or otherwise, as to the court shall seem reasonable and just:

Provided always that any order for an injunction may be discharged, varied or set aside by the court on application made thereto by any party dissatisfied with such order.

5. The court may, in every case, before granting an injunction or order as aforesaid, direct such reasonable notice of the application for the same to be given to the opposite party as it shall see fit. Notice of application

ORDER XXIV
EQUITABLE RELIEF, COUNTER-CLAIM, SET-OFF

1. Every suit implies an offer to do equity in the matter thereof, and admits of any equitable defence. Equitable defence

2. The plaintiff may obtain any such equitable relief as the facts stated and proved entitle him to, though not specifically asked. Equitable relief

3. A defendant in an action may set off, or set up by way of counter-claim against the claim of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court may if, in the opinion of the court, such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. Counter-claim: set-off

4. (1) No defendant shall be allowed to set up any such counter-claim or set-off unless he shall have lodged with the clerk of the court, four clear days before the return day, a notice in original, and as many duplicates thereof as there are plaintiffs, containing his name and Notice of counter-claim or set-off

address and a concise statement of the grounds of such counter-claim or set-off, and shall have paid the same court and service fees as would be payable if he were claiming by writ of summons:

Provided that the court may, in its discretion and on such terms as may seem just, allow the defendant to set up a counter-claim or set-off, notwithstanding that such notice has not been duly lodged.

(2) On receipt of notice of counter-claim or set-off, and on due payment of the fees, the clerk of the court shall cause a duplicate of such notice to be served on the plaintiff.

(3) The provisions of Order IX as to particulars of claims shall apply, O.24, 25 as far as they are applicable, to counter-claim and set-off.

5. Where, in any action, a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. Defendant may have judgment for balance due on counter-claim

6. The court, if it sees fit, may order that a defence of partial set-off shall be accompanied by payment into court of the amount to which, on the defendant's showing, the plaintiff is entitled, unless the plaintiff's claim to that amount is resisted on some other ground of defence; and, in default of such payment, the defendant shall be liable to bear the costs of the suit, even if he succeed in his defence to the extent of the set-off on which he relies. Payment into court where partial set-off Costs

ORDER XXV TENDER AND PAYMENT INTO COURT

1. A defence alleging tender by the defendant must be accompanied by payment into court of the amount alleged to have been tendered. Payment into court

2. (1) A defendant in an action in which there is no claim for relief other than the payment of money may, at any time before judgment, pay into court unconditionally or with an admission of liability the whole of the amount claimed in the summons and thereupon all further Payment in full

proceedings in the action shall be stayed save as to any costs not included in such payment.

(2) Where all costs incurred up to and including the date of payment are not included in such payment, the plaintiff shall be at liberty on the return day to apply to the court for judgment for all costs not so paid together with the costs of obtaining judgment.

(3) Money may be paid into court under this rule by one or more of several defendants sued jointly or in the alternative and shall, in such case, be accompanied by a note stating the name and address or names and addresses of the defendant or defendants who have so paid.

(4) The clerk of the court shall, on receipt of any payment into court under this rule, if time permits, send notice of such payment to the plaintiff and, if such payment was made by one or more of several defendants sued jointly or in the alternative, to every other defendant.

(5) Where money is paid into court in accordance with this rule, the clerk of the court shall, on the application of the plaintiff, pay out such money to such plaintiff without any order of the court.

3. (1) A defendant in an action may, at any time before judgment, pay money into court- O.25 Payment in part

(a) in satisfaction of part of the claim or part of the claim and costs or, where several causes of action are joined in one action, in satisfaction of the whole or part of the whole or part of one or more causes of action; or

(b) on account of a sum admitted by him to be due to the plaintiff.

(2) Money may be paid into court under this rule by one or more of several defendants sued jointly or in the alternative and shall, in such case, be accompanied by a note stating the name and address or the names and addresses of the defendant or defendants making the payment.

(3) Any payment made under this rule shall be deemed to be made with an admission of liability to the extent of the amount paid unless accompanied by a notice stating that liability is denied.

(4) Any payment into court under this rule shall be deemed to be made on account of the amount claimed unless accompanied by a note stating that it is made in satisfaction of the claim or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action.

(5) The clerk of the court shall, on receipt of any payment into court under this rule, if time permits, send notice of such payment to the plaintiff and, if such payment was made by one or more of several defendants sued jointly or in the alternative, to every other defendant.

4. Where any amount, being less than the whole amount of the claim and costs, is paid into court unconditionally or with an admission of liability or where the whole amount of the claim and costs is paid into court unconditionally or with an admission of liability but there is a claim for some relief other than the payment of money and the plaintiff elects to accept the amount or any one or more specified amounts paid into court in satisfaction of the whole of his claim or of the cause or causes of action to which the specified amount or amounts relate, the following provisions shall apply: Acceptance by plaintiff

(a) The plaintiff shall, within three days (or such greater number of days as the clerk of the court may on the direction of the magistrate of such court insert in the notice referred to in sub-rule (5) of rule 3) after the receipt by him of such notice, file with the clerk of the court a notice of acceptance indicating the extent of such acceptance and thereupon proceedings in the action or in respect of any cause of action or in respect of any part of such action or cause of action to which such notice of acceptance relates shall be stayed.

(b) The clerk of the court shall give notice of such acceptance and of the extent of such acceptance to the defendant or, if there be more than one defendant, to each defendant. O.25

(c) If the notice of acceptance relates to the whole claim or if it relates to one or more of several causes of action and the plaintiff within the said period of three days (or such greater number of days as may be prescribed in accordance with paragraph (a)) give notice that he abandons the other cause or causes of action, he may apply to the court

for judgment to be entered in his favour for the amount of any costs properly incurred less any part of such costs as may have been included in the payment into court.

(d) Where money is paid into court in accordance with this Order, the clerk of the court shall, on the application of the plaintiff, pay out such money to such plaintiff without any order of the court.

5. If a plaintiff fails to give notice of acceptance within the time limited by paragraph (a) of rule 4, he may give notice of acceptance subsequently but the money paid into court shall not be paid out without an order of the court and the court may order the plaintiff to pay all or any costs reasonably incurred by the defendant since the date of payment into court. Late acceptance
by plaintiff

6. Where any amount referred to in rule 4 is paid into court and the plaintiff does not accept such amount (whether such non-acceptance extends to the whole amount or to any one or more of specified amounts paid into court) in satisfaction of the whole of his claim or in satisfaction of such cause or causes of action to which such specified sum or sums paid into court relate, the action shall proceed in respect of any unsatisfied part of the plaintiff's claim and if on trial judgment is given in favour of the plaintiff- Non-acceptance
by plaintiff

(a) for an amount more than the amount paid into court where there is only one cause of action or where there are several causes of action for an amount or amounts more than the specified amount or amounts paid into court in respect of one or more of such causes of action, the plaintiff shall be entitled to his costs in respect of such judgment in the same manner and to the same extent as if there had been no payment into court;

(b) for an amount not greater than the amount paid into court where there is one cause of action or where there are several causes of action for an amount or amounts not greater than the specified amount or amounts paid into court in respect of one or more of such causes of action, the plaintiff shall not, in respect of such cause or causes of action as to which the amount or amounts awarded in judgment is or are not greater than the amount or amounts paid into court, be entitled to any of his costs incurred after the expiry of the period prescribed in the notice to him referred to in paragraph (a) of rule 4 after the date on which he received notice of such payment into court and the defendant shall be entitled to the costs incurred by him after the expiry of such period in respect of such cause or causes of action.

7. Where an amount is paid into court by the defendant with a denial of liability, the action shall proceed as if no such payment had been made and, except in an action to which a defence of tender has been made or in which a plea under the Libel Acts, 1843 and 1845, of the United Kingdom, has been filed, no statement of the fact that money has been paid into court under this Order shall be inserted in the pleadings and no communication of the fact shall be made to the presiding magistrate or to any assessor until all questions of liability and amount of debt or damages have been decided, but the presiding magistrate shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into court and the amount of the payment: Non-communication to court in libel

Provided that this rule shall not apply where money paid into court has been accepted or taken out in satisfaction.

8. A plaintiff in an action for libel or slander who takes money out of court may apply to the presiding magistrate on notice in writing for leave to make in open court a statement in terms to be approved by such magistrate when giving leave. Statement by plaintiff

9. A plaintiff or other person made defendant to a counter-claim may pay money into court as if he were defendant to an action and, in such event, the relevant rules of this Order shall apply with the necessary modifications. Counter-claim

10. (1) Notwithstanding anything in this Order contained, where payment into court is made in any action in which money or damages is or are claimed by or on behalf of or for the benefit of an infant or a person of unsound mind, such money shall not be paid out of court to the plaintiff or to any other person without leave of the court. Infants and persons of unsound mind

(2) Where payment into court is made-

(a) by one or more of several defendants sued jointly or in the alternative; or

(b) with a defence of tender before action;

the money in court shall not be paid out except in pursuance of an order of the court.

ORDER XXVI
INTERROGATORIES. DISCOVERY AND PRODUCTION OF
DOCUMENTS

O.26

1. Any party may, by leave of the court (but, if he is required to deliver any pleading, not until he has delivered a sufficient pleading), deliver interrogatories in writing for the examination of the opposite party upon any matter as to which discovery may be sought.

When interrogatories may be delivered. First Schedule, Form 22
2. The court may strike out or permit to be amended any interrogatory which, in the opinion of the court, is scandalous or irrelevant, or not put *bona fide* for the purposes of the action, or not sufficiently material, or in any other way objectionable.

Amendment
3. The party interrogated shall answer the interrogatories, subject to just exceptions.

Answer
4. If any party interrogated omits to answer or answers insufficiently, without having just cause, the party interrogating may apply to the court for an order requiring him to answer or to answer further. Thereupon, or upon the court's own motion, if the court thinks fit, an order may be made requiring him to answer, or to answer further, either by affidavit or by *viva voce* examination, as the court may direct.

If answer insufficient
5. The court may order any party to the suit to make discovery, upon oath, of the documents which are or have been in his possession or power relating to any matter in question in the suit.

Discovery of documents
6. The court may, at any time during the pendency therein of any suit or proceeding, order the production by any party thereto, upon oath, of any documents in his possession or power relating to any matter in question in such suit or proceeding, and the court may deal with such documents, when produced, as shall appear just.

Production of documents. First Schedule, Forms 23 and 24
7. The court may, in its discretion, on the application of any of the parties to any suit or proceeding, compel any other party to allow the

Inspection of documents

applicant to inspect all or any documents in the custody or under the control of such other party relative to such suit, and, if necessary, to take examined copies of the same.

8. Whenever any of the parties to a suit is desirous that any document or other thing which he believes to be in the possession or power of another of the parties thereto should be produced at any hearing of the suit, he shall, at the earliest opportunity, serve the party in whose possession or power he believes the document or other thing to be with a notice in writing calling upon him to produce the same.

Notice to produce.
First Schedule,
Form 25

9. In case it shall appear to the court that there is reasonable ground to believe that such document or thing will not be produced pursuant to such notice, the court may make an order for the production of the same at the hearing of the suit by the party served with the notice, subject to just exceptions.

Order for production O.26,
27

10. If the party from whom discovery of any kind or production or inspection is sought objects to the same or any part thereof, the court, if satisfied that the right to the discovery or production or inspection sought depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, may order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Where right to production depends on questions in dispute

11. If any party fails to comply with any order to answer interrogatories, or for discovery or production or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the court for an order to that effect, and an order may be made accordingly.

Penalty on failure to comply with order to answer or for discovery

ORDER XXVII
MOTIONS

I-General

1. Interlocutory applications may be made by motion at any stage of a cause or matter. Motion may be made at any time

2. Unless the court shall otherwise order, no motion shall be entertained until the party moving has filed a motion paper distinctly stating the terms of the order sought. Motion paper

3. The clerk of the court shall make up, for each day on which the court appoints motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought by him. Motion list

4. There shall be filed with the motion paper all affidavits on which the person moving intends to rely. Affidavits

5. The motion shall be made on such days and at such times as are by the regulations of the court, appointed for hearing motions. In cases of urgency, the motion may, by leave of the court, be made at any time while the court is sitting. Hearing of motion

6. The hearing of any motion may, from time to time, be adjourned upon such terms as the court may deem fit. O.27
Adjournment

7. Motions may be made either *ex parte* or after notice to the parties to be affected thereby. Motions *ex parte*,
or on notice

II-*Ex Parte* Motions

8. On a motion *ex parte*, the party moving shall apply for either an immediate absolute order of the court, in the terms of the motion paper, on his own showing and evidence, or an order on the other party to appear on a certain day and show cause why an order should not be made in terms of the motion paper. Absolute order,
or order to show
cause

9. Any party moving in court *ex parte* may support his motion by argument addressed to the court on the facts put in evidence; and no party to the suit or proceeding, although present, other than the party moving, shall be entitled to be then heard. Argument on
motion

10. Where a motion is made *ex parte*, the court may refuse to make the order sought, or may grant an order to show cause why the order sought should not be made, or may allow the motion to be made on notice to the parties to be affected thereby. Orders on *ex parte* motions

11. Where an order is made on a motion *ex parte*, any party affected by it may, within seven days after service of it, or within such further time as the court shall allow, apply to the court by motion to vary or discharge it; and the court, on notice to the party obtaining the order, either may refuse to vary or discharge it, or may vary or discharge it, with or without imposing terms as to costs or security, or otherwise, as seems just. Court may vary or discharge order

III-Orders to Show Cause

12. An order to show cause shall specify a day when cause is to be shown, to be called the return day to the order, which shall ordinarily be not less than three days after service. Return day to be specified

13. A person served with an order to show cause may, before the return day, produce evidence to contradict the evidence used in obtaining the order, or set forth other facts on which he relies to induce the court to discharge or vary such order. Counter-evidence

14. On the return day, if the person served does not appear, and it appears to the court that the service on all proper parties has not been duly effected, the court may enlarge the time and direct further service, or make such other order as seems just. Further service in certain cases

15. If the person served appears, or the court is satisfied that service has been duly effected, the court may proceed with the matter. Appearance or proof of service

16. The court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case. O.27 General powers as to orders

IV-Notice of Motion

17. Unless the court gives special leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion. Notice of motion

18. Where a party acts by a solicitor, service of notice of motion on such solicitor shall be deemed good service on such party. Service on solicitor

19. Along with the notice of motion there shall be served a copy of any affidavit on which the party moving intends to rely at the hearing of such motion. Copy of affidavit to be served with notice

20. If, at the hearing of the motion, the court shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court may either dismiss the motion or adjourn the hearing thereof in order that such notice may be given, upon such terms as to the court may seem fit. Where all parties have not served

21. The plaintiff may, by leave of the court, cause any notice of motion to be served upon a defendant with the writ of summons. Service with writ of summons

V-Evidence in Interlocutory Proceedings

22. Oral evidence shall not be heard in support of any motion, unless by leave of the court. Oral evidence

23. In addition to or in lieu of affidavits, the court may, if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it, in like manner as at the hearing of a suit. Evidence in addition to or in lieu of affidavits

24. Such notice as the court, in each case according to the circumstances, considers reasonable shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the court considers entitled, to inspect the documents to be produced, or to examine the persons summoned, or to be present at their examination, as the case may be. Notice to parties

25. The evidence of a witness, on examination, shall be taken in like manner, as nearly as may be, as at the hearing of a suit. Evidence how taken

26. Upon the hearing of any motion, the court may, on such terms as it may deem fit, allow any affidavit to be used, although such affidavit has not been filed with the motion paper, and although a copy thereof has not been served on the opposite side along with the notice of motion. Affidavit not filed with motion paper O.28, 29

ORDER XXVIII
LISTING OF CAUSES FOR HEARING

1. It shall not be necessary for the defendant to enter a formal appearance, but, on the return day marked on the writ of summons, the cause shall be placed on the cause list for that day. Cause to be placed on the cause list

2. Subject to the discretion of the court, causes shall be placed on the cause list in the order of the date of the issue of their respective writs of summons. Order of causes on list

3. Causes shall be taken for hearing in the order in which they stand on the cause list for the day: Causes to be taken in order

Provided that the court may direct any cause to be heard out of its ordinary turn.

4. Any cause on the cause list not disposed of during the course of the day may be adjourned to a future day. Any causes not so adjourned shall be placed on the cause list of the following day before all causes returnable for hearing on that day, and in the same order as they stood on the cause list of the previous day. No further notice to either party of any such adjournment, or of any cause being placed on the cause list of the following day, shall be requisite, unless otherwise ordered by the court. Adjournment of causes

ORDER XXIX
POSTPONEMENT OF HEARING

1. The court may postpone the hearing of any cause or matter, on In what cases

being satisfied that the postponement is likely to have the effect of better ensuring the hearing and determination of the questions between the parties on the merits, or for other good cause shown to the satisfaction of the court. The postponement may be made on such terms as to the court seem just.

2. Where such an application is made on the ground of the absence of a witness, the court shall require to be satisfied that his evidence is material and that he is likely to return and give evidence within a reasonable time. Absence of witness

3. Where an application is made for the purpose of enabling the party applying to obtain the evidence of a witness resident out of Zambia, the court shall require to be satisfied that the evidence of the witness is material and that he is permanently residing out of Zambia or does not intend to come within Zambia within a reasonable time. Witness out of Zambia O.29, 30, 31

4. The provisions of this Order shall be in addition to and not in derogation from any other provisions contained in these Rules. Saving

ORDER XXX SITTINGS OF COURT

1. Subject to the provisions of the Act, the court may, in its discretion, appoint any day or days, from time to time, for the hearing of causes and matters, as circumstances require. Days of sitting

2. Subject to special arrangements for any particular day, the business of the day shall be taken, as nearly as circumstances permit, in the following order: Order of business

- (a) Judgments standing over for delivery.
- (b) *Ex parte* motions.
- (c) Motions on notice, and arguments on showing cause against orders.
- (d) Causes and matters for hearing.

The above shall be taken in the order in which they stand in the list, unless the court sees fit to vary the order.

ORDER XXXI

NON-ATTENDANCE OF PARTIES AT HEARING

1. The provisions of this Order shall have effect subject to the provisions of Order XXXII.

Saving for Order XXXII
 2. Where a cause or matter on the cause list has been called, if neither party appears the court shall, unless it sees good reason to the contrary, strike the same out of the cause list.

Non-appearance of both parties
 3. If the plaintiff does not appear, the court shall, unless it sees good reason to the contrary, strike out the cause or matter (except as to any counter-claim by the defendant), and make such order as to costs, in favour of any defendant appearing, as seems just:

Of plaintiff
- Provided that, if the defendant shall admit the cause of action to the full amount claimed, the court may, if it thinks fit, give judgment as if the plaintiff had appeared.
4. If the plaintiff appears, and the defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the court may, upon proof of service of the summons, proceed to hear the cause or matter and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the same and direct notice of such postponement to be given to the defendant.

O.31, 32 Of defendant
 5. Where the defendant to a cause or matter which has been struck out under rule 2 has a counter-claim, the court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counter-claim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counter-claim and direct notice of such postponement to be given to the plaintiff.

Counter-claim where plaintiff does not appear
 6. Any judgment obtained against any party in the absence of such party may, on sufficient cause shown, be set aside by the court, upon such terms as may seem fit.

Setting aside of judgment made in absence of party
 7. Any cause or matter struck out may, by leave of the court, be replaced on the cause list, on such terms as to the court may seem fit.

Relisting of cause struck out

ORDER XXXII
PROCEEDINGS ON THE RETURN DAY

I-Judgment by Consent

1. The defendant in a suit may, at any time before the return day, deliver to the clerk of the court a written consent to judgment in the prescribed form or in any similar form and the clerk of the court shall thereupon inform the plaintiff in writing that he has received the same. Consent to judgment

2. Where a consent to judgment is delivered to the clerk of the court in accordance with the preceding rule not less than two clear days before the return day, the plaintiff shall not, unless the court shall for good cause shown otherwise determine, be awarded any costs in respect of any steps taken in the action subsequent to the issue of the writ of summons and prior to taking judgment. Costs where consent delivered

3. Where the consent to judgment delivered to the clerk of the court is in respect of the whole of the claim contained in the writ of summons, the court may, at the request of the plaintiff, enter judgment forthwith in favour of the plaintiff for the relief claimed together with such costs as may to the court seem just. Consent to whole claim

4. Where the consent to judgment delivered to the clerk of the court is in respect of part only of the claim contained in the writ of summons, the court may, at the request of the plaintiff, enter judgment in favour of the plaintiff for so much of the claim as shall be comprised in the consent to judgment together with costs and thereupon so much of the claim as shall not be comprised in the consent to judgment shall be treated in all respects as if no consent to judgment had been delivered. Consent to part of claim O.32, 33

II-Proceedings in other Cases

5. Any person named as defendant in any writ may, at any time after service upon him of the writ of summons, deliver to the clerk of the court in the prescribed form or in any other form of similar effect a notice of his intention to defend the suit and stating the grounds of his defence and the clerk of the court shall forthwith inform the plaintiff or his legal representative that such notice has been delivered to him and shall supply him with a copy thereof. Notice of intention to defend

6. Where the defendant shall have delivered to the clerk of the court such notice, as is in the last preceding rule mentioned, or where the defendant shall appear on the return day in person or by his legal representative and shall state that he wishes to defend the suit, subject to the provisions of these Rules, the court may, at the request of either party, adjourn the action generally on such terms as to the court seem fit or may adjourn the hearing and give such directions as to pleadings and other matters as may be required by the nature of the case, or, if satisfied that the interests of justice so require or with the consent of both parties, may proceed to hear and determine the suit in accordance with the provisions contained in these Rules.

Proceedings
where cause
defended

ORDER XXXIII
(No. 155 of 1968)
DEFAULT PROCEDURE

1. Where the claim is contained in a default writ of summons and the defendant has not, within fifteen days from the date of service upon him of such summons and the accompanying affidavit and form of Admission Defence and Counter-claim, either-

(a) paid the claim and costs into court; or

(b) delivered to the clerk of the court the form of Admission Defence and Counter-claim duly signed by the defendant or a notice to the same effect so signed;

Entry of
judgment in
default action

then, on being satisfied that such summons, accompanying affidavit and form of Admission Defence and Counter-claim have been served on the defendant personally or otherwise in conformity with Order VII, and on a request to enter judgment by default in the prescribed form being filed by the plaintiff or his legal representative, the court or the clerk of that court may enter judgment in favour of the plaintiff against that defendant for the amount claimed and costs, and note the same on the court's record of the case. A notice of judgment entered in the prescribed form shall thereupon be sent by the court to both plaintiff and defendant.

First Schedule,
Form 6
O.33, 34
First Schedule,
Form 7

2. Where the claim is contained in a default writ of summons and the defendant has, within fifteen days from the date of service upon him of such default writ of summons, accompanying affidavit and form of Admission Defence and Counter-claim, delivered to the clerk of the court the form of Admission Defence and Counter-claim signed by him

Notice of
hearing.
First Schedule,
Form 8

or a form to the like effect so signed, then the clerk of the court shall cause to be served upon the plaintiff and the defendant a notice of hearing in the prescribed form having endorsed thereon the place, time and date of hearing (the return day), and the provisions of rules 6, 7 and 8 of Order VI and of Order XXVIII shall apply in respect of such notice of hearing as if it were a writ of summons.

ORDER XXXIV
PROCEEDINGS AT THE HEARING

1. The order of proceedings at the hearing of a cause or matter, where not otherwise by law prescribed and when judgment has not been entered in accordance with Order XXXII, rules 1 to 5 inclusive, shall be in accordance with rules 2 to 8 inclusive of this Order. Proceedings at hearing

2. The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, according as the court may determine, has the right to begin. He may state his case. Burden of proof: party to begin

3. He shall then produce his evidence and examine his witnesses. Evidence

4. When the party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit or deposition or under commission and documentary evidence not already read or taken as read); and, if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon; but, if answered in the affirmative, he shall wait for his general reply. Summing up

5. When the party beginning has concluded his case, the other party shall be at liberty to state his case and to call evidence, and to sum up and comment thereon. Case of other party

6. If no evidence is called or read by the other party, the party beginning shall have no right to reply, unless he has been prevented from summing up his case by the statement of the other party of his intention to call evidence. General reply

7. If the party opposed to the party beginning calls or reads O.34, 35

evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may, by leave of the court, call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters. Evidence in reply

8. Where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the court, and the party beginning shall be entitled to the general reply. Address thereon

9. Documentary evidence must be put in and read, or taken as read by consent. Documentary evidence

10. Every document put in evidence shall be marked by the magistrate or clerk of the court at the time, and shall be retained by the court during the hearing, and returned to the party who put it in, or from whose custody it came, immediately after the judgment, unless it is impounded by order of the court. Marking documents

11. In cases where written pleadings have not been filed or the parties or either of them are incapable of understanding their effect with sufficient accuracy, the preceding rules respecting the order of proceeding at the hearing shall be varied by the court so far as may be necessary. In particular, the statement of the defendant in defence, where he does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his claim and of the grounds thereof, and before any witnesses are examined, unless, in any case, the court shall see reason to direct otherwise. Where written pleadings not filed or parties are illiterate

12. The court may, in all cases, disallow any question put in cross-examination to any party or other witness, which may appear to it to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter. Disallowance of vexatious questions in cross-examination

13. The court may, in its discretion, allow either party to cross-examine any witness called by it on its own motion. Witness called by court

JUDGMENT

1. The decision or judgment in any suit shall be delivered in open court, unless the court otherwise directs.

Delivery of judgment
2. If the court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the court, at the hearing, states the day on which judgment will be delivered, in which case there shall be no further notice.

Notice when reserved
3. All parties shall be deemed to have notice of the decision or judgment, if pronounced at the hearing, and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

O.35 When parties deemed to have notice
4. A minute of every judgment, whether final or interlocutory, shall be made, and every such minute shall be a decree of the court, and shall have the full force and effect of a formal decree. The court may order a formal decree to be drawn up on the application of either party.

Minute of judgment: its effect.
First Schedule, Form 26
5. If the defendant shall have been allowed to set off any demand or counter-claim against the claim of the plaintiff, the judgment shall state what amount, if any, is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The judgment with respect to any sum awarded to the defendant shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Where set-off allowed
6. A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and, if no time is therein expressed, he is bound to do so immediately after the decree or order has been made (except as to costs, the amount whereof may require to be ascertained by taxation), unless the court shall enlarge the time by any subsequent order.

Decree to be obeyed without demand
7. The court, at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other

Court may direct time for payment

act is to be made or done, reckoned from the date of the judgment or order, or from some other point of time, as the court thinks fit. or performance

8. Where a judgment or order is for a sum of money, interest at six per centum shall be payable thereon, unless the court otherwise orders. Interest

9. Where any judgment or order directs the payment of money, the court may, for any sufficient reason, order that the amount shall be paid by instalments by instalments, with or without interest. Such order may be made at the time of giving judgment, or at any time afterwards, and may be rescinded or varied, upon sufficient cause, at any time. Such order may state that, upon failure of any instalment, the whole amount remaining unpaid shall forthwith become due. Payment by

10. (1) Where any judgment for a sum of money is entered and at the time of the same being entered the defendant is not present in court, the court may, after entering judgment, adjourn the proceedings to such date and place as to the court may seem fit for the purpose of determining whether and in what terms an order should be made in accordance with rule 9. Adjournalment of

(2) Where any proceedings are adjourned in accordance with this rule, the clerk of the court shall send to the defendant by registered post a notice informing him of the date and the place to which the proceedings have been adjourned. O.35, 36 Notice to defendant

(3) Where any proceedings are adjourned in accordance with this rule, it shall not ordinarily be necessary for the plaintiff or his representative to attend at the hearing of such adjourned proceedings. Non-attendance of plaintiff

Provided that-

(i) the plaintiff may, if necessary, attend at the same in person or by his legal representative;

(ii) where any order in accordance with rule 9 shall be made in the absence of the plaintiff or his legal representative, the clerk of the court shall send a memorandum of the same to the plaintiff or his legal representative.

(4) Notwithstanding anything in these Rules contained, where any proceedings are adjourned in accordance with this rule, no person shall be entitled, except with the leave of the court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order given or made in the course of such proceedings until three clear days after the same have been finally disposed of.

Stay of execution

ORDER XXXVI
RECORDING OF JUDGMENTS

*(No. 323
of 1960)*

1. Every judgment entered or given in any court for a fixed or liquidated sum of money shall be recorded by the clerk of the court in the Judgments Register kept by him. Any other judgment or order shall be recorded in the Civil Causes Register.

Register of
judgments

2. Subject as hereinafter provided by this Order, every Judgments Register and the Judgments Section of every Civil Causes Register shall be open for personal inspection during the hours in which court offices are open to the public.

Judgment
Registers open to
inspection

3. Where it is desired to make a personal search of the Judgments Register or of the Judgments Section of the Civil Causes Register for entries against a named person, the applicant shall first lodge at the court office in which a search is to be made a form of application in the prescribed form and shall pay the fees prescribed.

Individual
searches
First Schedule,
Form 68

4. When it is desired to make general searches, during any calendar year, of the Judgments Register in any court office for entries against any number of unspecified judgment debtors, the applicant shall first apply to the Registrar of the High Court in the prescribed form and, on payment of the prescribed fee, the Registrar of the High Court shall issue or cause to be issued to such applicant a form of permit in the prescribed form. The production of such form of permit signed by the Registrar of the High Court shall be sufficient authority to make general searches of the Judgments Registers kept in any court office during the period specified in such permit and at times when such Registers are open for public inspection.

General searches
O.36, 37
First Schedule,
Form 69
First Schedule,
Form 70

5. Where any judgment entered in a Judgments Register or a Civil Causes Register has been set aside, varied or reversed, the clerk of the court shall insert or cause to be inserted in the Judgments Register or Civil Causes Register, as the case may be, a note to that effect against the record of such judgment. Judgments set aside, varied or reversed

6. Where any judgment entered in a Judgments Register or a Civil Causes Register has been wholly satisfied or complied with, the clerk of the court shall, on an application in writing made by any party to the action in which the judgment was entered, and upon proof of the satisfaction thereof, insert or cause to be inserted in the Judgments Register or Civil Causes Register, as the case may be, a note to that effect against the record of such judgment. Judgments satisfied

ORDER XXXVII
AFFILIATION AND MAINTENANCE OF CHILDREN ACT (No. 247 of 1961)

I-Interpretation

1. (1) In this Order, unless the context otherwise requires- Interpretation.
"the Act" means the Affiliation and Maintenance of Children Act.

(2) Expressions used in this Order which are used in the Act have the same meanings as in that Act.

(3) Any reference in this Order to the administering court in relation to a maintenance order or a related attachment of earnings order is a reference to a subordinate court-

(a) which made the maintenance order;

(b) in which the maintenance order is registered under the Act, or under the Affiliation and Maintenance of Children Act; or Cap. 64

(c) by which the maintenance order was confirmed under the Act. Cap. 64

(4) Any reference in this Order to the register is a reference to the

register kept in accordance with rule 54 of the Magistrates' Courts Rules, 1952, of the United Kingdom, in so far as these Rules are applicable in Zambia.

(5) Any reference in this Order to a form in the First Schedule shall include a reference to a form to the like effect with such variations as the circumstances may require. O.37

II-Procedure under Part II of the Act

2. An application for the registration in the High Court of a subordinate court order need not be in writing or on oath. Application for registration under section 4 (3) of the Act

3. (1) On an application for the registration in the High Court of a subordinate court order, the court shall be satisfied in the manner provided by sub-rule (4) as to the amount due and unpaid under the order at the time the application was made. Manner in which subordinate court is to be satisfied as to various matters

(2) Where such an application as aforesaid is granted, the court shall be satisfied in the manner provided by sub-rule (4) that no process for the enforcement of the order issued before the grant of the application remains in force.

(3) Where the court receives a notice given under section *seven* of the Act (which relates to the cancellation of registration) the court shall be satisfied, in the manner provided by sub-rule (4), that no process for the enforcement of the order issued before the giving of the notice remains in force and that no proceedings for the variation of the order are pending in a subordinate court.

(4) For the purpose of satisfying the court as to the matters referred to in this rule-

(a) if the person through or to whom payments are ordered to be made is the clerk of a subordinate court, there shall be produced a certificate in that behalf purporting to be signed by the clerk in the appropriate prescribed form; First Schedule, Forms 71, 72 and 73

(b) in any other case, there shall be produced a document purporting to be a statutory declaration in that behalf in the appropriate prescribed form. First Schedule, Forms 74, 75 and 76

4. Where an application for the registration of a subordinate court order is granted and the court is satisfied that no process issued for the enforcement of the order before the grant of the application remains in force, the court shall, in accordance with paragraph (c) of subsection (4) of section *four* of the Act, cause the clerk to send a copy of the order, certified to be a true copy thereof in the prescribed form, to the Registrar of the High Court or to such District Registrar as may be specified by the applicant. Copy of subordinate court order sent to the High Court for registration First Schedule, Form 77

5. Where a clerk of a magistrate's court in accordance with paragraph (b) of subsection (2) of section *four* of the Act receives from an officer of the High Court a certified true copy of a High Court order, he shall cause the order to be registered in his court by means of a memorandum entered and signed by him in the register and shall send written notice to that officer of the High Court that it has been duly registered. Registration of High Court order in a magistrate's court O.37

6. (1) Where an order is made under subsection (7) of section *four* of the Act that all payments to be made under a maintenance order made in the High Court shall, on its registration in a magistrate's court, be made through a proper officer of the magistrate's court in which the maintenance order is registered, the clerk of the court shall give notice thereof in the prescribed form. Notices as respects payments through a clerk of a magistrate's court. First Schedule, Form 78

(2) When payments under a subordinate court order have, on its registration in the High Court, ceased to be payable to a clerk of a subordinate court, by virtue of subsection (6) of section *four* of the Act, a notice shall be given by the clerk of the original court and shall be in the prescribed form and, where payments have been payable through a clerk other than the clerk of the original court, he shall send a copy of the said notice to that other clerk. First Schedule, Form 79

(3) A notice under subsection (5) of section *seven* of the Act that the registration in a magistrate's court of a High Court order has been First Schedule, Form 80

cancelled and that payments thereunder have ceased to be payable through a clerk of a magistrate's court shall be given by the clerk of the court of registration and shall be in the prescribed form and, where payments have been payable through a clerk other than the clerk of the court of registration, he shall send a copy of the said notice to that other clerk.

(4) A notice given in accordance with the preceding provisions of this rule shall be delivered to the person liable to make payments under the order to which the notice relates or sent by post to that person at his last known address.

7. An order under subsection (4) of section *six* of the Act remitting an application for the variation of a High Court order registered in a magistrate's court to the original court shall be in the prescribed form. Remission to the original court of application for variation of registered maintenance order. First Schedule, Form 81

8. (1) Where a High Court order registered in a magistrate's court is, under subsection (2) of section *six* of the Act, varied by a magistrate's court, the clerk of the last-mentioned court shall give notice of the variation to the High Court. Notice of variation, remission, discharge or cancellation of registration by a magistrate's court or subordinate court of a registered order

(2) Where an application for the variation of a High Court order registered in a magistrate's court is, under subsection (4) of section *six* of the Act, remitted to the original court by a magistrate's court, the clerk of the last-mentioned court shall give notice of the remission to the High Court. O.37

(3) Where the registration of a High Court order in a magistrate's court is, under subsection (4) of section *seven* of the Act, cancelled by

the court of registration, the clerk of the last-mentioned court shall give notice of cancellation to the High Court stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section *seven*.

(4) Where a subordinate court order registered in the High Court is varied or discharged by a subordinate court, the clerk of the last-mentioned court shall give notice of the variation or discharge, as the case may be, to the High Court.

(5) Notice under the preceding provisions of this rule shall be given by sending to the appropriate officer of the High Court a copy of the order of variation, remission, cancellation or discharge, as the case may be, certified to be a true copy thereof by the clerk of the subordinate court and marked, in the case of a High Court maintenance order, with the title and cause number.

(6) For the purposes of sub-rule (5), the appropriate officer of the High Court shall be-

(a) in relation to a High Court order registered in a magistrate's court, the officer to whom notice of registration was given under rule 5;

(b) in relation to a subordinate court order registered in the High Court, the officer to whom a copy of the order was sent under rule 4.

(7) Where a subordinate court order registered in the High Court is discharged by a subordinate court and it appears to the last-mentioned court that no arrears remain to be recovered, notice under subsection (3) of section *seven* of the Act shall be given by an endorsement in the prescribed form on the certified copy of the order of discharge referred to in sub-rule (5). First Schedule, Form 82

9. Where any notice is received-

(a) of the registration in the High Court of a subordinate court order;

(b) of the discharge or variation by the High Court of a High Court order registered in a magistrate's court;

(c) under subsection (1) or (2) of section *seven* of the Act (which

Notices received from the High Court or from a person entitled to payments

relates to the cancellation of registration);

the clerk of the subordinate court shall cause particulars of the notice to be registered in his court by means of a memorandum entered and signed by him in the register and, in the case of a notice under subsection (1) or (2) of section *seven* of the Act, shall cause the person in possession of any warrant of commitment, issued but not executed, for the enforcement of the order to be informed of the giving of the notice.

10. Rule 34 of the Magistrate's Courts Rules, 1952, of the United Kingdom (which relates to jurisdiction to hear certain complaints), in so far as the same is applicable in Zambia, shall apply to a complaint for the variation of a High Court order registered in a magistrate's court as if the order were an affiliation order made by the court of registration and as if in sub-rule (4) of the said rule for the words "shall cause" there were substituted the words "may cause".

Jurisdiction as respects complaints for variation of High Court maintenance orders

III-Procedure under Part III of the Act

11. An attachment of earnings order shall be in the prescribed form.

Attachment of earnings order. First Schedule, Form 83

12. (1) Where a subordinate court makes an attachment of earnings order or an order varying or discharging such an order, the clerk of the court shall cause a copy of the order to be served on the person to whom the order is directed and shall send a copy of the order to the defendant.

Orders and notices to be served on and given to employer

(2) Where an attachment of earnings order made by a subordinate court ceases to have effect as provided in subsection (2) of section *eleven* of the Act, the clerk of the administering court shall give notice in writing of the cessation to the person to whom the attachment of earnings order was directed.

13. The particulars of the defendant for the purpose of enabling him to be identified which, so far as they are known, are to be included in an attachment of earnings order under sub-section (3) of section *eight* of the Act and which the defendant may be ordered to give to the

Particulars of defendant

court under subsection (1) of section *thirteen* of the Act shall be-

- (a) full name and address;
- (b) age;
- (c) place of work;
- (d) nature of work.

14. A person to whom the attachment of earnings order is directed who, at the time when a copy of the order is served on him or any time thereafter, has on no occasion during a period of four weeks immediately preceding that time been the defendant's employer, shall forthwith, under sub-section (4) of section *twelve* of the Act give notice to the court which made the order in the prescribed form. Defendant not employed by person to whom attachment of earnings order directed First Schedule, Form 84

15. The clerk of a subordinate court, by which an application under subsection (5) of section *eleven* of the Act for the appropriate variation of an attachment of earnings order is to be heard, shall give notice in writing of the time and place appointed for the hearing of the application to such person entitled to receive payment under the related maintenance order as is specified by the attachment of earnings order. O.37 Notice of application for appropriate variation order

16. (1) This rule shall apply to a complaint for the discharge or variation of an attachment of earnings order, except where the related maintenance order- Jurisdiction as respects complaints for the discharge and variation of attachment of earnings orders.

(a) is an affiliation order and jurisdiction is conferred by paragraph (a) of subsection (2) of section *one hundred and eleven* of the Juveniles Act, to courts having jurisdiction in the place where the person liable thereunder is residing; Cap. 53

(b) is an order made under section *one hundred and ten* of the Juveniles Act. Cap. 53

(2) Where a complaint is made to a magistrate having jurisdiction in the same District as the court which made the attachment of earnings

order and it appears to him that-

(a) the person in whose favour the attachment of earnings order was made; or

(b) the person liable to make payments under the related maintenance order;

is for the time being in some District other than that in which the magistrate has jurisdiction, or that the complainant is the clerk of a subordinate court having jurisdiction in such other District, then, if it appears to the magistrate that the complaint may be more conveniently dealt with by a subordinate court having jurisdiction in that other District, he may cause the clerk of the court to send the complaint by post to the clerk of the other court and for that purpose shall write down the complaint if this has not already been done.

(3) On receipt by the clerk of a subordinate court of a complaint under sub-rule (2), he shall bring the complaint before the court and the court shall issue a summons requiring the person appropriate under subsection (3) of section *eighteen* of the Act to appear before it, and shall hear and determine the complaint.

17. (1) An application under section *fourteen* of the Act, for a determination whether payments of a particular class or description are earnings for the purposes of the attachment of earnings order, shall be in writing and may be made by the applicant in person, by his solicitor or by such person as may be authorised by him in that behalf. Applications under section 14 of the Act

(2) The parties to proceedings in pursuance of such an application as aforesaid shall be the person to whom the attachment of earnings order is directed, the person in whose favour the order is made and the person liable to make payments under the related maintenance order. O.37

(3) Where such an application as aforesaid is made to a court and the magistrate having jurisdiction in the same District as the court determines that the application could more conveniently be dealt with by a subordinate court acting for some other District, being a District in which one of the parties is for the time being or a District in which the person to whom the attachment of earnings order is directed trades or conducts business, he may cause the clerk of the court to send by post to the clerk of that other court the application together with the name

and other particulars of each of the parties, and the clerk of that other court shall bring the application before that court.

(4) The clerk of the court by which such an application as aforesaid is to be heard-

(a) shall serve written notice on the parties to the proceedings of the time and place appointed for the hearing of the application; and

(b) shall, when the hearing is concluded, give written notice to the parties to the proceedings, of the determination of the court.

(5) A court may, if the applicant does not appear, dismiss such an application as aforesaid and shall not begin to hear such an application in the absence of any of the other parties to the proceedings unless it is proved to the satisfaction of the court, on oath or in the manner prescribed by rule 55 of the Magistrate's Courts Rules, 1952, of the United Kingdom, in so far as the same is applicable in Zambia, that the provisions of paragraph (a) of sub-rule (4) have been complied with.

18. (1) The clerk of a subordinate court to whom any payment under Method of an attachment of earnings order is to be made shall notify the person to making payment whom the order is directed and such person entitled to receive under attachment payments under the related maintenance order as is specified by the of earnings order attachment of earnings order of the hours during which, and the place at which, payments are, subject to the provisions of this rule, to be made and received.

(2) If an employer makes any payment under an attachment of earnings order to a clerk of a subordinate court by post, he shall do so at his own risk and expense.

(3) A clerk of the subordinate court may send by post any payment under an attachment of earnings order to such person entitled thereto as is specified by the attachment of earnings order at the request and the risk and expense of that person.

19. (1) Where imprisonment or other detention has been imposed for Payment under the purpose of enforcing a maintenance order, the clerk of a subordinate attachment of

court to whom any payment under a related attachment of earnings order is to be made-

O.37 earnings order after imprisonment imposed

(a) in relation to such a payment shall be a person authorised to receive the said payment for the purposes of section 67 (2) of the Magistrates' Courts Act, 1952, of the United Kingdom (which relates to release from custody and reduction of detention on payment), in so far as this Act is applicable in Zambia;

(b) on receiving such a payment shall notify the person authorised for the purposes aforesaid by rule 45 (1) of the Magistrates' Courts Rules, 1952, of the United Kingdom, in so far as the same is applicable in Zambia, of the sum received.

(2) Where a person receives notice of the receipt of a sum under sub-rule (1), he shall note the receipt of that sum on the warrant of commitment, if any, held by him.

20. Where under section *thirteen* of the Act (which relates to statements of earnings, etc.) an order is directed to the defendant or to a person appearing to be an employer of the defendant or where under this Part a copy of an order is to be served or a notice is to be given to any person- Service of orders and notices

(a) service may be effected on, or notice may be given to, a person other than a corporation by delivering it to the person to whom it is directed or by sending it by post in a letter addressed to him at his last known or usual place of abode or, in the case of a person appearing to be an employer of the defendant or of a person to whom the related attachment of earnings order is directed, at his place of business;

(b) service may be effected on, or notice given to, a corporation by delivering the document at, or sending it to-

(i) such office or place as the corporation may, for the purpose of this rule, have specified in writing to the court which made the order or the related attachment of earnings order in relation to the defendant or to the class or description of persons to which he belongs; or

(ii) the registered office of the corporation if that office is in Zambia or, if there is no registered office in Zambia, any place therein

where the corporation trades or conducts its business.

IV-Miscellaneous and Supplemental

21. Where any decision is reached, or warrant of distress or commitment is issued, in pursuance of a complaint or application relating to a maintenance order or the enforcement of a maintenance order (including an application under section *fourteen* of the Act, which relates to the determination whether payments are earnings), being a complaint or application heard by a subordinate court other than the administering court- Administering court to be informed of O.37, 38 proceedings in foreign court

(a) the clerk of the first-mentioned court shall forthwith send by post to the clerk of the administering court an extract from the register containing a minute or memorandum of the decision or of the issue of the warrant, as the case may be;

(b) on receipt of the extract the last-mentioned clerk shall enter the minute or memorandum in his register.

ORDER XXXVIII
REVIEW

1. Any magistrate may, upon such grounds as he shall consider sufficient and either on application by any party to a cause or matter or of his own motion, review any judgment or decision given by him (except where an appeal shall have been entered by any party, and such appeal is not withdrawn), and, upon such review, it shall be lawful for him to open and rehear such cause or matter, wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision: Power to review

Provided that the magistrate shall not rehear any evidence or take any fresh evidence unless he shall have reason to believe that there has been a miscarriage of justice.

2. Any application by any party for review of any judgment or decision shall be made not later than fourteen days after such judgment or decision. After the expiration of fourteen days, an application for review shall not be admitted except by special leave of the court and on such terms as to the court seem just. Application within 14 days

3. (1) A magistrate shall not proceed of his own motion to review Magistrate to

any judgment or decision under this Order until he shall have caused notice of his intention to do so to be served on all parties to the suit (which service may be by registered post) and until all such parties shall have had an opportunity to appear before him and be heard. notify parties

(2) Such notice as is in this rule mentioned shall be served on all the parties concerned within twenty-eight days after the judgment or decision which the magistrate has decided to review.

4. The application of any party or the decision of the magistrate to review of his own motion shall not of itself operate as a stay of execution, unless the court so orders, and such order may be made upon such terms as to security for performance of the judgment or decision or otherwise as the court may consider necessary. Any money in court in the suit shall be retained to abide the result of the motion or the further order of the court. Stay of execution O.38, 39

5. The court in which a judgment has been entered under the provisions of rule 1 of Order XXXIII may at any time, upon application by an interested person and upon such terms as it thinks just, set aside in whole or in part such judgment where it is satisfied that the interests of justice require such action. Setting aside of judgment

(No. 155 of 1968)

ORDER XXXIX COSTS

1. Under the denomination of costs is included the whole of the expenses necessarily incurred by either party on account of any cause or matter, and in enforcing the decree or order made therein, such as the expenses of summoning and of the attendance of the parties and witnesses, and of procuring copies of documents, the fees of court, or the remuneration of referees. What included in costs

2. (1) All questions relating to the amount of costs shall, unless summarily determined by the court, be referred to the Taxing Master, and, after notice of taxation, to the parties, be ascertained by him. How amount of costs determined

(2) Any party who may be dissatisfied with the certificate or *allocatur*

of the Taxing Master as to any item or part of any item which may have been objected to before the Taxing Master may, within twenty-one days from the date of the certificate or *allocatur*, or such other time as the Taxing Master, at the time he signs his certificate or *allocatur*, may allow, apply to the court for an order to review the taxation as to the said item or part of an item, and the court may thereupon make such order as the court may think fit; but the certificate or *allocatur* of the Taxing Master, subject to the proviso to sub-rule (3), shall be final and conclusive as to all matters which shall not have been objected to before the Taxing Master.

(3) Such application shall be heard and determined by the court upon the evidence which shall have been brought in before the Taxing Master, and no further evidence shall be heard on the hearing thereof, unless the court shall otherwise direct:

Provided that, where any party fails to appear at the taxation after notice, and the taxation has been proceeded with in his absence, such party may apply to the court for a review of taxation within the time limited as aforesaid, and the court, if satisfied that the non-appearance is due to no default of such party, may set aside or review such taxation.

3. The costs of every suit or matter and of each particular proceeding therein shall be in the discretion of the court; and the court shall have full power to award and apportion costs, in any manner it may deem just, and, in the absence of any express direction by the court, costs shall abide the event of the suit or proceeding: O.39
Costs in discretion of court

Provided that the court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit; although the court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

4. Where a plaintiff does not, or does not ordinarily, reside in Zambia, the court may, either on its own motion or on the application of any defendant, if it sees fit, require any plaintiff in any suit, either at the commencement or at any time during the progress thereof, to give security for costs to the satisfaction of the court, by deposit or otherwise, or to give further or better security. Security for costs

5. Where the court orders costs to be paid, or security to be given for costs, by any party, the court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceeding, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

Stay of proceedings pending payment

6. The court may order any costs to be paid out of any fund or property to which a suit or matter relates.

Costs out of fund in suit

7. Upon any taxation of costs, the Taxing Master may, in determining the remuneration to be allowed, have regard, subject to any rule of court, to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Master considers that there are special reasons why costs in excess of those laid down in the Fourth Schedule should be allowed in any cause or matter, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable.

Discretion of Taxing Master

(As amended by No. 166 of 1950)

8. In taxation of costs between party and party, nothing shall be allowed in respect of fees paid to the court beyond what was necessary, having regard to the amount recovered on judgment.

Taxation

9. A reference in the schedule to these rules to a page means a sheet of A4 size

Page to be A4 size

(As amended by S.I. No. 104 of 1986 and 11 of 1990)

ORDER XL ENFORCEMENT OF ORDERS

O.40, 41

1. Any order of the court made in any civil cause or matter may be enforced in the same manner as a decree to the same effect.

Orders in general

2. Any interlocutory order may be enforced by any of the methods applicable thereto by which a final order is enforceable.

Interlocutory orders

3. Interlocutory orders may also be enforced according to the

Staying

following provisions:

(a) if a plaintiff in a suit makes default or fails in fulfilling any interlocutory order, the court may, if it thinks fit, stay further proceedings in the suit until the order is fulfilled, or may give a judgment of nonsuit against such plaintiff, with or without liberty of bringing any other suit on the same grounds of action, or may make such other order on such terms as to the court shall seem fit;

(b) if a defendant in any suit makes such default or failure, the court may give judgment by default against such defendant, or make such other order as to the court may seem just:

proceedings and judgment by default

Provided that any such judgment by default may be set aside by the court upon such terms as to costs or otherwise as the court may think fit.

ORDER XLI EXECUTION

I-General

1. No proceedings by way of execution shall be taken until three clear days after the date of the judgment or order.

Three days' grace after judgment

2. Notwithstanding anything contained in the last preceding rule, the court may, if it thinks fit, order immediate execution.

II-Writs of Fieri Facias and Sale

3. A party in whose favour any judgment of a court for the payment of money is given may sue out of the office of the clerk of the court a writ of *fieri facias* for execution of the same, if the same is not satisfied.

Writ of *fieri facias*

4. The writ of *fieri facias* shall be in the prescribed form and shall be under the hand of a magistrate of the court in which the judgment was given. It shall be directed to the Under-Sheriff who shall be empowered to levy, by distress and sale of the personal property, wherever found within the jurisdiction of the court, of the person against whom the judgment was given (hereinafter in this Order called

Form of writ.
First Schedule,
Form 27
O.41

the judgment debtor) such sum as shall be specified in the writ, together with the costs of execution, and all police officers shall aid in the execution.

5. All personal property belonging to a party against whom execution is to be enforced, and whether held in his own name or by another party in trust for him or on his behalf (except the wearing apparel and bedding of himself or his family and the tools and implements of his trade, if any, to the value of twenty or, in the case of a farmer, two hundred kwacha) is liable to attachment and sale in execution of the decree. Property liable to execution

6. When the Under-Sheriff, bailiff or other person is charged with the levying of an execution, he shall not enter into mere walking possession, nor delay the execution with a view to taking walking possession only, unless and until the person against whom such execution has been issued signs a request and authority for walking possession. Walking possession. First Schedule, Form 28

(No. 135 of 1959)

7. No sale of goods in execution shall be made until the end of five days next after such goods were seized, unless such goods are perishable, or on the request of the party whose goods are seized. Procedure on execution
Where the property seized is of a value estimated to exceed forty kwacha, the sale shall be advertised at least once in a newspaper, if any, circulating in the District where the sale is to take place.

8. Any property sold in execution of a writ of *feri facias* shall be sold publicly and for ready money by the Under-Sheriff or his agent to the highest bidder at such place as the Under-Sheriff shall appoint; and the said Under-Sheriff shall cause a notice of the sale and of the day and place thereof to be exhibited at a public place at or about the Court House, and also at a public place where or as near as may be to the place where the said sale is to take place, not less than three clear days before the day appointed for the said sale. Sale in execution

9. If the party against whom execution has issued shall, before actual sale, pay or tender to the clerk of the court or to the Under-Sheriff or his agent the amount specified in the writ, or so much thereof as the person entitled thereto shall agree to accept in full discharge, Payment before sale

together with the costs of the execution, then the execution shall be superseded and the property discharged.

10. Whenever there shall not be found within the jurisdiction of the court from which the writ was issued sufficient property from which the amount specified on the writ, together with the costs of the execution, can be levied, the writ may be sent to and shall be endorsed by the magistrate of any other court having jurisdiction in any other District where the judgment debtor has property, and shall have the like force and effect, and may be executed within the District of the magistrate by whom it has been endorsed as if it had been issued by such last-mentioned magistrate. Endorsement of writ for execution elsewhere O.41

11. (1) In all cases the Under-Sheriff, bailiff or other person charged with the execution of any particular process shall render a return in the prescribed form within seven days after the execution thereof, whether in whole or in part, or after any payment to avoid such execution, specifying the extent to which such process shall have been executed or payment made, and, in the event of the same not being fully executed or payment in full not having been made at the expiration of the first and each succeeding month thereafter, he shall render a return in similar form specifying the reason or reasons why such execution is so incomplete. Return of writ. First Schedule, Form 12

(2) Any return required to be rendered under sub-rule (1) shall be rendered to the court in duplicate, and the duplicate thereof shall thereon be despatched by the clerk of the court to the party's solicitor or to the party himself if he is acting in person, as the case may be, who has required such process to be executed.

(No. 135 of 1959)

12. (1) A writ of execution if unexecuted shall remain in force for one year only from its issue, but such writ may, at any time before its expiration, by leave of the court, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ. Duration and renewal of writ of *feri facias*

(2) A note of the renewal shall be endorsed on the writ which shall have effect and be entitled to priority according to the time of its original issue.

(No. 135 of 1959)

III-Judgment Summons and Commitment

13. No order of commitment under section *four* of the Debtors Act shall be made unless a summons to appear and be examined on oath (hereinafter in this Order called a judgment summons) has been personally served upon the judgment debtor.

Judgment summons to be served personally. First Schedule, Form 29. Cap. 77

14. A person entitled to enforce a judgment or order, and requiring a judgment summons to issue, shall apply in writing to the clerk of the court for the issue of the same. Such application shall be signed by the applicant, or by his solicitor on his behalf, and shall give the full names and addresses of, or otherwise sufficiently identify, every person against whom the judgment summons is to be issued.

Application in writing for issue

15. Where a judgment has been given or an order made against two or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more of the persons liable under the judgment or order.

Where two or more defendants O.41

16. (1) Where a judgment or order is against a firm, or against a person not in his own name but in some other name in which he is carrying on business, and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be liable under the judgment or order as a partner in or the sole member of the firm, or as the person carrying on business in a name other than his own as aforesaid, he shall file an affidavit, together with a copy thereof, stating the grounds upon which the person against whom the judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief, and thereupon a judgment summons may be issued directed to the person alleged to be liable as aforesaid, and there shall be annexed to such judgment summons and served therewith a copy of the said affidavit.

Against a firm, etc. First Schedule, Form 30

(2) If, on the return day, such person denies his liability, the court may decide the question on the evidence then before it, or may order the

question to be tried and determined in an action to be commenced by summons in the ordinary way.

17. Witnesses may be summoned to prove the means of a judgment Evidence as to debtor in the same manner as witnesses are summoned to give evidence means upon the hearing of an action, and their expenses may be allowed.

18. A person served with a judgment summons, and any person Compelling summoned under the last preceding rule, shall be deemed a person duly attendance of summoned to give evidence within the meaning of section *forty-two* of witnesses the Act.

19. The hearing of a judgment summons may, by leave of the court, Adjournment be adjourned from time to time.

20. Where a judgment creditor desires to apply for a judgment Where judgment summons to a court other than the court in which the judgment or order summons applied was obtained, he shall obtain from the clerk of the last-mentioned court for at a court in a certified copy of the judgment or order in the action and file the same which judgment with his application. The certificate shall, where the amount to be paid was not obtained was directed to be paid into court either forthwith or at a specified time or by instalments, state the date on which the last payment into court, if any, under such judgment or order was made, or, if no payment into court has been made, the date upon which default was made.

21. Where a judgment creditor at whose instance a judgment Evidence by summons is issued, or a judgment debtor summoned to appear by a affidavit judgment summons, does not reside within a District within which the O.41 court in which the summons is to be heard has jurisdiction, he may forward to the court from which the summons is issued an affidavit setting forth any facts which he may wish to be before the court prior to any order being made on the summons. And the court may, if it thinks fit, on the hearing of the judgment summons, admit the affidavit as evidence of the person by whom the same is made.

22. (1) Where a judgment summons is heard in a court other than Where judgment that in which the original judgment or order was obtained, a certified summons heard copy of the order (if any) made on such hearing shall be sent by the clerk of the court to the clerk of the court in which the original judgment or order was obtained, and shall be entered by such last- judgment was

mentioned clerk of the court on the minute of the original judgment or obtained order.

(2) If, on such hearing, an order of commitment or an order altering the terms of the original judgment or order is made, the proceedings shall be thereby transferred to the court in which such order is made; and all payments, whether under the order of commitment, or under the original judgment or order, or under the new order, shall be made into, and execution or other process for enforcing either the order of commitment or the original judgment or order, or the new order, shall be issued by, the court making such order of commitment or new order.

(3) If, on such hearing, no order is made, the judgment or order shall remain in the court in which it was obtained and the certified copy thereof, filed in conformity with rule 20, shall be returned to that court; and subsequent payments thereunder shall be made into, and subsequent proceedings for the enforcement thereof may be taken in, such last-mentioned court.

23. If any order of commitment shall have been made against any person, and such person shall be out of the jurisdiction of the court making such order, the clerk of the court shall send the order of commitment to the clerk of the court within the jurisdiction of which such person shall then be or be believed to be, and the magistrate of the court to which the same shall be sent shall endorse his signature to the same, and the order of commitment shall then be executed as if issued by such last-mentioned court. Where order of commitment sent to another court

24. (1) Where, upon the return day of a judgment summons, the judgment debtor satisfies the magistrate that a receiving order has been made for the protection of his estate, or that he has been adjudicated bankrupt, or that a composition order has been made against him, and that the debt was provable therein, no order of commitment shall be made. Provisions if receiving order has been made

(2) Where an order of commitment has been made, and the magistrate making the same shall thereafter be satisfied that a receiving order has been made for the protection of the estate of the judgment debtor against whom such order was made, or that he has been adjudicated bankrupt, or that a composition order has been made against him, and that the debt in respect of which the order was made was provable O.41

therein, the order of commitment shall not issue, and, if issued and not executed, shall be recalled. If such order has been executed, the magistrate of the District in which the judgment debtor is in custody, on being satisfied as to the aforesaid facts, shall order him to be discharged.

25. (1) On the hearing of a judgment summons, the magistrate, if he is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time or by instalments.

Order on judgment

(2) If an order of commitment is made, the magistrate may direct that the execution of such order be suspended to enable the debtor to pay the amount in respect of which such order is made, by instalments or otherwise. When such direction is given, notice thereof shall be sent to the debtor, unless he be present in court when such direction is given.

Suspension of order of commitment

(3) The magistrate may, from time to time, upon the application of either party after reasonable notice to the other party of the time and place when and where such application will be heard, vary the amount of such instalments by such amount as will in his opinion meet the ability of the judgment debtor to pay the same.

Variation of instalments

(4) Subject to the provisions of rules 27 and 28, all payments under a fresh order or order of commitment shall be paid into court.

Payments to be made into court

(5) An order of commitment shall be according to such one of the prescribed forms in the First Schedule as shall be applicable to the circumstances of the case, and shall, on whatever date it may be issued from the office of the clerk of the court, bear date on the day on which the order of commitment was made, and shall, if unexecuted, remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided; but the magistrate may, at any time before or after the expiration of such year, and so on from time to time, extend the time within which the order may be executed, for any time not exceeding one year from the date upon which it would otherwise have ceased to be in force. An order of extension may be made either before or after the order of commitment is issued, and the fact of an extension having been made shall be endorsed on the order of commitment.

Form, date, duration and extension of order of commitment. First Schedule, Forms 31 and 32

(6) Costs may be allowed on the renewal of an order of commitment. Costs

(7) An order of commitment shall be executed by a bailiff or by a police officer (hereinafter in this Order referred to as the bailiff). Execution of order of commitment

(8) If no order of commitment or fresh order for payment is made on the hearing of a judgment summons, but the magistrate considers that under the circumstances the action of the judgment creditor in applying for a judgment summons was justified, the magistrate may, instead of dismissing the summons, adjourn the same. O.41 Adjournment

(9) Where an order of commitment is made and is suspended to enable the debtor to pay the amount of the judgment debt by instalments, then and in such case, if the debtor fails to pay any such instalment or instalments, the order of commitment shall be deemed to be in respect only of the amount of any such instalment or instalments as shall be due and unpaid at the time the order is executed and not in respect of the amount in respect of which it was originally made. Amount of commitment

(10) When a bailiff is charged with the execution of an order of commitment, he shall render a return of due execution within seven days after the same shall have been carried into effect or payment or part payment made in lieu, and, in the event of the same not having been carried into effect or payment made as aforesaid at the expiration of fourteen days from the date of receipt thereof and each succeeding fourteen days thereafter, he shall render a return specifying the reason or reasons for such non-execution. Returns by bailiff

(11) Any return required to be rendered under sub-rule (10) shall be rendered to the court in duplicate, and the duplicate thereof shall thereon be despatched by the clerk of court to the party's solicitor or to the party himself if he is acting in person, as the case may be, who has required such order to be executed. Returns to be rendered in duplicate

(As amended by No. 135 of 1959)

26. Where a judgment or order has been given or made for payment by instalments, and an order of commitment is made in respect of the Commitment order in respect

non-payment of one or more of such instalments before the whole of such instalments have become due, then, if the magistrate orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise, he may, if he thinks fit, order that the judgment or order for payment of instalments shall also be suspended for so long as the execution of the order of commitment is suspended, or for any less period. If the magistrate makes such order as last mentioned, he may, at any subsequent time, order that the suspension of the judgment or order for payment of instalments shall cease; and, if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments shall cease to operate on such withdrawal or abandonment.

27. When an order of commitment for non-payment of money is issued, the debtor may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount endorsed on the order as that on the payment of which he may be discharged; and, on receiving such amount, the bailiff shall discharge the debtor, and shall, within twenty-four hours after receiving such amount, pay over the same to the clerk of the court.

28. (1) After the making of an order of commitment for non-payment of money, money in respect of the amount due may be paid either into the court making the order or into the court to which the order has been sent for execution. Instead of being paid into court as aforesaid, such money, prior to the person against whom the order of commitment has been made being delivered into the custody of the gaoler, may be paid to the bailiff holding the order of commitment, and, after delivery into the custody of the gaoler, to such gaoler.

(2) Where payment is made into the court having jurisdiction in the District in which the order of commitment is to be executed, the clerk of the court shall notify the fact and amount of such payment to the bailiff holding such order, if the judgment debtor has not yet been delivered into the custody of the gaoler, and to the gaoler, if the judgment debtor has been delivered into custody as aforesaid. If the bailiff shall receive payment or notice of payment under this rule or any money in respect of the amount due, he shall, on delivering the judgment debtor into the custody of the gaoler, notify the gaoler of the fact and of the amount of such payment.

of instalments

Debtor may pay amount endorsed on commitment O.41 order at any time

How and where amount may be paid

(3) Where payment is made into the court out of which the order of commitment issued, after the order has been sent for execution to any other court, the clerk of the first named court shall notify the fact and amount of such payment to the clerk of such other court, who shall then proceed as if the payment has been made into the court.

29. On receiving payment or notice of payment of the whole or the balance of the amount in respect of which the order of commitment was made, a magistrate of the District in which the order of commitment has been or is to be executed shall, if the judgment debtor has not been lodged in gaol, notify the fact to the bailiff holding the order and recall the order, or, if the judgment debtor has been lodged in gaol, inform the gaoler.

30. (1) The bailiff holding an order of commitment, on receipt of the amount or the balance of the amount in respect of which the order of commitment was made, or the notice mentioned in the last preceding rule, shall liberate the judgment debtor, if in his custody, and return the order to the court from which it was received.

(2) The gaoler in whose custody the judgment debtor has been lodged shall, on receipt of the amount or the balance of the amount in respect of which the order of commitment was made, or of the notice mentioned in the last preceding rule, forthwith liberate the judgment debtor.

31. All moneys received by the bailiff or the gaoler shall be paid forthwith to the clerk of the court, who shall remit the same to the clerk of the proper court, and the last-mentioned clerk shall pay the same to the judgment creditor.

32. Upon the judgment creditor lodging with the clerk of the court a request in writing that the judgment debtor, if in prison, may be discharged from custody, the clerk of the court shall notify the gaoler whose custody the judgment debtor is, and the gaoler shall forthwith liberate the judgment debtor.

33. Costs incurred in endeavouring to enforce a judgment or order by way of execution against the property of the judgment debtor, and not recovered under such execution, shall not be included in the amount

due under such judgment or order for the purpose of a judgment summons, or of an application for a fresh order for payment, nor shall money paid into court, otherwise than under execution, be attributed to payment of such costs. judgment summons

34. Upon the issue of a judgment summons against a party upon a judgment or order of the court out of which the judgment summons is issued, the bailiff of such court shall lodge in court any writ of execution against the property of such party which may have been issued in the action, whether executed or not; but any such writ, if not fully executed, may be reissued by leave of the magistrate. Writ of execution to be lodged in court upon issue of judgment summons

35. Where a certified copy of a judgment or order is obtained from a clerk of a court for the purpose of taking proceedings thereon in any other court, such clerk shall make on the minute of the judgment or order a memorandum of such certified copy having been given, and the bailiff of the court which issued such certified copy shall lodge in court any writ of execution or judgment summons or order of commitment which may have been issued by such court upon such judgment or order; and no such writ, summons or order shall be reissued, nor shall any subsequent writ of execution or judgment summons upon such judgment or order be issued by the court, unless it is shown, to the satisfaction of the court, that no order has been made against the person liable under such judgment or order in any other court upon such certified copy. Safeguards in respect of certified copies of judgments

36. The magistrate, if he thinks it desirable for the convenience of the parties or for the saving of costs, may dispense with the attendance of the judgment creditor or of any representative of such creditor upon the hearing of a judgment summons: Attendance of creditor may be dispensed with

Provided however that if, upon the hearing of such judgment summons, it appears to the magistrate that such attendance is necessary for properly disposing of the summons, he may adjourn the hearing and require the judgment creditor to attend in person or by his representative.

37. The costs of a judgment summons and of any order made thereon shall be the discretion of the magistrate who, if he is satisfied that the judgment creditor acted reasonably in applying for the issue of the judgment summons and that, under the circumstances, an O.41 Costs

investigation of the judgment debtor's means was justified, may award costs to the judgment creditor although no order of commitment or fresh order be made.

IV-Attachment of Debts

38. (1) Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after any oral examination of the debtor liable under such judgment or order, upon lodging with the clerk of the court in which the judgment or order was given or made an affidavit by himself or his solicitor in the prescribed form, apply for a summons to obtain payment to him of the amount of any debt due to the debtor from any other person (hereinafter called the garnishee) who is indebted to such debtor, or so much thereof as may be sufficient to satisfy the said judgment or order, together with the costs of the garnishee proceedings; and thereupon a summons in the prescribed form calling upon the garnishee to show cause why he should not pay to the person who has obtained such judgment or order (hereinafter called the judgment creditor) the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid, shall be issued by the clerk of the court, and the name and address of the applicant, or his solicitor, shall be entered on the summons. In this rule, "debtor" includes a married woman against whom judgment has been obtained in respect of her separate estate. An affidavit under this rule may, instead of being made by the solicitor of the judgment creditor, be made by a clerk in the employ of such solicitor.

Proceedings against garnishee.

First Schedule, Form 33
First Schedule, Form 34

(2) For the purposes of this rule, the garnishee shall be deemed to be within the jurisdiction of the court in respect of the debt due from him to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings, notwithstanding the fact that the debt due from him to the debtor, or the amount thereof required to satisfy the judgment or order and the costs of the garnishee proceedings, exceeds the sum in respect of which the court has jurisdiction.

Where debt sought to be attached exceeds the amount for which an action could be brought

39. Where the garnishee is not, in respect of such debt, within the jurisdiction of the court in which the judgment or order was obtained, the judgment creditor, upon lodging with the clerk of the court having jurisdiction in the District in which the garnishee resides or carries on business a certified copy of the judgment or order, and also an affidavit similar to that prescribed by the last preceding rule, may apply for a

Where garnishee not within jurisdiction

summons against the garnishee in such other court; and thereupon a summons shall be issued and all proceedings shall be had and taken thereon as if the judgment or order had been obtained in that court.

40. (1) The summons shall be personally served on the garnishee, and, when so served, it shall bind in the hands of the garnishee all debts due and payable from him to the debtor liable under the judgment or order.

O.41
Service and effect
of garnishee
summons

(2) Where the garnishee is a firm or a person carrying on business in a name or style other than his own, or a company or other corporation, the summons may be served in the same manner as a writ of summons.

41. Where a garnishee summons has been served otherwise than by a bailiff or court messenger, a copy of the summons, with the date and place endorsed thereon, and an affidavit of service, shall, within three clear days after the day of service, or such further time as may be allowed by the clerk of the court issuing the summons, be delivered or transmitted to such clerk of the court by the judgment creditor; and the costs of such affidavit may be included in the costs entered on the summons.

Where service
effected
otherwise than by
bailiff or court
messenger

42. (1) On the return of the copy of the garnishee summons, if served by a bailiff or court messenger, or the filing of an affidavit of service of the garnishee summons, if served otherwise than by a bailiff or court messenger, the clerk of the court shall issue a copy of the summons for service on the debtor liable under the judgment or order, with a notice in the prescribed form, that, if he has any cause to show why the court should not order the garnishee to pay to the judgment creditor the debt alleged to be due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the sum due from the judgment debtor to the judgment creditor, with the costs of the garnishee proceedings, he must appear at the court on the return day of the summons and show cause accordingly.

Notice to
judgment debtor
First Schedule,
Form 35

(2) The copy and notice mentioned in sub-rule (1) shall be served by posting the same in a prepaid registered envelope addressed to the judgment debtor, or by service on the judgment debtor in such other manner as the clerk of the court may direct, at least five clear days before the return day of the summons, and, if necessary, the clerk of the court shall adjourn the hearing of the garnishee summons to enable

Service of notice

such service to be effected, and shall enter in the notice to be served on the judgment debtor the day of the adjourned hearing as the day on which he must appear, and shall give notice of such adjournment to the judgment creditor and to the garnishee.

43. (1) The garnishee may, at any time before the return day of the summons, pay into court the amount admitted by him to be due from him to the debtor liable under the judgment or order, or, if the amount so admitted is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied and the fees and costs (if any) endorsed on the garnishee summons, the garnishee may pay into court a sum sufficient to satisfy such amount, fees and costs. Payment into court by garnishee

(2) The clerk of the court shall send notice, by post or otherwise, of any payment into court to the judgment creditor or to his solicitor as endorsed on the summons, and to the judgment debtor, warning the latter that the money paid into court will be ordered to be paid out to the judgment creditor, unless the judgment debtor appears on the return day of the summons and shows cause to the contrary. O.41 First Schedule, Form 36 First Schedule, Form 37

(3) If the judgment creditor elects to accept the money paid into court in satisfaction of his claim against the garnishee, he shall send notice of such acceptance to the clerk of the court and the garnishee, and thereupon all further proceedings against the garnishee shall abate, except as herein provided, and the judgment creditor shall not be liable to any costs incurred by the garnishee after receiving such notice.

(4) If payment into court is made by the garnishee five clear days before the return day, he shall not be liable for any further costs incurred by the judgment creditor; but if it is made less than five clear days before the return day the court may, in its discretion, order the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the judgment creditor may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order for the same; and, if the judgment creditor intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in; or, where the time of payment into court by the garnishee does not permit of notice of acceptance being given, he may apply for such costs without giving such notice.

(5) Where the judgment creditor has not given notice of acceptance in accordance with sub-rule (3), he may, nevertheless, accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the garnishee since the date of payment into court, and which may be allowed by the court.

(6) In default of acceptance by the judgment creditor, the proceedings against the garnishee may proceed.

44. Subject to the following provisions, money paid into court by the garnishee and accepted by the judgment creditor shall, on application made by the judgment creditor on the return day of the summons, be ordered to be paid out to him: Payment out of court of money paid in by garnishee

(a) Before such money is paid out, the court shall be satisfied, by evidence on oath or affidavit or otherwise, that the judgment creditor has not received payment of the amount payable under the judgment or order from any other source, and has not obtained an order for payment of such amount under any other garnishee proceedings; and, if it appears that he has received payment or obtained an order for payment of any part of such amount, so much only of the money paid into court shall be paid out to him as will, with the amount so received, or for payment whereof an order has been obtained, make up the full amount payable under the judgment or order, and any fees or costs allowed to the judgment creditor in the garnishee proceedings; and the balance of the money paid into court shall be dealt with as the court shall direct. O.41

(b) If the judgment debtor appears and shows cause, according to the notice sent to him, why the money should not be paid out to the judgment creditor, the court may thereupon make such order as to the money paid into court, and as to costs, as may be just.

(c) If the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge on it, the court may proceed in accordance with rule 48.

(d) If the judgment creditor does not intend to apply for an order against the garnishee for payment of any further costs, and obtains the consent in writing of the judgment debtor to the payment out of the money paid into court, he may apply for an order for payment out on any day earlier than the return day, and, on the production of such consent to the clerk of the court, the money shall, subject to paragraph

(c) and to rule 48, be ordered to be paid out accordingly.

(e) The costs of any application for payment out under this rule, including the costs of any affidavit required under paragraph (a), or of obtaining any consent under paragraph (d), may be allowed as costs in the garnishee proceedings, and may be retained by the judgment creditor out of the money recovered by him in accordance with rule 50.

(f) No hearing fee shall be payable on an application for payment out of money paid into court by a garnishee, unless the judgment debtor appears and shows cause, in which case a hearing fee shall be payable by him on the amount paid into court, or unless the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by a third person, or that any third person has or claims to have a lien or charge on it, and the court thereupon proceeds in accordance with rule 48, in which case, if the third person appears, a hearing fee shall be payable by him on so much of the amount so paid into court as is claimed by him.

45. If the garnishee does not, before the return day of the summons, pay into court the amount admitted by him to be due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) endorsed on the garnishee summons, and does not, on the return day, dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear on the return day, the magistrate may, if the judgment debtor does not appear and show cause to the contrary, give judgment for the judgment creditor against the garnishee for the amount due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the judgment or order, and any costs allowed, and, in default of payment, execution may issue to levy such amount; or, if the judgment debtor appears and shows cause, the magistrate may make such order in the garnishee proceedings, and as to the party by whom the costs of the proceedings shall be paid, as may be just.

46. If no amount is paid into court, or the amount (if any) paid into court under rule 43 is not accepted, and the garnishee appears on the return day and disputes his liability, the magistrate may, after hearing the judgment creditor and the garnishee, and the judgment debtor, if he appears, determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed to be due from him to the judgment debtor, and as to the party by whom the costs of the proceedings shall be paid, and make such order as may be in accordance with such determination; or he may, instead of giving

judgment, order that any issue or question necessary for determining the liability of the garnishee to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined.

47. Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnisheed was given or made, the clerk of such first-mentioned court shall send forthwith a certificate of the order of his court to the court in which such judgment or order was given or made, and shall also send notice, from time to time, of any payment made on, before or after the return day. Certificate where garnishee sued in court other than that in which judgment obtained

48. Whenever, in proceedings to obtain an attachment of debts, it is suggested by the garnishee or the debtor liable under the judgment or order, or it is otherwise made to appear to the magistrate, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the magistrate may order such third person to appear and state the nature and particulars of his claim upon such debt. After hearing the allegations of such third person, and of any other person whom the magistrate, by the same or any subsequent order, may order to appear, or in case of such person not appearing when ordered, the magistrate may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between such third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the magistrate may think just and reasonable. Where debt is stated to belong to a third person, or there is a lien thereon O.41

49. Payment made by or execution levied upon the garnishee under any proceedings as aforesaid shall be a valid discharge to him, as against the debtor liable under the judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by these Rules or by order of court allowed to deduct from the amount due from him to the judgment debtor), although such proceedings may be set aside, or the judgment or order reversed. Payment by or execution levied on garnishee a discharge against debtor

50. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court; any costs allowed to the judgment Costs

creditor which are not ordered to be paid by the garnishee personally shall, unless otherwise directed, be taxed and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor.

51. In proceedings to obtain an attachment of debts, the magistrate may, in his discretion, refuse to interfere, where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious. Magistrate may refuse to interfere

52. Notwithstanding anything in this Order contained, no part of any wages or salary payable under any contract of employment shall be liable to attachment save for the purpose of enforcing an affiliation order, maintenance order or a judgment for damages in respect of personal injury. Exemption of wages and salary

(As amended by No. 244 of 1944)

V-Interpleader Summons

53. If any claim shall be made to or in respect of any goods or chattels, or in respect of the proceeds or value thereof, by any person (in this Order called the claimant) and shall be delivered in writing to the Under-Sheriff having the conduct of the execution, the Under-Sheriff shall forthwith deliver notice of such claim in the prescribed form to the party issuing the execution and all proceedings upon the execution shall be stayed until such claim is disposed of. Notice of claim to execution creditor. First Schedule, Form 67

54. The party issuing the execution shall, within five days of his receiving the notice in the last preceding rule mentioned, inform the Under-Sheriff in writing whether he admits or does not admit the claimant's claim: Admission or denial by judgment creditor

Provided that the party issuing the execution may admit the claimant's claim in one part and not admit it in the other part. O.41

55. Where the whole or any part of the claimant's claim is admitted by the party issuing the execution, the Under-Sheriff shall forthwith abandon the execution in respect of all the goods and chattels in respect Abandonment of execution

of which the claimant's claim is so admitted.

56. Where the whole or any part of the claimant's claim is not admitted by the party issuing the execution, the Under-Sheriff shall make application to the clerk of the court to issue, and the clerk of the court shall issue, a summons calling before the court the claimant and the party issuing execution, and the court shall hear and determine the claimant's claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as it shall think fit, and shall also adjudicate between such parties, or either of them, and the Under-Sheriff with respect to any damage or claim of or to damages arising or capable of arising out of the execution, and make such order in respect thereof, and of the costs of the proceedings, as shall seem fit; and such orders shall be enforced in like manner as any order in any suit brought in the court, and have a like force and effect; and, upon the issue of the summons, any suit which shall have been commenced in any court in respect of the claimant's claim, or of any damages arising out of the execution, shall be stayed. Interpleader proceedings

57. (1) A summons issued in accordance with the last preceding rule shall be called an interpleader summons and shall be in two parts. Interpleader summons

(2) The respective parts of the interpleader summons shall be in the prescribed forms and shall be served upon the party issuing execution and upon the claimant respectively. First Schedule, Forms 38 and 39

(3) No fee shall be payable upon the issue of an interpleader summons, but the court, at the hearing, shall direct by whom the hearing fee shall be paid.

VI-Property in Custody of Public Officer or in Custodia Legis

58. Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment in execution of a decree with the consent of the Attorney-General, and property *in custodia legis* shall be liable to attachment by leave of the court. In such cases, the order of attachment must be served on such public officer, or on the clerk of the court, as the case may be. Property in custody of public officer or *in custodia legis*

1. (1) A debtor against whom a judgment has been obtained in a court, and who desires to obtain a composition order under section *fifty-three* of the Act, shall file in the Court Office a request in the prescribed form with the clerk of the court.

Composition orders.
First Schedule,
Form 42

(2) Where the debtor is illiterate and unable to fill up the request, the clerk of the court shall fill it up from the information given by the debtor.

2. (1) The debtor shall state in his request whether he proposes to pay his creditors in full, or whether he proposes to pay a composition. In the latter case he shall further state the amount in the kwacha which he proposes to pay, and in either case he shall state the amount of the monthly or other instalments by which he proposes to pay.

Contents of request

(2) The debtor's proposal shall be without prejudice to the power of the court to make on the hearing of the request an order providing for the payment of his debts to a greater or less extent, or by greater or smaller instalments, as appears practicable to the court under the circumstances of the case.

(3) The debtor shall set out in a list attached to his request the names, addresses and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates and taxes. Where a creditor is secured, or any person in addition to the debtor is liable for any debt, the particulars and estimated value of the security, or the name and address of such other person, shall be stated. Where judgment has been obtained or proceedings are pending in any court in respect of any debt scheduled, that fact shall be stated, and the order or summons in each case must be produced to the clerk of the court.

(4) The debtor shall attach to his request an affidavit deposing that, to the best of his knowledge, information and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list attached to the request, and that the statements made by him in his request are true.

3. (1) Upon a request being filed, the clerk of the court shall appoint Notice of request.

a day for the hearing, and shall send in the prescribed form a notice to all the creditors mentioned in the list of the day and hour when the request will be heard. The notice shall be sent by post not less than ten clear days before the day appointed for hearing the request. First Schedule, Form 46

(2) The clerk of the court shall also in like manner send a notice to the debtor in the prescribed form: O.42 First Schedule Form 45

Provided that, where on the filing of a request it appears that the debtor or a majority of the creditors resides or reside within the jurisdiction of another court, the clerk of the court may, before appointing a day for the hearing, refer the matter to the magistrate; and thereupon the magistrate may either direct that the request shall proceed, or may, if he is of opinion that it would be inconvenient that the court should administer the estate, order the request and a certificate of the judgment to be forwarded to the court having jurisdiction in the District in which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. Before making such order as last mentioned the magistrate may, if he thinks fit, direct notice to be given to the debtor to attend at the court on a day to be named in the notice, and to show cause why such order should not be made. If such order is made, a copy thereof shall be sent by post by the clerk of the court to the debtor. First Schedule, Form 43

4. Any creditor to whom notice of the hearing of a request has been sent, and who desires to object to any debt included in the debtor's list, or to the amount of the composition or of the instalments which the debtor proposes to pay, shall send written notice of his objection, by post or otherwise, to the clerk of the court and to the debtor, and in the case of objection to a debt to the creditor whose debt is objected to, not less than five clear days before the day appointed for the hearing of the request; and he shall state in the notice the grounds of his objection: Objection to debts included in the debtor's list, or to composition or instalments offered

Provided that, by leave of the magistrate, an objection may be heard although such notice has not been given.

5. (1) At any time between the filing and the hearing of a request, the magistrate or clerk of the court in which the request is filed may stay proceedings on any judgment or order of that court against the debtor, or on any execution, judgment summons or order of commitment Stay of proceedings between filing and hearing of

issued against the property or person of the debtor in respect of any request
debt included in the debtor's list, whether issued by the court in which
the request is filed or issued by any other court and sent for execution
to the court in which the request is filed.

(2) Any other court in which a judgment or an order has been obtained
against the debtor, or from which an execution, judgment summons or
order of commitment has issued against the debtor, or to which an
execution, judgment summons or order of commitment issued by any
other court has been sent for execution, may, in like manner, on proof
that a request for a composition order has been filed by the debtor, stay
proceedings on such judgment, order, execution, judgment summons or
order of commitment.

(3) If in any such case the bailiff is in possession under a warrant of O.42
execution, the magistrate or clerk of the court may, on application made Order for bailiff
in accordance with Order XXVII, order the bailiff to withdraw from to withdraw
possession until after the hearing of the request.

(4) Where proceedings are stayed under this rule, the magistrate or Costs already
clerk of the court may allow costs already incurred by the creditor, and incurred may be
such costs, if and so far as they are not allowed pursuant to rule 6 out of allowed
any money received under the execution, judgment summons, or order
of commitment, may on application be added to the debt included in the
debtor's list.

(5) An order staying proceedings shall be in the prescribed form. First Schedule,
Form 44

(6) For the purpose of any application under this rule to a court other First Schedule,
than that in which the request is filed, the clerk of the court in which Form 60
the request is filed shall on the application of the debtor issue to him a
certificate in the prescribed form.

6. (1) Where proceedings are stayed under the preceding rule, or Application of
under section *fifty-three* of the Act, any money received under the money received
execution, judgment summons, or order of commitment shall, when under execution,
received by the clerk of the court out of which the warrant issued, be etc., where
dealt with as follows: proceedings
stayed under rule

(a) if a composition order is made in or the proceedings are stayed by the court out of which the warrant issued, such money shall be dealt with as the magistrate shall direct; and

(b) if a composition order is made in or the proceedings are stayed by any other court, such money shall be paid by the clerk of the court out of which the warrant issued to the clerk of the court in which the composition order is made or by which the proceedings are stayed, and the last-mentioned clerk of the court shall deal with the money as the magistrate directs.

(2) Where in any such case the costs of the execution, judgment summons, or order of commitment incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs; but if they are allowed as against the debtor, they may on application be added to the debt. Costs

7. In any such case as in the last preceding rule mentioned, the magistrate may, if he thinks fit, on application by the clerk of the court, make an order for payment by the execution creditor to the clerk of the court of any fees or expenses incurred by the clerk of the court which are not allowed under the last preceding rule out of the money (if any) received under the execution. Order for possession: fees

8. Upon the request coming on for hearing the course of proceedings shall be as follows: Proceedings on hearing of request

(a) The debtor shall attend in person, unless the court otherwise directs. O.42

(b) Any creditor, whether he has received a notice of the request or not, may attend the hearing thereof and prove his debt, and, subject to the provisions of rule 4, object to any debt, or to the amount of the composition or the instalments which the debtor proposes to pay.

(c) All debts included in the debtor's list shall be taken to be proved unless objected to by a creditor, or disallowed by the magistrate.

(d) All creditors whose debts are objected to either by the debtor or

any other creditor shall prove their debts in like manner as upon the hearing of an ordinary summons:

Provided that the magistrate may in his discretion direct the proof of any debt to be adjourned upon any terms that he may think fit, and may thereupon adjourn the further consideration of the application or proceed to determine the same, in which latter case such debt, if and when proved, shall be added to the schedule of proved debts.

(e) The debtor shall answer all questions put or allowed by the magistrate.

(f) Any creditor whose debt is admitted or who has proved, and by leave of the magistrate any creditor the proof of whose debt has been adjourned, and with the like leave any other person on behalf of any such creditor, shall be entitled to be heard and to adduce evidence.

(g) Where any facts are proved on proof of which a court exercising jurisdiction in bankruptcy would be required either to refuse, suspend, or attach conditions to the debtor's discharge if he were adjudged bankrupt, the magistrate may refuse to make a composition order.

(h) No composition order shall be made under which the payment of instalments, if kept up without default, would extend over a period of more than three years from the date of the order.

(i) Where the magistrate is of opinion that it would be inconvenient that the court should administer the estate, he may order the request and a certificate of the judgment to be forwarded to a court having jurisdiction in the District in which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. If such order is made, a copy thereof shall be sent by post by the clerk of the court to the debtor.

9. (1) A composition order shall be in the prescribed form, and, when made, a copy thereof shall be sent by post by the clerk of the court to the debtor, but it shall not be necessary to prove the receipt thereof by the debtor before taking any proceedings upon the order.

Proceedings when order made. O.42 First Schedule, Form 47

(2) Notice of the order having been made shall be sent to each creditor whose debt has been admitted or who has proved; the notice shall be sent by post, and shall be in the prescribed form.

First Schedule, Form 48

(3) Notice of the order having been made shall also be sent by post in

the same form (with the necessary modifications) to every other court in which, to the knowledge of the clerk of the court, judgment has been obtained or proceedings are pending against the debtor in respect of any debt scheduled to the order.

10. (1) After a composition order has been made, any creditor who desires to object to any debt scheduled, or to the manner in which payment is directed to be made, must give notice in writing, by post or otherwise, to the clerk of the court of his objection and of the grounds thereof, and the clerk of the court shall thereupon name a day when the objection may be heard. Objections

(2) An application to allow the objection shall be heard *ex parte* in the first instance by the magistrate, who may dismiss the application, or may direct it to be renewed upon notice being given to such persons and upon such terms, as to security for costs and otherwise, as he may think fit.

(3) No creditor to whom notice of hearing of the request has been duly sent under rule 3 shall be entitled to object to any debt scheduled, or to the manner in which payment is directed to be made, unless within two months from the date of the order he proves to the satisfaction of the court that the notice did not reach him, and that he has not received reasonable notice of the proceedings in any other manner. Objections after time

11. Any creditor of the debtor in respect of a debt due before the hearing of the request which has not been scheduled by the debtor who desires to prove his debt, or any person who after the date of the order becomes a creditor of the debtor and desires to prove his debt under section *fifty-three* (12) of the Act, shall send in his claim in writing, by post or otherwise, to the clerk of the court, who shall thereupon send notice of the claim to the debtor, by post or otherwise, in the prescribed form. Proof by creditor omitted from schedule or of subsequent debt. First Schedule, Form 50

12. If the debtor does not, within the period allowed by the notice, give notice that he disputes the claim, the claim shall be deemed to be proved, and shall be added to the schedule to the order accordingly, and notice of the addition shall be sent, by post or otherwise, to the creditor, in the prescribed form. Proceedings if claim not disputed. First Schedule, Forms 56 and 61

13. If the debtor, within the period allowed, gives notice of his objection, by post or otherwise, the clerk of the court shall appoint a day for the hearing of the objection, and give notice of the time of hearing to both parties, by post or otherwise, in the prescribed form, and the magistrate on the hearing may either disallow the claim, or allow the same in whole or in part, in which latter case the debt allowed shall be added to the schedule, subject to the provisions of section *fifty-three* (12) of the Act and to rule 23.

Proceedings if claim disputed. First Schedule, Form 62 O.42

14. (1) The magistrate shall appoint some person to have the conduct of the order, and may at any time afterwards remove him and appoint any other person in his place.

(2) It shall be the duty of any person so appointed to take all proper proceedings for enforcing the terms of the order; but in case of his neglect to proceed, or of urgency, any creditor scheduled to the order may, by leave of the court, take such proceedings.

Duties of person having conduct of order

(3) In particular, it shall be the duty of the person so appointed-

(a) if default is made in payment of any instalment payable in pursuance of the order-

(i) to apply for the issue of a judgment summons under rule 15; or

(ii) if it appears that the debtor is unable to pay by reason of illness or other unavoidable misfortune, to apply to the magistrate under rule 18;

(b) if any facts become known to such person on which the order might be set aside or rescinded under rule 16, to bring such facts to the attention of the magistrate, who may thereupon, if he thinks fit, direct notice to be given to the debtor, by post or otherwise, in the prescribed form to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded, or may make such order or give such directions in the matter as he may think fit.

First Schedule, Form 57

15. If default is made in payment of any instalment payable in pursuance of the order, a judgment summons may, on the application of any person entitled to take proceedings under rule 14, be issued without fee. A judgment summons shall be in the prescribed form, and shall be

Judgment summons to enforce order. First Schedule,

served personally five clear days before the return day thereof, and all proceedings thereon shall be taken in like manner as if it were a judgment summons issued in a suit in a court, except that (as provided by section *fifty-three* (6) of the Act) the debtor shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same; and the magistrate, if satisfied that the debtor has not had the means to pay the sum in respect of which he has made default, may direct that the composition order shall be deemed to have been suspended during the period covered by the default, or make a new order for payment of the amount remaining due under the order by instalments. An order of commitment shall be in the prescribed form.

Form 52

O.42

First Schedule,

Form 53

16. (1) Where a composition order has at any time heretofore been or shall hereafter be made, such order may at any time be set aside or rescinded by the magistrate in any of the following cases:

Rescission of

order

(a) where two or more of the instalments ordered to be paid are in arrear;

(b) where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor;

(c) where the debtor, subsequent to the date of the order, has obtained credit without informing the creditor that a composition order has been made against him and has not been superseded;

(d) where the order has been obtained by fraud or misrepresentation;

(e) where a receiving order has, since the date of the composition order, been made against the debtor.

(2) An order setting aside or rescinding a composition order shall be in the prescribed form.

First Schedule,

Form 63

(3) A composition order may be set aside or rescinded under this rule-

(a) on hearing of a judgment summons; or

(b) on the application of any person entitled to take proceedings under rule 14 or of any creditor not scheduled to the order whose debt has been notified to the court, in which case notice shall be given to the debtor, by post or otherwise, in the prescribed form to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded; but such notice need not be given when the application is made on the ground of a receiving order having been made against the debtor. First Schedule, Form 57

17. (1) Where a composition order is set aside or rescinded under rule 16, it shall be without prejudice to anything already done or suffered under the order. Effect of rescission

(2) Any money paid into court under the order may be dealt with as if the order had not been set aside or rescinded.

(3) Notice that the order has been set aside or rescinded shall be sent by the clerk of the court to the debtor and to every creditor named in the schedule, and to every creditor not scheduled whose debt has been notified to the court, and to every other court in which, to the knowledge of the clerk of the court, judgment had been obtained or proceedings were pending against the debtor at the time when the order was made in respect of any debts scheduled to the order. Such notice shall be sent by post, and shall be in the prescribed form. O.42 First Schedule, Form 58

18. Where it appears that the debtor is unable to pay any instalment, by reason of illness or other unavoidable misfortune, the clerk of the court may from time to time suspend the operation of the order until the next sitting of the court, and the magistrate may from time to time suspend the operation of the order for such time as he shall direct, or make a new order for payment by instalments. Suspension of order. First Schedule, Form 51

19. (1) Where notice is given to the debtor in the prescribed form to attend and to show cause why the composition order should not be set aside or rescinded, the magistrate may on the day named in the notice either- What order may be made on application for rescission

(a) set aside or rescind the order pursuant to rule 16; or

(b) suspend the order or make a new order for payment by instalments pursuant to rule 18; or

(c) make an order in the prescribed form directing that the composition order shall be set aside or rescinded unless the debtor pays the sum in payment of which he has made default, either within a specified time, or by instalments to be specified in the order. First Schedule, Form 64

(2) If the magistrate makes an order pursuant to sub-rule (1) (c), then-

(a) the composition order shall be suspended during the time allowed to the debtor for payment of the sum in payment of which he has made default; and

(b) if the debtor fails to pay such sum within the time so allowed, the composition order shall on such failure be rescinded without further notice to him: and in that case the provisions of rule 17 shall apply.

20. Where a debtor has filed a request for a composition order, and the magistrate has refused to make the order, or when an order has been rescinded, the debtor shall not be allowed to file another request in the same or any other court without first obtaining the leave of the court first mentioned. Second request after refusal or rescission of order

21. Where an order of commitment is made upon the hearing of any judgment summons, and the execution of the order is suspended for a specified time to enable the debtor to pay the amount in respect of the non-payment of which the order is made, the composition order shall be also suspended during that time. Suspension of order, pending commitment

22. In calculating the amount in arrear under a composition order, any instalments accruing due during the period for which such order has been suspended shall not be reckoned in that amount. Calculation of arrears

23. All persons scheduled as creditors under section *fifty-three* (12) of the Act, before the composition order is superseded under section *fifty-three* (13) of the Act, shall rank *pari passu inter se*, subject to the priority given by the said section *fifty-three* (12) to those creditors who are scheduled as having been creditors before the date of the composition order, but no payment made to any such creditor by way of O.42, 43 Payment *pari passu* of debts scheduled under section 53 (12) of the Act

of dividend or otherwise shall be disturbed by reason of any subsequent proof by any other creditor under the said section *fifty-three* (12).

24. (1) All moneys paid or levied under a composition order shall be paid into court. Payment into court

(2) Dividends shall from time to time be declared and distributed among the creditors entitled thereto.

25. The clerk of the court shall send notice to the plaintiff in the action when a sum sufficient to satisfy his costs has been paid into court, and when a dividend is declared he shall send notice to each creditor entitled to share therein. Such notices shall be sent by post, and shall be in the prescribed form. Notice and payment out of costs and dividends. First Schedule, Form 54

26. The clerk of the court shall keep accounts of all moneys received and payments made under any composition order. Accounts

27. Where a debtor against whom a composition order has been made changes his address, he shall at once give notice to the clerk of the court of his new address. Notice by debtor of change of address

ORDER XLIII REFERENCE TO ARBITRATION

1. If the parties to a suit are desirous that the matters in difference between them in the suit, or any of such matters, should be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the court, at any time before final judgment, for an order of reference; and the court may, on such application, make an order of reference accordingly. Order of reference

2. The arbitrators shall be nominated by the parties in such manner as may be agreed upon between them. If the parties cannot agree with respect to the nomination of the arbitrators, or if the persons nominated by them shall refuse to accept the arbitration, and the parties are desirous that the nomination shall be made by the court, the court shall appoint the arbitrators. Appointment of arbitrators

3. The court shall, by an order under its seal, refer to the arbitrators the matters in difference in the suit which they may be required to determine and shall fix such time as it may think reasonable for the delivery of the award, and the time so fixed shall be specified in the order.

Form of order of reference

4. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed upon between the parties, or, if they cannot agree, as the court may determine.

O.43
Appointment of umpire where necessary

5. When a reference is made to arbitration by an order of court, the same process to the parties and witnesses whom the arbitrators or umpire may desire to have examined shall issue as in ordinary suits, and persons not attending in compliance with such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt of the arbitrators or umpire during the investigation of the suit, shall be subject to the like disadvantages, penalties and punishments, by order of the court on the representation of the arbitrators or umpire, as they would incur for the same offences in suits tried before the court.

Enforcing attendance of witnesses

6. When the arbitrators shall not have been able to complete the award within the period specified in the order, from want of the necessary evidence or information, or other good and sufficient cause, the court may, from time to time, enlarge the period for delivery of the award, if it shall think proper. In any case in which an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time, or their extended time, to expire without making an award, or shall have delivered to the court, or to the umpire, a notice in writing stating that they cannot agree:

Extension of time for making award

Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, or unless the award shall have been made after the issue of an order by the court superseding the arbitration and recalling the suit.

7. If, in any case of reference to arbitration by an order of court, the arbitrators or umpire shall die, or refuse to act or become incapable of acting, it shall be lawful for the court to appoint a new arbitrator or arbitrators, or umpire, in the place of the person or persons so dying, or refusing to act or becoming incapable of acting. Where the arbitrators are empowered, by terms of the order of reference, to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and, if, within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the court, upon the application of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

8. The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to. It shall comprehend a finding on each of the several matters referred.

9. It shall be lawful for the arbitrators or umpire, upon any reference by an order of court, if they shall think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case for the opinion of the court.

10. The court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, if such part can be separated from the other part, and does not affect the decision on the matter referred, or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

11. The court may also, on the application of either party, make such order as it thinks just respecting the costs of the arbitration, if any question arises respecting such costs or their amount, and the award contains no sufficient provision concerning them.

12. In any of the following cases the court shall have power to remit the award, or any of the matters referred to arbitration, for

reconsideration by the arbitrators or umpire, upon such terms as it may think proper:

- (a) if the award has left undetermined some of the matters referred to arbitration, or if it has determined matters not referred to arbitration;
- (b) if the award is so indefinite as to be incapable of execution;
- (c) if an objection to the legality of the award is apparent upon the face of the award.

13. No award shall be liable to be set aside except on the ground of Setting aside perverseness or misconduct of the arbitrator or umpire. Any application award to set aside an award shall be made within fifteen days after the publication thereof.

14. If no application shall have been made to set aside the award, or Filing award: to remit the same or any of the matters referred for reconsideration, or effect of if the court shall have refused any such application, either party may file the award in court, and the award shall thereupon have the same force and effect for all purposes as a judgment.

ORDER XLIV
APPEALS

O.44

I-Proceedings in the Court Below

1. Save when the contrary shall appear or shall be here or elsewhere Interpretation expressly provided, "the court", for the purposes of this Order, shall be deemed to be the Subordinate Court by which the judgment or decision appealed against or intended to be appealed against shall have been given.

2. (1) Where an appeal lies only by special leave, the appellant shall Special leave to apply for such special leave within thirty days of the date of any final appeal judgment or decision against which he intends to appeal or, in the case of any interlocutory decision against which he intends to appeal, within fourteen days of the same.

(2) Notice of application for special leave to appeal shall be served by the appellant on the other party or parties to the suit not less than five clear days before the date fixed for the hearing thereof.

(3) Where special leave to appeal shall be granted, the date of the judgment or decision against which the appellant intends to appeal shall, for the purposes of this Order, be deemed to be the date upon which special leave to appeal against the same shall have been granted, and thereafter the provisions of this Order shall apply in all respects as in a case where special leave to appeal is not required.

3. (1) Every appellant shall, within thirty days of the date of any final judgment or decision against which he intends to appeal, or, in the case of any interlocutory decision against which he intends to appeal, within fourteen days of the same- Procedure where special leave not required

(a) file with the clerk of the court and serve upon the other party or parties to the suit notice of his intention to appeal;

(b) pay to the clerk of the court the amount of the expense of making up and transmission to the appellate court of the record of appeal (which amount shall be refunded to him if the record of appeal be not made up and transmitted);

(c) give security to the satisfaction of the magistrate either by deposit, or by bond with or without sureties in the prescribed form, for payment of all such costs as the appellant may be adjudged to pay to any party by the appellate court. First Schedule, Form 40

(2) When the appellant shall have complied with the requirements of sub-rule (1), the clerk of the court shall forthwith sign and transmit to the appellant a certificate that he has complied with the said requirements and, when the said certificate shall have been signed, the appeal shall be deemed to have been entered.

4. The entering of an appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed from, except so far as the court below or the appellate court may order, and no intermediate act or proceeding shall be invalidated, except so far as the court below may direct. O.44 Appeal not to operate as stay of execution

5. (1) The appellant shall, within fourteen days of the day on which the certificate mentioned in rule 3 is signed, file in the court the grounds of his appeal and shall cause a copy thereof to be served on Grounds of appeal

every other party to the suit:

Provided that the court or the appellate court may, on good cause shown, extend the period of fourteen days herein mentioned, but in no case shall the same be extended to a period of more than thirty days.

(2) If the appellant shall fail to file the grounds of appeal within the period mentioned in sub-rule (1), he shall be deemed to have abandoned the appeal.

(3) The appellant may, at any time, by leave of the appellate court, amend or add to the grounds of appeal filed by him.

6. (1) When the appellant shall have filed his grounds of appeal, the court below shall, without the application of any party, make up the record of appeal, which shall consist of the writ of summons, the pleadings (if any), certified copies of all documents admitted as evidence or tendered as evidence and rejected, the notes of the evidence, the judgment or order of the court and the grounds of appeal. Contents of record of appeal

(2) The record of appeal, when completed by a court below, shall be forwarded-

(a) in the case of a Subordinate Court in the Central, Southern, Eastern or Western Provinces, to the Registrar at the principal Registry of the High Court at Lusaka;

(b) in the case of a Subordinate Court in the Copperbelt, Northern, Luapula or North-Western Provinces, to the District Registrar, Ndola District Registry.

(As amended by No. 323 of 1960, No. 445 of 1964 and S.I. No. 63 of 1964)

7. The court below shall not, except for some special cause, take upon itself the charge or the transmission of original letters or documents produced in evidence. These shall be returned to the parties producing them, and the parties must be prepared to produce the originals, if required by the appellate court, before or at the hearing of the appeal. Production of original letters or documents

8. All proceedings on appeal, save as hereinbefore provided, shall be in accordance with the rules of the High Court for the time being in force. Proceedings in appellate court

(No. 445 of 1964)

II-Proceedings in the Appellate Court

O.44

9. After the record of appeal has been transmitted, until the appeal is disposed of, the appellate court shall be in possession of the whole proceedings as between the parties to the appeal. Every application in the proceedings shall be made to the appellate court, and not to the court below, but any application may be made through the court below: Control by appellate court while appeal pending

Provided that, in cases of urgency, the court below may make any interim order to prevent prejudice to the claims of any party pending an appeal, but every such order may be discharged or varied by the appellate court.

10. The appellate court may, where necessary, require security for costs or for performance of the orders to be made on appeal, in addition to what the court below has thought fit to direct, and may make any interim order or grant any injunction which the court below is authorised to make or grant and which may be necessary. Additional security

11. If the appeal is from an interlocutory order, the appellate court shall not cause notice to be given to the parties of the day when the appeal shall be disposed of, unless, in special circumstances, it thinks fit to do so; but, where a party to the appeal notifies to the appellate court his desire to attend, he shall be at liberty to do so, and to be heard, at such time as the appellate court directs. Notice to parties in interlocutory appeals

12. If the appeal is from a final judgment or decision, the clerk of the court of the appellate court shall give notice of the date of hearing, through the court below, to the parties to the appeal. Notice to parties in appeals from final judgments

13. (1) If the appellant fails to appear, in person or by his legal representative, when his appeal is called on for hearing, the appeal shall, on proof of service upon him of the notice of the hearing, stand dismissed with costs. Failure of appellant to appear

(2) When an appeal has been dismissed owing to the non-appearance of the appellant or his representative, the appellate court may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

14. If the respondent fails to appear, in person or by his legal representative, when the appeal is called on for hearing, the appellate court shall, on proof of the service upon him of notice of the hearing, proceed to hear the appeal *ex parte*. Failure of respondent to appear

15. (1) Notwithstanding anything in rules 13 and 14 contained, if any party to the appeal is desirous that the appeal should be disposed of without his attendance, either in person or by his legal representative, he shall notify the court below, and the court below shall so inform the clerk of the court of the appellate court at the time of transmitting the record; and thereupon, if the appellate court sees fit, it may determine the appeal in the absence of that party. Hearing in absence of parties O.44

(2) If any party so notifies the court below, it shall not be necessary for the clerk of the court of the appellate court to give him notice in accordance with rule 12.

16. It is not open, as of right, to any party to an appeal to adduce new evidence in support of his original case; but, for the furtherance of justice, the appellate court may, where it thinks fit, allow or require new evidence to be adduced. A party may, by leave of the appellate court, allege any facts essential to the issue that have come to his knowledge after the decision of the court below, and adduce evidence in support of such allegations. New evidence on appeal

17. No interlocutory order from which there has been no appeal shall operate so as to bar or prejudice the appellate court from giving such decision upon the appeal as may seem just. Interlocutory order not to prejudice decision on appeal

18. The appellate court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and General powers of appellate court

may direct the court below to inquire into and certify its finding on any question which the appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs.

19. The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

III-Enforcement of Judgments, Decrees or Orders on Appeal

20. Any judgment, decree or order given or made by the appellate court may be enforced by the appellate court or by the court below, according as the appellate court may consider most expedient and may direct.

21. When the appellate court directs any judgment, decree or order to be enforced by the court below, a certificate under seal of the appellate court and the hand of the presiding Judge or magistrate, as the case may be, setting forth the judgment, decree or order of the appellate court shall be transmitted by the Registrar or clerk of the court of the appellate court, as the case may be, to the court below, and the latter shall enforce the judgment, decree or order made by the appellate court in the terms of the certificate.

IV-Fees Payable

22. The fees prescribed in the Second Schedule shall be charged in respect of the matters to which they are respectively assigned, and shall be paid to the Registrar or the clerk of the court of the appellate court or of the court below, as the case may be. The appellate court or the court below may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, or for other sufficient reasons, dispense, if it sees fit, with payment of any

fees.

V-Ex Parte Orders

23. An appeal does not lie, except by special leave of the appellate court or of the court below, from an order made *ex parte*. Any person aggrieved by such an order may apply, by motion on notice to the other party, to the court by which it was made to vary or discharge it, and an appeal lies from the decision on that application in like manner as from other orders or decisions. *Ex parte orders*

ORDER XLV
RECOVERY OF COSTS BY LEGAL PRACTITIONERS

1. In this Order, unless the context otherwise requires- *Interpretation*

"fees" include charges and disbursements;

"practitioner" includes barrister, solicitor and notary public, and the executor, administrator and assignee of a barrister, solicitor or notary public.

2. No practitioner shall commence any suit for the recovery of any fees for any business done by him until the expiration of one month after he shall have delivered to the party to be charged therewith or sent by registered letter to or left for him at his office, place of business, dwelling-house or last known place of abode a bill of such fees, such bill either being signed by such practitioner (or, in the case of a partnership, by any of the partners, either in his own name or in the name of the partnership) or being enclosed in or accompanied by a letter signed in like manner referring to such bill. *Bill to be sent before suit*

3. Upon the party to be charged applying to the court, within such month as in the last preceding rule mentioned, it shall be lawful for the court to refer the bill and the demand of the practitioner to be taxed and settled by the Taxing Master of the court, and the court shall restrain such practitioner from commencing any suit touching such demand pending such reference. *Party charged may apply to court to tax bill O.45*

4. In case no application shall be made within one month, as in the *Where no application*

last preceding rule provided, it shall be lawful for such reference as aforesaid to be made, either upon the application of the practitioner making the demand, or upon the application of the party to be charged, with such directions and subject to such conditions as the court making the reference shall think proper, and the court may restrain such practitioner from commencing or prosecuting any suit touching such demand pending such reference, upon such terms as shall be thought proper.

to tax made within
one month

5. No such reference as aforesaid shall be directed, upon application made by the party to be charged, after judgment shall have been obtained in any suit for the recovery of the demand of such practitioner as aforesaid, or after the expiration of twelve months after any bill as aforesaid shall have been delivered, sent or left as aforesaid, except under special circumstances to be proved to the satisfaction of the court to which application for such reference shall be made.

When application not
to be granted

6. Upon any reference as aforesaid, if either the practitioner or the party to be charged, having due notice, shall refuse or neglect to attend the taxation, the Taxing Master may proceed to tax and settle the bill and demand *ex parte*.

Non-attendance of
party at taxation

7. If, on any reference as aforesaid, the party to be charged shall attend on taxation, the cost of the reference shall (except as in rule 8 provided) be paid according to the event of such taxation: that is to say, if such bill, when taxed, be less by a sixth part than the bill delivered, sent or left, then such practitioner shall pay such costs, and if such bill, when taxed, shall not be less by a sixth part than the bill delivered, sent or left, then the party to be charged making such application or so attending shall pay such costs.

Costs of taxation

8. Every order to be made for any reference as aforesaid shall direct the Taxing Master to certify what shall be found to be due to or from such practitioner in respect of the bill and demand referred, including the costs of the reference:

Form of order to be
made: special cases

Provided that-

(i) the Taxing Master may certify specially any circumstances relating to such bill or reference, and the court may make any such order as it may think right respecting the costs of such reference; and

(ii) where any reference is made under rule 5, the court may, if it thinks fit, give any special directions relative to the cost of such reference.

9. It shall not in any case be necessary in the first instance for any practitioner, in proving a compliance with these Rules, to prove the contents of the bill he may have delivered, sent or left, but it shall be sufficient to prove that a bill for fees signed in the manner provided or enclosed in or accompanied by such letter as provided was duly delivered, sent or left.

O.45
Proof of compliance
with rules

10. Upon the completion of the taxation of any bill referred as aforesaid, the Taxing Master shall submit to the court the result of his taxation, including costs, and the amount so submitted shall be final and conclusive as to the amount of the bill and costs:

Completion of
taxation

Provided that the court may, in its discretion, review any such taxation. And it shall be lawful for the court to order that judgment be entered for the amount submitted, unless the retainer is disputed, or to make such other order therein as the court may deem proper.

11. It shall be lawful for the court to make an order for the delivery by any practitioner of any bill of fees for business done by him.

Court may order
delivery of bill

12. It shall be lawful for the court to authorise any practitioner to commence a suit for the recovery of his fees against the party chargeable therewith, and also to refer his bill of fees and the demand of the practitioner thereupon to be taxed and settled by the Taxing Master of the court, although one month shall not have expired from the delivery of such bill, on proof, to the satisfaction of the court, that there is probable cause for believing that the party chargeable is about to leave Zambia or to become a bankrupt or to take any other steps or to do any other act which, in the opinion of the court, would tend to defeat or delay such practitioner in obtaining judgment.

Where practitioner
may begin suit
within month of
delivery of bill

13. All applications made under this Order to refer any bill to be taxed and settled shall be by motion in the matter of the practitioner concerned.

Applications to be by
motion

FIRST SCHEDULE

(O. 1, r. 3)

LIST OF FORMS

1. General Title of Writs and other Documents in a Suit.
2. Writ of Summons. (O. 6, r. 3.)
3. Default Writ of Summons. (O. 6, r. 4 (1).)
4. General Affidavit.
5. Admission Defence and Counter-claim. (O. 6, r. 4 (2).)
6. Praecipe for Entry of Judgment in Default Action. (O. 33, r. 1.)
7. Notice to Plaintiff and Defendant of Entry of Judgment. (O. 33, r. 1.)
8. Notice of Hearing. (O. 33, r. 2.)
9. Hearing Notice to Plaintiff. (O. 6, r. 6.)
10. Notice to Plaintiff of Altered Return Day. (O. 6, r. 7.)
11. Affidavit of Service. (O. 7, r. 2.)
12. Debit and Advice Note. (O. 7, r. 19.)
13. Summons to a Witness.
14. Subpoena Duces Tecum.
15. Notice to Admit and Inspect. (O. 16, r. 2.)
16. Notice to Admit Facts. (O. 16, r. 2.)
17. Affidavit on Making Application for Security from Defendant. (O. 21, r. 1.)

18. Warrant to Arrest an Absconding Defendant. (O. 21, r. 2.)
19. Order on Defendant to Find Bail. (O. 21, r. 3.)
20. Bail Bond by Defendant and Sureties. (O. 21, r. 3.)
21. Warrant to Attach Property before Judgment. (O. 22, r. 4.)
22. Order for Delivery of Interrogatories. (O. 26, r. 1.)
23. Order for Affidavit as to Documents. (O. 26, r. 6.)
24. Affidavit as to Documents. (O. 26, r. 6.)
25. Notice to Produce (General Form). (O. 26, r. 8.)
26. Formal Decree. (O. 35, r. 4.)
27. Writ of Fieri Facias. (O. 41, r. 4.)
28. Request and Authority to Under-Sheriff. (O. 41, r. 6.)
29. Judgment Summons. (O. 41, r. 13.)
30. Judgment Summons on Judgment or Order against a Firm, or a Person Carrying on Business in a Name other than his own. (O. 41, r. 16.)
31. Order of Commitment on a Judgment or Order of a Court. (O. 41, r. 25.)
32. Order of Commitment of a Judgment Summons on a Judgment or Order against a Firm, or a Person Carrying on Business in a Name other than his own. (O. 41, r. 25.)
33. Affidavit for Leave to Summon Garnishee. (O. 41, r. 38.)
34. Summons to Garnishee. (O. 41, r. 38.)
35. Notice to Judgment Debtor of Issue of Garnishee Summons. (O. 41, r. 42.)
36. Notice to Judgment Creditor of Payment into Court by Garnishee. (O. 41, r. 43.)
37. Notice to Judgment Debtor of Payment into Court by Garnishee. (O. 41, r. 43.)
38. Interpleader Summons (1). (O. 41, r. 57.)

39. Interpleader Summons (2) (O. 41, r. 57.)
40. Bond for Costs on Appeal. (O. 44, r. 3.)
41. Warrant for Prisoner to Give Evidence.
42. Request for a Composition Order. (O. 42, r. 1.)
43. Order Directing Request to be Forwarded to another Court. (O. 42, rs. 3 and 8.)
44. Order Staying Proceedings on Judgment, Order, Execution, Judgment Summons, or Order of Commitment. (O. 42, r. 5.)
45. Notice to Debtor. (O. 42, r. 3.)
46. Notice to Creditors. (O. 42, r. 3.)
47. Composition Order. (O. 42, r. 9.)
48. Notice to Creditors and other Courts. (O. 42, r. 9.)
49. Notice of a Composition Order. (Section 53 (9).)
50. Notice of Claim to have Additional Debt Scheduled. (O. 42, r. 11.)
51. Order Suspending Operation of Composition Order or New Order for Payment by Instalments. (O. 42, r. 18.)
52. Judgment Summons. (O. 42, r. 15.)
53. Order of Commitment. (O. 42, r. 15.)
54. Notice of Dividend. (O. 42, r. 25.)
55. Order Superseding Composition Order. (Section 53 (13).)
56. Order Adding Debt to Schedule. (O. 42, r. 12.)
57. Notice to Debtor to Attend and Show Cause why Composition Order should not be Rescinded (O. 42, r. 14.)
58. Notice to Debtor and other Courts of Rescission of Composition Order. (O. 42, r. 17.)
59. Notice of Instalments Due.
60. Certificate that Request has been Filed. (O. 42, r. 5.)
61. Notice to Creditor that his Claim is not Objected to. (O. 42, r. 12.)
62. Notice of Hearing of Objection to Claim. (O. 42, r. 13.)
63. Order Setting Aside or Rescinding Composition Order. (O. 42, r. 16.)
64. Order Rescinding Composition Order unless Debtor Pays Instalments in Arrear within a Specified Time or by Instalments. (O. 42, r. 19.)
65. Certified Copy of Proceedings.
66. Third Party Notice. (O. 12, r. 1.)
67. Notice by Under-Sheriff to Execution Creditor of Claim to Goods Seized. (O. 41, r. 53.)
68. Request to Search Judgments Register or Judgments Section of the Civil Causes Register (Individual Search). (O. 36, r. 3.)
69. Application for Permit for General Searches in Judgments Registers (against Unspecified Number of Names). (O. 36, r. 4.)
70. Permit for General Searches in Judgments Registers (against Unspecified Number of Names). (O. 36, r. 4.)
71. Certificate of Clerk of Subordinate Court as to Amount Due and Unpaid. (O. 37, r. 3 (4) (a).)
72. Certificate of Clerk of Subordinate Court that no Process for Enforcement Remains in Force. (O. 37, r. 3 (4) (a).)
73. Certificate of Clerk of a Magistrate' Court that no Process for Enforcement Remains in Force and no Proceedings for Variation are Pending. (O. 37, r. 3 (4) (a).)
74. Declaration as to the Amount Due and Unpaid. (O. 37, r. 3 (4) (b).)

- 75. Declaration that no Process for Enforcement Remains in Force. (O. 37, r. 3 (4) (b).)
- 76. Declaration that no Process for Enforcement Remains in Force and no Proceedings for Variation are Pending. (O. 37, r. 3 (4) (b).)
- 77. Certificate of Clerk of Subordinate Court that Copy of Maintenance Order is a True Copy sent for Registration. (O. 37, r. 4.)
- 78. Notice that Payments have Become Payable through the Clerk of a Magistrate's Court. (O. 37, r. 6(1).)
- 79. Notice that Payments under a Subordinate Court Order have Ceased to be Payable through the Clerk of a Subordinate Court. (O. 37, r. 6 (2).)
- 80. Notice of Cancellation of Registration of a High Court Order. (O. 37, r.6 (3).)
- 81. Order Remitting to the Original Court Application for Variation of Registered Maintenance Order. (O. 37, r. 7.)
- 82. Endorsement that no Arrears Remain to be Recovered. (O. 37, r. 8 (7).)
- 83. Attachment of Earnings Order. (O. 37, r. 11.)
- 84. Notice that Defendant is not Employed by Person to whom an Attachment of Earnings Order is Directed. (O. 37, r. 14.)

Sch. 1

1. GENERAL TITLE OF WRITS AND OTHER DOCUMENTS IN A SUIT

In the Subordinate Court of

Between

A.B., Plaintiff
and
C.D., Defendant
or

In the matter of G.H., etc.

2. WRIT OF SUMMONS

(General Title)

To _____ of _____
You are hereby commanded in the name of the President to attend this Court
at _____ on the _____
day of _____ 19, _____ at _____
o'clock in the _____ noon then and there to
answer a suit by _____

against you. The plaintiff claims-

Issued at _____ the _____
day of _____ 19 _____
(Magistrate or Clerk of the Court)

Sum claimed	..	..	..	K	
Court fees	..	..	..	K	
Messenger's fees	..	..	..	..	K
Solicitor's costs	..	..	..	..	K
TOTAL	..	..	..	K	

This Writ is issued by
(Plaintiff)
(Solicitor for Plaintiff)
whose address is:

Certificate of Service by Court Messenger

Upon the _____ day of _____
19 _____ this Writ of Summons _____
was served by me on _____ Defendant,
personally at _____
(Court Messenger)

NOTICE TO DEFENDANT

1. If the amount claimed on this writ (K _____) is paid to the Clerk of
the Court before the _____ day of _____ 19
, you will have no further costs to pay.

2. If you admit the claim but do not pay into Court as above then, if you complete
Form A below and lodge it with the Clerk of the Court before the
day of _____ 19 _____, the only additional costs you will have
to pay will be as follows:

Solicitor's costs	..	..	..	K	
Court fees	..	..	..	<u> K </u>	
				<u> K </u>	

3. If you admit the claim but wish to apply for an order for payment by instalments then

if you, reside in

you must attend the Court at the time and on the date shown on the face of the summons. If you reside elsewhere you should inform the Clerk of the Court in writing before the date shown on the summons that you wish such an order to be made and what instalments you are able to pay.

4. If you do not admit the claim and wish to defend yourself against it, you must fill in Form B below and lodge it with the Clerk of the Court before the day of _____ 19_____, together with a written statement of the grounds on which you wish to defend. You should also attend to the following instructions:

(i) On the date shown on the summons the Court may give directions as to the time and place when the action will be heard and generally as to the conduct of the action. You need not attend or you may attend in person or by a Solicitor.

(ii) Any directions given in your absence will be notified to you by the Clerk of the Court and, if the directions are to be given in your absence, you should write to the Clerk of the Court informing him of any directions which you may desire including the time and place of hearing and giving your reasons for your request.

(iii) If you attend on the date shown on the summons the Court may also, if satisfied that the interests of justice so require or with the consent of both parties, proceed to hear and determine the action on that day.

FORM A

Consent to Judgment

No.
Plaintiff

Between
and

Defendant.

I, _____, the Defendant in the above suit,
do hereby consent to judgment being entered against me for the sum of K
and K _____ costs.

(Signed)

Witness:

FORM B

Notice of Intention to Defend

No.

Between
and

Plaintiff

Defendant.

Take notice that I,
intend to defend it on the following grounds:

, the Defendant in the above suit,

My address is:

*My Solicitor is:

(Signed)

* Delete if inapplicable.

3. DEFAULT WRIT OF SUMMONS

(General Title)

BETWEEN *(names in full)*

(residence or place of business)

(postal address)

Plaintiff

AND *(names in full where known)*

(address at which service is to be effected)

(a post office box number is not sufficient)

TO THE DEFENDANT

Defendant

THE PLAINTIFF CLAIMS THE SUM OF K

FOR

Particulars:	Sum claimed	..	..	..	K
Costs:					
Court fee	..	..	..
Solicitor's costs	..	..	..
Service fee	..	..	..
Kilometres	..	..	..		_____
	TOTAL				<u>K</u> _____

Signature of Plaintiff or his solicitors

Postal address for service and place of business:

Judgment may be obtained against you and enforced without further notice unless within fifteen days of the service of this summons, inclusive of the day of service, you pay the total amount of the claim and costs to the plaintiff or his solicitors *or* send to the Court, with a copy for the plaintiff or his solicitors, an Admission, Defence or Counter-claim for which the attached form should be used.

Dated this _____ day of _____, 19

(Court Seal
or Stamp)
(Clerk of the Court)

FOR INSTRUCTIONS TURN OVER

NOTE-Four copies should be presented at Court by the party filing. Three will be returned to him. The original and a copy for service are for the Court Messenger or other person who is to effect service. The fourth copy will remain in the Court file.

INSTRUCTIONS TO DEFENDANT

- (1) If you admit the claim or any part of it, pay the amount admitted and costs to the plaintiff or his solicitors within fifteen days after service of this summons, inclusive of the day of service. If you require longer time for payment, complete the form of ADMISSION attached.
- (2) If you dispute the claim or any part of it, complete the form of DEFENCE attached.
- (3) If you have any claim against the plaintiff, complete the form of COUNTER-CLAIM attached.
- (4) After filling in and signing the form with as many copies as there are plaintiffs, deliver all the copies to the Court not later than fifteen days after service of this summons, inclusive of the day of service. You will receive notice from the Court of a day on which you will have an opportunity of being heard on your proposal for payment, defence or counterclaim.
- (5) Delay in payment or in returning the form may add to the costs.
- (6) Remittances must be by CASH, OR POSTAL OR MONEY ORDER, payable to the plaintiff or his solicitors and crossed /& CO/ (cheques and stamps are not acceptable). POSTAGE MUST BE PREPAID. This summons must also be sent and a stamped addressed envelope for receipt. Payment otherwise than in cash to the plaintiff or his solicitor personally is made at the payer's risk.

Address all communications for the Court to:

The Magistrate/Clerk of the Court, P.O. Box

THE COURT OFFICE is open from 9 a.m. to 12 noon and 2 p.m. to 3 p.m. on Mondays to Fridays and 9 a.m. to 11 a.m. on Saturdays.

Service Endorsement on Default Writ of Summons against a Firm.

A true copy of this writ of summons was served by me on the day of 19 , (a) by delivering the same at the address stated in the writ of summons or at

to

a partner in (or who stated that he was a partner in) the defendant's firm (or who stated that he carried on business in the name of the defendant firm)

Or (b) by delivering the same at being the principal place of business of the defendant firm to the person who had at the time the control or management of the business there.

Mr. was informed by notice in writing given at the time of such service that he was served as the person having control or management of the partnership business.

Service Endorsement on Default Writ of Summons against a Company.

A true copy of this default writ of summons was served by me on the defendant company on the day of 19 , by leaving the same at

the address stated in the summons to be the Registered Office of the Company.

Kilometres of K was incurred in attempting and/or effecting service and this was endorsed on both copies of the summons in the space provided and the total completed at the time of service.

.....
(Court Messenger)

Service Endorsement on Default Writ of Summons against an Individual.

A true copy of this summons was served by me on the day of 19 , by delivering the same to the said defendant personally.

Or (where court orders service other than personal) by delivering the same to at the place of abode/ business of the defendant as stated in the summons.

Kilometres of K was incurred in attempting and/or effecting service and this was endorsed on both copies of the summons in the space provided and the total completed at the time of service.

.....
(Court Messenger)

Kilometres of K was
incurred in attempting and/or effecting
service and this was endorsed on both
copies of the summons in the space
provided and the total completed at the
time of service.

.....

(Court Messenger)

(No. 155 of 1968)

4. GENERAL AFFIDAVIT

I (*full names of deponent*) of (*Residence of deponent, followed by his occupation*) make oath and say as follows:

(*Here set out, in numbered paragraphs, the facts deposed to*)

Sworn at
Province this

day of

in the

, 19

Before me

(*Officer of a*

Court,

Appointed to

take Affidavits)

This affidavit is filed on behalf of
(*No. 155 of 1968*)

5. ADMISSION DEFENCE AND COUNTER-CLAIM

I ADMIT the plaintiff's claim (1), and I offer to pay the same by instalments of K per month (2).

Admission
(1) Or state
the amount
admitted

NOTE-You MUST answer the following questions as to your means, if you want time to pay:

(2) Or state
the date on
which you
can pay the
whole sum

1. What is your occupation?
2. What is your total income from all sources?
3. What persons, if any, are dependent on you? Cap. 399
4. What rent or mortgage instalments have you to pay?
5. What other regular payments have you to make?

(Add , in an action to which section 12 of the Hire-Purchase Act applies, I understand that if the plaintiff accepts this offer an order will be made for the return of the goods but the plaintiff will not be able to enforce the order so long as I make punctual payment in accordance with my offer.)

Or

I DISPUTE the plaintiff's claim (3) for the following reasons:

Defence
(3) Or state
the amount
disputed
Counter-
claim

Or

I have a COUNTER-CLAIM against the plaintiff for K , for-

NOTE-If your counter-claim exceeds the plaintiff's claim, you may have to pay a fee (which can be ascertained from any Subordinate Court Office). If this fee is not paid to the Clerk of Court your counter-claim may be struck out.

To be signed here

(Defendant)

Address to which notices are to be sent:
(No. 155 of 1968)

6. PRAECIPE FOR ENTRY OF JUDGMENT IN DEFAULT ACTION

(General Title)

I HEREBY REQUEST you to enter judgment by default against the defendant, (*name the defendant, or if there are more defendants than one and it is desired to enter judgment against some or one only, name them or him*) payable forthwith or on the day of _____ or by instalments of K _____ for every the first instalment to be paid on the _____ day of _____, 19 ____ .

		K
Amount of claim as stated in summons		
Amount (if any) since received by plaintiff . . . . .		..
<hr/>		
Balance of claim for which judgment to be entered ..		K
Court fees entered on summons		
Solicitor's costs entered on summons		
Solicitor's costs (if any) on entering judgment		
Service fee		
Kilometres		
<hr/>		
TOTAL		K _____

Dated the _____ day of _____, 19 ____ .

(Plaintiff or Plaintiff's Solicitor)
To The Clerk of the Court.

(No. 155 of 1968 as amended by No. 342 of 1968)

7. NOTICE TO PLAINTIFF AND DEFENDANT OF ENTRY OF JUDGMENT

Sch. 1

(General Title)

TAKE NOTICE that on the
day of _____, 19____,
Judgment was given in the said Action of
in favour of the Plaintiff.

(Clerk of the Court)

(No. 155 of 1968)

8. NOTICE OF HEARING

(General Title)

TAKE NOTICE that this matter will be heard at the Subordinate Court of the
Class *(insert here the address of the Court House)* on the
day of _____ 19____, at
o'clock and that if you do not attend at the time and place above mentioned, such order will
be made as the court thinks just.

(Clerk of the Court)

(No. 155 of 1968)

9. HEARING NOTICE TO PLAINTIFF

(General Title)

To A.B., Plaintiff.

This cause will come on for hearing on the
day of 19 , unless service of the Writ of Summons be not effected in sufficient time.

Should this date be altered a further notice will be sent to you.

(Clerk of the Court)

10. NOTICE TO PLAINTIFF OF ALTERED RETURN DAY

(General Title)

To A.B., Plaintiff.

In accordance with Order VI, rule 7 (2), of the Subordinate Courts (Civil Jurisdiction) Rules, the return day of the Writ of Summons in this case has been altered to the day of _____ 19_____, service not having been effected in sufficient time for the following cause:

(Clerk of the Court)

11. AFFIDAVIT OF SERVICE

(General Title)

I, _____, make oath and say as follows:

(a) Place where service effected

1. I did on the _____ day of _____ 19____, at (a) _____ personally serve (b) _____ the within named defendant (or as the case may be) with a true copy of the writ of summons in this action which appeared to me to have been regularly issued out of the said Court against the within named defendant (or defendants) and which was dated the _____ day of _____ 19____.

(b) Name of defendant or person served

2. At the time of the said service the said writ and the copy thereof were subscribed in the manner and form prescribed by the rules of the said Court.

3. I did on the _____ day of _____ endorse on the said writ the day of the month and the week of the said service on the said defendant.

Sworn by the said _____ at _____ on the _____ day of _____ 19____. Before me

}

12. DEBIT AND ADVICE NOTE

Sch. 1

IN THE COURT

In the matter between

Plaintiff

and
Defendant.

SERVICE of the writ/summons/judg-
failed/has been EXECUTION issued has
ment summons/notice- withdrawn/suspended and the
following fees are due from and owing by you
(a) was effected: in respect thereof:
in
(b) has failed/been attempted
without success:

Seizure	..	..	K
Kilometres (if appropriate at 10n per kilometre)			K
Commission	..	..	K
Haulage	..	..	K
Labour	..	..	K
Auctioneer	..	..	K
Advertising	..	..	<u>K</u>
<i>Total</i>	..	..	<u>K</u>

The following fees are due from and owing by you in respect thereof:

Service (only if effected)	.. ..	K
Kilometres (if appropriate at 10n per kilometre)		<u>K</u>
<i>Total</i>	.. ..	<u>K</u>

Kindly forward the above fees to me at the address given below immediately.

To: (Name and signature):

.....

Address: Address:

.....

.....

.....

.....

.....

.....

Date.....

NOTES-Delete whichever inapplicable

Insert date and place of service, person served and capacity.
Set out reasons with particulars and dates.

(No. 94 of 1958)

13. SUMMONS TO A WITNESS

(General Title)

TO

You are hereby commanded in the name of the President to attend in person before this Court at _____ on the _____ day of _____ and so from day to day till the above cause be tried, to testify all that you know in the said cause.

You are summoned at the instance of _____

Issued at _____ the
day of _____ 19____ .
(Clerk of the Court)

14. SUBPOENA DUCES TECUM

(General Title)

TO

You are hereby commanded in the name of the President to attend in person before this Court at _____ on the _____ day of _____ and so from day to day till the above cause be tried, to testify all that you know in the said cause and also to bring with you and produce at the time and place aforesaid

Issued at _____ the _____ day of _____ 19____ .
(Clerk of the Court)

15. NOTICE TO ADMIT AND INSPECT

Sch. 1

(General Title)

Take notice that the plaintiff (*or* defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*or* plaintiff) or his solicitor at _____ on the day of _____ 19____ between the hours of _____ and _____, and the defendant (*or* plaintiff) is hereby required within forty-eight hours from the last-mentioned hour to admit, saving all just exceptions to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been, that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively.

Dated at _____ the _____ day of _____ 19____.

*(Plaintiff or his Solicitor
or Defendant or his Solicitor)*

TO

Originals

Description of Document	Date

Copies

Description of Document	Date	Original or Duplicate served, sent or delivered, when, how and by whom

16. NOTICE TO ADMIT FACTS

(General Title)

Take notice that the plaintiff (*or* defendant) in this action requires the defendant (*or* plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified, and the defendant (*or* plaintiff) is hereby required, not later than three clear days before the return day, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated at _____ the _____ day of
19 _____ .

*(Plaintiff or his Solicitor
or Defendant or his Solicitor)*

TO

The facts the admission of which are required are:

17. AFFIDAVIT ON MAKING APPLICATION FOR SECURITY FROM DEFENDANT

(General Title)

I, _____ of _____, the above-named plaintiff, make oath, and say as follows:

1. _____, the above-named defendant, is justly and truly indebted to me in _____ kwacha for (*state grounds of action*).

2. I have caused a writ of summons to be issued out of this Court at my suit against the said defendant.

3. The said defendant is about to leave Zambia, if he is not immediately apprehended, as appears from the following circumstances (*state the circumstances from which the defendant's intention to abscond is inferred*).

4. The absence of the said defendant from Zambia will materially prejudice me in the prosecution of my action by reason of the following facts (*state the facts from which such prejudice is inferred*) (*or the said defendant has disposed of (or removed) his property from Zambia as follows*) (*state particulars respecting the property removed or disposed of, and the manner of disposal*) and the execution of any judgment or order obtained by me will be thereby obstructed or delayed.

Sworn by the said _____
at _____ on _____ }
the _____ day of _____ 19____

Before me

18. WARRANT TO ARREST AN ABSCONDING DEFENDANT

Sch. 1

(General Title)

To the Sheriff of Zambia,

You are hereby commanded in the name of the President to take and arrest the body of _____ of _____, the above-named defendant, and him to deliver to the keeper of the prison at _____ there to be kept until he shall have given bail or security by deposit or otherwise to the satisfaction of the said Court, for his appearance at any time when called upon while the above suit is pending, and until execution or satisfaction of any decree that may be passed therein against him, or until he shall otherwise be lawfully delivered from custody under the said arrest, and also that you bring and have the said _____ before the Court forthwith after the execution of this writ, in order that he may show cause touching the matter of such bail or security, and have there then this writ.

Dated at _____ the _____ day of _____ 19____.

(Magistrate)

19. ORDER ON DEFENDANT TO FIND BAIL

(General Title)

Whereas _____ of _____, the above-named plaintiff, hath proved that there is probably cause for believing that _____ of _____ is about to leave Zambia (*or* that he has removed from Zambia his property, or part thereof), and that by reason thereof the execution of any decree which may be made against the said _____ is likely to be obstructed or delayed;

And whereas the said _____, having been allowed and required to show cause why he should not give bail as afterwards herein ordered, has failed to show any such sufficient cause:

I do hereby order that the said _____ do find security, by deposit or otherwise, to the satisfaction of the Court, for his appearance at any time when called upon while the above suit is pending and until execution or satisfaction of the decree of the Court, in case judgment be given against him, and further that the said _____ be committed to the prison at _____ until the decision of the above-mentioned suit or execution of the decree, if judgment shall be given against the said _____, or until he comply with this order.

Dated at _____ the
day of _____ 19 ____ .
(Magistrate)

20. BAIL BOND BY DEFENDANT AND SURETIES

(General Title)

Know all men by these presents, that we (the defendant arrested) of _____, of _____ of _____, and _____ are held and firmly bound to _____ in the sum of _____, kwacha of lawful money, to be paid to the said _____, his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole, one and every of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the _____ day of _____ in the year _____ of Our Lord 19 _____

Whereas a suit has been brought in the said Court at _____, wherein _____ is plaintiff, and the above-bounden _____ is defendant;

And whereas the said _____ hath been ordered to give bail to the satisfaction of the Court for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of the decree of the Court in case judgment therein be given against him;

And whereas the above-named _____ and _____, at the request of the said _____, have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the said _____ shall appear when called upon as aforesaid, or if in default of such appearance as aforesaid, the said _____ and _____, any or either of them, shall pay unto the said _____ or his executors, administrators or assigns, any sum of money that may be adjudged against the said _____, the defendant in the suit, with costs, then this obligation shall be void, otherwise shall remain in full force.

Signed, sealed and delivered in the presence }
of _____ }

(L.S.)
(L.S.)
(L.S.)
(Clerk of the Court)

21. WARRANT TO ATTACH PROPERTY BEFORE JUDGMENT

Sch. 1

(General Title)

To the Sheriff of Zambia,

Whereas it has been shown to the satisfaction of this Court that
of _____,
the defendant in the above suit, with intent to obstruct or delay the execution of any decree
which may be passed against him therein, is about to dispose of or remove out of Zambia
his goods and chattels:

You are hereby commanded to seize, attach and take into your hands the movable and
immovable property of the defendant (*or* certain property specified to the value of K
) , and to hold the same until the further order of the Court; and you are also commanded
forthwith after the execution of this writ to return the same into the Court, with the place,
time and particulars of execution endorsed thereon.

Dated at _____ the
day of _____ 19 ____ .
(Magistrate)

22. ORDER FOR DELIVERY OF INTERROGATORIES

(General Title)

Upon hearing _____ it is ordered that the
on payment of the _____
sum of K _____ into court (*or* without giving security) be at liberty within
days from the date of this order to deliver to the _____ interrogatories in
writing and that the said _____ do answer the interrogatories by
affidavit and return such answer to me for filing and deliver a copy thereof to the
within _____ days from the service of this order (*add, where payment into*
court ordered , and a copy of the receipt for payment into court) upon him and that the costs
of this application be _____ .

Dated at _____ the _____ day of

19 _____ .

(Magistrate)

23. ORDER FOR AFFIDAVIT AS TO DOCUMENTS

(General Title)

Upon hearing _____ it is ordered that on payment by the
of the sum of K _____ into court (*or* without security given by the
) the _____ do within
_____ days from the service of this order (*add, where payment
into court ordered*, and a copy of the receipt for the payment into court) upon him, answer
on affidavit stating what documents are or have been in

possession or power relating to the matters in question in this action and return such
affidavit to me for filing and deliver a copy thereof to the _____ and that the
cost of this application be _____ .

Dated at _____ the
day of _____ 19 _____ .
(Magistrate)

24. AFFIDAVIT AS TO DOCUMENTS

(General Title)

I, the above-named _____, make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the First Schedule.

2. I object to produce the said documents set forth in the second part of the First Schedule.

3. That (*here state upon what grounds the objection is made and verify the facts as far as may be*).

4. I have had but have not now in my possession or power the documents relating to the matters in question in this action set forth in the Second Schedule.

5. The last-mentioned documents were last in my possession or power on (*state when*).

6. That (*here state what has become of the last-mentioned documents and in whose possession they now are*).

7. According to the best of my knowledge, information and belief I have not now, and never had in my possession, custody or power or in the possession, custody or power of my solicitor or of any other person on my behalf any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document or any other document whatsoever relating to the matter in question in this action or any of them or wherein any entry has been made relative to such matters or any of them other than and except the documents set forth in the First and Second Schedules.

Sworn by the said

day of
19 .

on the }
}

Before me

First Schedule
Second Schedule

25. NOTICE TO PRODUCE (GENERAL FORM)

Sch. 1

(General Title)

Take notice that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this and particularly (*specify them*).

Dated at _____ the
day of _____ 19____ .
(Plaintiff or his Solicitor
or Defendant or his Solicitor)
To _____

26. FORMAL DECREE

(General Title)

It is decreed in the above suit that the above-named plaintiff do recover from the above-named defendant the sum of K _____ together with K _____ for costs, and the said defendant is hereby ordered to pay the sum of K _____ forthwith (*or* by the following instalments).

Dated at _____ the _____ day of _____ 19 _____ .

Debt K
Costs K

(Magistrate)

27. WRIT OF FIERI FACIAS

(General Title)

To
Between

A.B.
C.D.

Under-Sheriff.
Plaintiff
Defendant.

Whereas in the above case in this Court the said _____ on the _____ day of _____ last by judgment of the Court recovered against the said _____ the sum of K _____ together with the sum of K _____ for costs.

This is therefore to require you that of the goods and chattels of the said _____ in this District you cause to be levied by distress and sale of the goods and chattels of the said _____ wherever the same may be found within the District of this Court the sum of K _____ together with your charges about the same and pay to the said _____ the sum aforesaid; and certify to the Clerk of the Court what you have done by virtue hereof for which this shall be your warrant.

Given under my hand this _____ day of _____ 19_____. Clerk of the Court.
(Magistrate)

28. REQUEST AND AUTHORITY TO UNDER-SHERIFF

(Walking Possession)

In the High Court for Zambia, at the
District Registry,
In the Subordinate Court
CIVIL CAUSE No.

Between

Plaintiff
and

Defendant

To the Under-Sheriff and Others, the Bailiffs of the Court.

I hereby request that you will not leave a Possession Man on my premises in close possession of the goods listed overleaf which you have seized under the above warrant of execution.

If this convenience is allowed to me, I undertake, pending the withdrawal or satisfaction of the warrant-

- (a) not to remove the said goods or any portion thereof nor to permit their removal by any person unauthorised by you in that behalf;
- (b) to inform any Sheriff's Officer or other person who may enter my premises for the purpose of levying any other execution or distress that you are already in possession of my goods under the above warrant;
- (c) to notify you immediately at your office of the visit of any such Sheriff's Officer or other person for the purpose of levying as aforesaid.

And I authorise you, or any of you, pending the withdrawal or satisfaction of the above warrant, to re-enter my premises at any time and as often as you may consider necessary for the purpose of inspecting the said goods or completing the execution of the warrant.

Dated this _____ day of _____
19 ____ .

(Judgment Debtor)

NOTE.-A copy of this form must be left with the debtor.

(No. 94 of 1958)

29. JUDGMENT SUMMONS

Sch. 1

(General Title)

Whereas the plaintiff obtained a judgment (*or* order) against the above-named defendant in this Court (*or* in the Subordinate Court of _____ holden at _____) on the _____ day of _____ 19____ for the payment of K _____ and costs, forthwith (*or* on the day of _____ 19____, *or* by instalments of K _____ for every _____ days), and subsequent costs have been incurred in pursuance thereof amounting to K _____ ;

And whereas default has been made in payment of the sum of K _____ payable in pursuance of the said judgment (*or* order), and the plaintiff has required this judgment summons to be issued against you the defendant:

You are hereby summoned to appear personally in this Court at _____ on the _____ day of _____ 19____ at _____ o'clock in the noon to be examined on oath by the Court touching the means you have or have had since the date of the said judgment (*or* order) to satisfy the sum payable in pursuance of the said judgment (*or* order).

Dated at _____ the _____ day of _____ 19____ .
(Magistrate or Clerk of the Court)

To the Defendant. _____ K _____ K

Amount of judgment (*or* order) and costs.

Deduct : Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned before date of order.

Add : Costs of previous judgment summonses, hearings and commitments (if any) since date of judgment (*or* order) allowed by the Magistrate

Deduct :

Paid into court:
 Otherwise than under execution.
 Under execution (after deducting costs of execution).
 Amounts in respect of which an order of commitment has been made since date of judgment (*or* order), and in respect of which defendant has been or may be imprisoned.
 Amounts which were not required to have been paid before the date of this summons.

Sum in payment of which defendant has made default

Costs of this summons. .

..

..

..

..

..

30. JUDGMENT SUMMONS ON JUDGMENT OR ORDER AGAINST A FIRM, OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN HIS OWN

(General Title)

To (a) _____ of _____

Whereas the plaintiff obtained judgment (*or* an order) against the defendant in the name of (b) _____ of _____ above described in this Court (*or* in the Subordinate Court of _____ holden at _____) on the _____ day of _____ 19 _____ for the sum of K _____ (and costs) and there is now due and payable under the said judgment (*or* order) from the said (b) _____ to the said plaintiff the sum of K _____ ;

And whereas the plaintiff has filed an affidavit in this Court a copy whereof is hereto annexed wherein it is alleged that you the above-named (a) _____ (*or* (b) _____) as the person carrying on business on your own behalf in the name of (b) _____) are liable to pay the sum payable under the said judgment (*or* order):

You are hereby summoned to appear personally in this Court at _____ on the _____ day of _____ 19 _____ at the hour of _____ in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the said judgment (*or* order) to pay the said sum of K _____ now due and payable under the said judgment (*or* order).

And take notice that if you deny that you are liable as one of the partners in (*or* the sole member _____ of) _____ the _____ said _____ firm _____ of _____ (*or* as the person carrying on business on your own behalf in the name of _____) to pay the sum payable under the said judgment (*or* order) you must appear at this Court on the day and at the hour above mentioned, and that in default of your so appearing you will be deemed to admit your liability as aforesaid to pay the amount due and payable under the said judgment (*or* order).

Dated at _____ the _____ day of _____ 19 _____ .
(Magistrate or Clerk of the Court)

Amount remaining due under judgment (<i>or</i> order)	..	..	..	..	K
Costs of this summons	..	..	..	..	<u> K </u>
				Total sum due	.. .. .. ..
..	<u> K </u>				

(a) Insert the name of person alleged to be a partner in the firm or sole member thereof

or of the person alleged to be carrying on business in a name other than his own.

(b) Insert name as in the original summons with any amendment made by the Court.

31. ORDER OF COMMITMENT ON A JUDGMENT OR ORDER OF A COURT

(General Title)

To _____ bailiff and the gaoler at

Whereas the plaintiff obtained judgment (or an order) against the defendant in this Court (or in the Subordinate Court of _____ holden at _____) on the _____ day of _____

19 _____ for the payment of K _____ for debt (or damages) and costs, and subsequent costs have been incurred in pursuance thereof amounting to K _____;

And whereas the defendant has made default in payment of K _____ payable in pursuance of the said judgment (or order);

And whereas a summons was at the instance of the plaintiff duly issued out of this Court by which the defendant _____ was required to appear personally at this Court on the _____ day of _____

19 _____ to be examined on oath touching the means he then had or had had since the date of the said judgment (or order) to satisfy the sum then due and payable in pursuance of the said judgment (or order), which summons has been proved to this Court to have been personally and duly served on the defendant;

And whereas at the hearing of the said summons it has been proved to the satisfaction of the Court that the said defendant _____ now has (or has had since the date of the said judgment (or order)) the means to pay the sum due and payable in pursuance of the said judgment (or order) and refuses (or neglects or has refused (or neglected)) to pay the same:

Now therefore it is ordered that for such default as aforesaid the said defendant

shall be committed to prison for _____, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged or an order for his discharge shall be granted pursuant to Order XLI, rule 25.

These are therefore to require you the said _____ to take the said defendant _____ and to deliver him to the gaoler of the prison and you the said gaoler to receive the said defendant and him safely keep in the said prison for _____ from the arrest under this order or until he shall be sooner discharged by due course of law.

Dated at _____ the _____ day of _____ 19 _____ .
(Magistrate)

Sum in payment of which defendant had made default at time of issue of judgment summons K _____
Fees and costs on issue and hearing of judgment summons K _____
Deduct amount paid into court since issue of judgment summons K _____

Fee on issue of this order K_____

Sum on payment of which the debtor is to be discharged K

32. ORDER OF COMMITMENT OF A JUDGMENT SUMMONS ON A JUDGMENT OR ORDER AGAINST A FIRM, OR A PERSON CARRYING ON BUSINESS IN A NAME OTHER THAN HIS OWN Sch. 1

(General Title)

TO _____ bailiff and the gaoler at

Whereas the plaintiff obtained a judgment (*or* order) against the defendant by and in the name of (*a*) _____ above described in this Court (*or* in the Subordinate Court of _____ holden at _____) on the _____ day of _____ 19 _____ , for the sum of K _____ (and costs), and there is now due and payable under the said judgment (*or* order) from the said defendant to the said plaintiff the sum of K _____ ;

And whereas the said plaintiff having filed an affidavit in this Court, wherein it was alleged that (*b*) _____ was liable as one of the partners in (*or* the sole member of) the said firm of _____ (*or* as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (*or* order) a summons was, at the instance of the said plaintiff, duly issued out of this Court, by which the said _____ was required to appear personally at this Court on the day of _____ 19 _____ , to be examined on oath touching the means he had then or had had since the date of the said judgment (*or* order) to pay the sum due and payable under the said judgment (*or* order) and notice was thereby given to the said _____ that if he denied that he was liable as one of the partners in (*or* the sole member of) the said firm of _____ (*or* as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (*or* order) he must appear at this Court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment (*or* order);

And whereas the said summons came on for hearing this day, and the said summons has been proved to this Court to have been personally and duly served on the said _____ ;

And whereas the said _____ did not appear at the hearing of the said summons; (*or* And whereas the said _____ appeared at the hearing of the said summons, and admitted his liability as one of the partners in (*or* the sole member of _____) the said firm of _____ (*or* as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (*or* order);) (*or* And whereas the said _____ appeared at the hearing of the said summons, and denied liability but proof has been made to the satisfaction of the Court that the said _____ is liable as one of the partners in (*or* the sole member of) the said firm of _____ (*or* as the person carrying on business on his own behalf in the name of _____) to pay the said sum);

And whereas at the hearing of the said summons it has now been proved to the

satisfaction of the Court that the said _____ now has (*or* has had since the date of the said judgment (*or* order)) the means to pay the sum due and payable under the said judgment (*or* order), and refuses (*or* neglects *or* has refused (*or* neglected)) to pay the same:

Now therefore it is ordered that for such default as aforesaid the said _____ shall be committed to prison for _____, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged or an order for his discharge shall be granted pursuant to Order XLI, rule 25.

These are therefore to require you the said _____ and others to take the said _____ and to deliver him to the gaoler of the prison at _____ and you the said gaoler to receive the said _____ and him safely keep in the said prison for _____ from the arrest under this order or until he shall be sooner discharged by due course of law.

Dated at _____ the _____ day of _____ 19 _____.
(Magistrate)

Amount remaining due under judgment (<i>or</i> order) at time of issue of of judgment summons .. .. .	..	..	..	..	..	..	..	..	K
Fees and costs on issue and hearing of judgment summons .. .. .	..	..	..	..	..	..	..	..	K
<i>Deduct</i> amount paid into court since issue of judgment summons .. .. .	..	..	..	..	..	..	..	..	..
	K _____								
Fee on issue of this order .. .. .	..	..	..	..	..	..	..	..	K _____
Sum on payment of which the debtor is to be discharged .. .. .	..	..	..	..	..	..	..	..	..
	K _____								

- (a) Insert name, address and description as in the original summons with any amendment made by the Court.
- (b) Insert name, address and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof or of the person alleged to be carrying on business in a name other than his own.

33. AFFIDAVIT FOR LEAVE TO SUMMON GARNISHEE

Sch. 1

(General Title)

and
Garnishee.

I, A.B. of (or I, C.D. of
, solicitor to) the above-named plaintiff, make oath and say:

1. That I (or A.B.) on the day of
recovered judgment (or obtained an order) in the Court holden at
in this action (or matter) against the above-named defendant, for the sum of
K for debt (or damages) and costs.

2. That the said judgment (or order) is still wholly unsatisfied (or is unsatisfied as to
the sum of K).

3. That I am informed and verily believe that the above-named garnishee of

is indebted to the defendant in the sum of (about) K

4. That the garnishee is in respect of the said debt to the defendant within the
jurisdiction of this Court and could be (or has been) sued in respect thereof in this Court on
the following ground (state grounds of jurisdiction).

Sworn by the said
at
on the
day of
19
Before me

34. SUMMONS TO GARNISHEE

(General Title)

and
Garnishee.

Whereas the plaintiff at a Court holden at _____
on the day of _____ 19_____
recovered judgment (*or* obtained an order) against the defendant who resides at _____
and is a (*description of trade or calling*) for the sum of K _____ for debt (*or*
damages) and costs which judgment (*or* order) remains unsatisfied as to the sum of K _____
;

And whereas the plaintiff has filed an affidavit stating that you are indebted to the
defendant in the sum of _____
K _____.

You are hereby summoned to appear at a Court to be holden at _____
on the _____

_____ day of _____ 19_____, at the hour _____
of _____ in the _____ noon, to show cause
why an order should not be made upon you for the payment to the plaintiff of the amount of
the debts due and payable from you to the defendant, or so much thereof as will satisfy the
debt due under the said judgment (*or* order) and the plaintiff's costs of this proceeding;

And take notice that from and after the service of this summons upon you all such debts
are attached to answer the said judgment (*or* order);

And further take notice that if you pay to the Clerk of the Court the amount of such
debts, or so much thereof as will satisfy the debts due under the said judgment (*or* order)
(and the fees and solicitor's costs endorsed on this summons), five clear days before the day
upon which you are required to appear, you will incur no further costs.

Dated at _____ the _____
day of _____ 19_____.
(Clerk of the Court)

TO
Amount remaining due under judgment (*or* order) K
Court fees, including hearing fee K
Solicitor's costs K _____
TOTAL AMOUNT
.. .. . K _____

This summons is issued at the instance of _____ the
above-named plaintiff (*or* solicitor for the above-named plaintiff).

35. NOTICE TO JUDGMENT DEBTOR OF ISSUE OF GARNISHEE SUMMONS

Sch. 1

(General Title)

and
Garnishee.

Take notice that the garnishee summons, a copy of which is hereunto annexed, was issued on the _____ day of _____, and served on the _____ day of _____, and that if you have any cause to show why the Court should not order _____, the garnishee named in the said summons, to pay to the judgment creditor the debt alleged to be due from the garnishee to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs of the garnishee proceedings, you must appear at this Court on _____ the day of _____ at the hour of _____ in the _____ noon, and show such cause accordingly.

Dated at _____ the
day of _____ 19 ____ .
(Clerk of the Court)
TO _____

36. NOTICE TO JUDGMENT CREDITOR OF PAYMENT INTO COURT BY GARNISHEE

(1)

WHERE WHOLE CLAIM PAID IN

(General Title)

and

Garnishee.

Take notice that the garnishee has paid into court the full amount of your claim in these proceedings, together with your costs therein.

The amount paid into court will on application made by you on the day of

at the hour of in the noon be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

Dated at the day of 19 . the
(Clerk of the Court)
TO

(2)

WHERE PART OF CLAIM PAID IN

(General Title)

and

Garnishee.

Take notice that the garnishee has paid into court the sum of K in respect of your claim in these proceedings, and the sum of K in respect of fees and costs.

If you elect to accept the sum paid in in full satisfaction of your claim against the garnishee, and the costs you have incurred, and send to the Clerk of the Court and to the garnishee a written notice of such acceptance forthwith, by post, or by leaving the same at the office of the Clerk of the Court and at the garnishee's residence or place of business, the proceedings against the garnishee will abate, and you will not be liable to any costs incurred by the garnishee after receiving such notice, and the amount paid into court will on application made by you on the day of at the hour of in the noon be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

In default of such notice the proceedings will proceed; and if you do not appear at the

hearing you will be liable to pay to the garnishee such costs as he may incur for appearing at the hearing, or such other sum of money as the Magistrate may order for expenses subsequent to the payment into court.

Dated at _____ the
day of _____ 19 ____ .
(*Clerk of the Court*)
TO _____ .

37. NOTICE TO JUDGMENT DEBTOR OF PAYMENT INTO COURT BY GARNISHEE Sch. 1

(General Title)

and
Garnishee.

Take notice that M.N., the garnishee named in the proceedings herein, has paid into court the sum of K

And further take notice that the said sum will be ordered to be paid out to the judgment creditor, A.B., unless you appear at this Court on _____ the _____ day of _____ at the hour of _____ in the noon, and show cause to the contrary.

Dated at _____ the _____ day of _____ 19 _____ .

(Clerk of the Court)

TO .

38. INTERPLEADER SUMMONS (1)

(To be served on Execution Creditor)

(General Title)

Whereas _____ has made a claim to certain property (*or* to the proceeds of sale (*or* value) of certain property) taken in execution under process issuing out of this Court at your instance (*or* certain rent alleged to be due to him in respect of and issuing out of the premises upon which certain property was taken in execution under process issuing out of this Court at your instance):

You are hereby summoned to appear at a Court to be holden at _____ on the _____ day of _____ 19____ at the hour of _____ in the _____ noon, when the said claim will be adjudicated upon; and such order made thereupon as to the Court shall seem fit.

Dated at _____ the _____ day of _____ 19____ .
(Magistrate or Clerk of the Court)
TO _____

39. INTERPLEADER SUMMONS (2)

(To be served on the Claimant)

(General Title)

TO

You are hereby summoned to appear at a Court to be holden at
on the _____ day of _____ 19____
at the hour of _____ in the _____ noon to
support a claim made by you to certain property (*or* to the proceeds of sale (*or* value) of
certain property) taken in execution under process issuing out of this Court at the instance of
(*a*) _____ and in default of your then establishing such claim the
said property will then be sold and the proceeds thereof paid over (or the said proceeds of
sale (*or* value) will be paid over) according to the exigency of the said process.

Dated at _____ the
day of _____ 19____ .

(Magistrate or Clerk of the Court)

(*a*) Here insert name of execution creditor.

40. BOND FOR COSTS ON APPEAL

(General Title)

Know all men by these presents, that we _____ of _____, _____ of _____, and _____ of _____, are jointly and severally held and firmly bound to _____ of _____, in the sum of _____ kwacha of lawful money, to be paid to the said _____, his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, in the whole, one and every of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.

Dated the _____ day of _____, in the year of our Lord 19 _____.

Whereas a suit is now depending in the court below at _____; wherein the said _____ is plaintiff, and the said _____ is defendant;

And whereas a judgment was given by the court below therein on the day of _____ for the said _____, and the said _____ have applied for leave to appeal from the said judgment;

And whereas it is by law provided that the party appealing shall give security to the satisfaction of the court below for all such costs as may be awarded to any respondent by the Appellate Court;

And whereas the above-named _____ and _____ Sch. 1, at the request of the said _____, have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the above-bounden _____, _____ and _____, any or either of them, shall pay unto the said _____, his executors, administrators or assigns, the costs of the said appeal as the Appellate Court shall order, then this obligation shall be void, otherwise shall remain in full force.

Signed, sealed and delivered in the presence } (L.S.)
of _____ } (L.S.)
_____ } (L.S.)
(Clerk of the Court)

41. WARRANT FOR PRISONER TO GIVE EVIDENCE

(General Title)

To the Keeper of the Prison at _____ .

You are hereby commanded to have _____ , a prisoner under
your custody, before the Court at _____ on _____
the _____ day of _____ next at _____
o'clock in the _____ noon, to give evidence in the above-
named cause, and immediately after he has there and then given his evidence to return.

Issued at _____ the
day of _____ 19 ____ .
(Magistrate)

42. REQUEST FOR A COMPOSITION ORDER

(General Title)

I, _____ of _____ the above-named defendant, state that a judgment was obtained against me in this action on the day of _____ 19_____, for the sum of K_____, and that I am unable to pay the amount forthwith.

I am indebted to the several persons, including the plaintiff in this action, mentioned in the list hereto in the sums set opposite their names, not exceeding in the whole K800, and I am indebted to the best of my knowledge, information, and belief to no other person whatsoever.

I hereby request that an order may be made for the administration of my estate under the Subordinate Courts Act and the payment of my debts in full (or to the extent of _____ ngwee in the kwacha), by instalments of _____ kwacha and _____ ngwee for every _____

LIST OF CREDITORS

Name of Creditor	Address	Amount of Debt
Description		

If any of the above creditors, in addition to the judgment creditor, have sued the defendant in any Court, the summons or order in each case must be produced to the Clerk of the Court.

Note.-The judgment debt must be inserted as well as all other debts

If any creditor is secured or entitled to distrain, or any person in addition to the debtor is liable for any debt, this fact must be stated, with the particulars and estimated value of the security, or the name and address of such other person.

STATEMENT

I STATE-

- That I am _____ years of age, and am (*here state occupation*);
- That I am employed at (*here state name and address and description of employer*);
- That my wages are (*here state amount received weekly or otherwise*);
- That I have (*or have not*) a wife;
- That my wife earns by (*here state the work done by wife, and the wages she earns*);
- That I have the following children living with me (*here insert names and ages of children*):

- (1) _____ aged _____ years
- (2) _____ aged _____ years
- (3) _____ aged _____ years
- (4) _____ aged _____ years
- (5) _____ aged _____ years
- (6) _____ aged _____ years

That numbers _____ earn money (*or are in receipt of incomes as*

43. ORDER DIRECTING REQUEST TO BE FORWARDED TO ANOTHER COURT

Sch. 1

(General Title)

Whereas a judgment was obtained against the above-named defendant in this action on the _____ day of _____ 19____;
;

And whereas the defendant has filed a request in this Court for an Order for the administration of his estate under section 53 of the Subordinate Courts Act;

And whereas in the opinion of the Court it would be inconvenient that this Court should administer the estate;

It is ordered that the said request and a certificate of the said Judgment be forwarded to the Subordinate Court (Class _____), _____ holden at _____ in the District of _____ of which Court the said debtor (or a majority of the creditors of the said debtor) reside(s).

Dated this _____ day of _____
19____.
(Magistrate)

44. ORDER STAYING PROCEEDINGS ON JUDGMENT, ORDER, EXECUTION,
JUDGMENT SUMMONS, OR ORDER OF COMMITMENT

(General Title)

In the matter of a request for a Composition Order against the above-named

Upon the application of the above-named defendant, and it appearing that the said defendant has filed in this Court (*or* in the Subordinate Court of holden at) a request for a Composition Order under section 53 of the Subordinate Courts Act;

And the defendant undertaking not to dispose of or remove any of his goods and chattels which are liable to be seized under Warrant of Execution until after the hearing of the said request;

It is ordered that the proceedings under the judgment (*or* order) obtained against the defendant in this action (*or* writ of execution *or* judgment summons *or* order of commitment) issued in this action against the defendant be stayed until the hearing of the said request on the day of 19

[If the sheriff is in possession under writ of execution, and is ordered to withdraw, add:
And it is ordered that the sheriff do withdraw from possession of the goods and chattels seized under the said writ until after the hearing of the said request.]

[If costs allowed, add:

And it is ordered that the costs of the said writ of execution (*or* judgment summons, *or* order of commitment) incurred by the above-named plaintiff be allowed, and that such costs, if and so far as they are not allowed out of any money received under the writ of execution (*or* judgment summons *or* order of commitment) may on the application of the plaintiff be added to the debt due to him from the said defendant and scheduled to the said request.]

Dated this day of 19
(Magistrate)

45. NOTICE TO DEBTOR

Sch. 1

In the Subordinate Court (Class) holden at
In the matter of a request for a Composition Order against of
debtor.

Take notice, that your request for a Composition Order under section 53 of the
Subordinate Courts Act, (add, if so, which has been forwarded to this Court from the Court
of holden at), will be heard
at the Court House at , on the
day of 19 , at the hour
of in the noon.

You must bring with you to the Court all your books of account, invoices, papers,
summons, or other documents relating to any debts owing by you.

Date
(Clerk of the Court)
To of .

46. NOTICE TO CREDITORS

In the Subordinate Court (Class) holden at
In the matter of a request for a Composition Order against of
debtor.

Whereas the above-named debtor has filed a request for a Composition Order under section 53 of the Subordinate Courts Act, and for the payment of his debts in full (*or* to the extent of ngwee in the kwacha) to be paid by instalments of kwacha and ngwee for every (add, if so, which request has been forwarded to this Court from the Subordinate Court (Class) holden at);

This is to give you notice that the Court will proceed to hear the said request at a Court to be holden at on the day of 19 , at the hour of in the noon.

The debtor states that he owes you the sum of K

The debtor states that he is and is employed at (as set out in the request), and that his wages are ,and that his wife earns and that he has children living with him, of whom earn wages (*or* are in receipt of incomes) amounting to K , and that he has other property, to wit (specifying the same) to the value of (*or*, no other property).

A list of creditors, with the amounts stated to be respectively owing to them, can be inspected on application at the office of the Clerk of the Court.

If you wish to object to the debt of any creditor named in the list, or to the amount of the composition or the instalments which the debtor proposes to pay, you must give written notice thereof, by post or otherwise, to the Clerk of the Court and to the debtor, and in the case of objection to a debt to the creditor whose debt is objected to, five clear days before the day fixed for the hearing of the request, stating in such notice the grounds of your objection.

If you claim more than the amount stated to be due to you, you should bring with you to the Court on the day above mentioned any witnesses, books, etc., necessary to prove your claim.

The debtor's proposal above mentioned does not prejudice the power of the Court to make on the hearing of the request an order providing for the payment of his debts to a greater or less extent, or by greater or smaller instalments, as appears practicable to the Court under the circumstances of the case.

Dated the day of
19 .
(Clerk of the Court)
To of .

47. COMPOSITION ORDER

In the Subordinate Court (Class)
holden at

Number of Composition Order

In the matter of a Composition Order against of
debtor.

The day of 19

It is this day ordered that the above-named debtor do pay the several debts in the Sch. 1
Schedule, and all others now due and which may hereafter be duly proved under this order
in respect of debts now incurred, in full (or to the extent of ngwee in
the kwacha); And it is ordered that the said debtor do pay to the Clerk of the Court K
(kwacha ngwee) every
until such debts shall be paid in full (or to the extent of ngwee in the
kwacha) together with the costs of administering this order, and the costs of
the first of such payments to be made on the day of
19 , and it is directed that

have the conduct of this order.

(Magistrate)

To

Take notice that if you change your address you must at once give notice to the Clerk of
the Court of your new address.

This order may at any time be set aside or rescinded by the Magistrate in any of the
following cases, namely:

- (1) Where two or more of the instalments ordered to be paid are in arrear.
- (2) Where the debtor has wilfully inserted in the list attached to his request the wrong name
or address of any of his creditors, or has wilfully omitted therefrom the name of any
creditor.
- (3) Where the debtor subsequent to the date of the order obtains credit without informing the
creditor that a composition order has been made in respect of his estate.
- (4) Where the order has been obtained by fraud or misrepresentation.
- (5) Where a receiving order has since the date of the composition order been made against
the debtor.
- (6) Where the debtor leaves Zambia before he has fully complied with the order.

SCHEDULE OF DEBTS

Name of Creditor
Address

K

48. NOTICE TO CREDITORS AND OTHER COURTS

In the Subordinate Court (Class _____) holden
at _____

Number of Composition Order _____

In the matter of a Composition Order against _____ of
debtor _____

Take notice, that the Court has this day made a Composition Order providing for the payment of the debts of the above-named debtor in full (*or*, to the extent of ngwee in the kwacha) by instalments of K _____ (_____) every _____, and has directed that shall have the conduct of the order.

This _____ day of _____
19 ____ .
(*Clerk of the Court*)

Please bring this notice with you when you apply for a dividend or attend at the office of the Clerk of the Court for any purpose whatsoever.

49. NOTICE OF A COMPOSITION ORDER MADE IN THE SUBORDINATE Court
(Class)

holden at on the
day of 19 .

Name of Debtor
Residence
Description
Number of Creditors Scheduled .
Judgment .
Non-Judgment .
Gross amount of debts .
Number of Order .

I certify that the above return is correct.

Dated at this
day of 19 .
(Clerk of the Court)

50. NOTICE OF CLAIM TO HAVE ADDITIONAL DEBT SCHEDULED

Sch. 1

In the Subordinate Court (Class _____) holden at _____ .
No. of Composition Order _____ .

In the matter of a Composition Order against _____ of
debtor.

Take notice that _____ states that you owe him the sum of K
for _____ and claims to be scheduled as a creditor for that sum;

And further take notice that if you wish to dispute such claim you must within fourteen
days from this date sign and return the notice at the foot hereof to the Clerk of the Court.

If you do not return the notice as above mentioned the said claim will be taken to be
admitted by you, and will be added to the schedule accordingly.

(Clerk of the Court)

To _____ .

NOTICE

No. of Composition Order _____

I object to the claim of _____ against me.

(Debtor)

To the Clerk of the Court

51. ORDER SUSPENDING OPERATION OF COMPOSITION ORDER OR NEW ORDER FOR PAYMENT BY INSTALMENTS

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ debtor.
of _____

Whereas a Composition Order was made against the above-named debtor on the _____ day of _____ for the payment of his debts in full (*or* to the extent of _____ in the K) by instalments of K _____ every _____ and whereas it appears that the debtor is unable to pay the instalments due under the said order by reason of illness (*or* unavoidable misfortune).

It is hereby ordered that the operation of the above Order be and the same is hereby suspended for a term of _____ from this date (*or* it is hereby ordered that the said debtor do pay the amount remaining due under the said Order by instalments of K _____ every _____ the first of such instalments to be paid on the _____ day of _____ 19 _____).

Dated this _____ day of _____ 19 _____
(Magistrate)

52. JUDGMENT SUMMONS

(On Composition Order)

In the Subordinate Court (Class) holden at

No. of Composition Order . No. of Judgment Summons

In the matter of a Composition Order against of debtor.

Whereas a Composition Order was made against you the above-mentioned debtor in this Court, on the day of 19 , for the payment of your debts in full (or to the extent of in the K) by instalments of K every .

And whereas you have made default in payment of the sum of K payable in pursuance of the said Order:

You are therefore hereby summoned to appear personally in this Court at on the day of 19 at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the Order to satisfy the sum payable in pursuance of the said Order, and also to show cause why you should not be committed to prison for such default; and you are hereby warned that unless the contrary is proved you will be deemed to have since the date of the Order the means to pay the sum in respect of which you have made default, and to have refused or neglected to pay the same.

Dated this day of 19 .

(Clerk of the Court)

Amount paid under Composition Order K
Amount of instalments due and upon payment of which no further proceedings will be had until default in payment of the next instalment K

53. ORDER OF COMMITMENT

Sch. 1

(On Composition Order)

In the Subordinate Court (Class) holden at

No. of Composition Order . No. of Judgment Summons

No. of Order

In the matter of a Composition Order against of debtor.

To bailiff and the gaoler at

Whereas a Composition Order was made against the above-named debtor on the day of for payment of his debts in full (or to the extent of in the K) by instalments of K every ;

And whereas the debtor has made default in the payment of K payable in pursuance of the said Order;

And whereas a summons was duly issued out of this Court by which the debtor was required to appear personally at this Court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the Order to satisfy the sum then due and payable in pursuance of the Order, and to show cause why he should not be committed to prison for such default, which summons has been proved to this Court to have been duly and personally served on the debtor;

And whereas at the hearing of the said summons it has not been proved to the satisfaction of the Court that the debtor has not (or has not had) since the date of the Order the means to pay the sum then due and payable in pursuance of the Order;

And whereas the debtor has refused (or neglected) to pay the same and has shown no cause why he should not be committed to prison:

Now therefore it is ordered that, for such default as aforesaid, the debtor shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.

These are therefore to require you, the said , to take the debtor, and to deliver him to the gaoler of the prison and you the said gaoler to receive the debtor, and safely keep him in the said prison for days from the arrest under this Order, or until he shall sooner be discharged by due course of law.

Issued at this day of 19 (Magistrate)

Amount remaining due under judgment (<i>or</i> order) at time of judgment summons	.. .. .	..	..	..	..	..	..	..	..	K
Fees and costs on issue and hearing of judgment summons	..	..	..	..	..	..	..	..	..	K_____
<i>Deduct</i> amount paid into court since issue of judgment summons	..	..	..	..	..	..	..	..	..	K_
Fee on issue of this order	..	..	..	..	..	..	..	..	..	K_____
Sum on payment of which the debtor is to be discharged	..	..	..	..	..	..	..	..	..	K

54. NOTICE OF DIVIDEND

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ of
debtor.

(1) NOTICE OF PAYMENT OF PLAINTIFF'S COSTS

Take notice that a sum has been paid into Court in this matter to pay your costs of action amounting to
K _____

(2) NOTICE OF DIVIDEND

Take notice that a sum has been paid into Court in this matter to provide for the payment of a

_____ dividend of _____ in the kwacha.

The amount of the dividend on the debt of K _____ scheduled as due to
you is _____

The above sum will be paid out to you on your applying for the same. It will be necessary for you to produce this notice.

A cheque for this amount is enclosed. Kindly acknowledge receipt to me.

Dated this _____ day of _____

19 _____

(Clerk of the Court)

To _____

55. ORDER SUPERSEDING COMPOSITION ORDER

Sch. 1

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ of _____ debtor.

Whereas the above-named debtor has under the said Order paid into Court a sum sufficient to pay each debt scheduled to the extent thereby provided and the costs of the plaintiff and of the administration of the said Order:

It is ordered that such Order be superseded and that the debtor be discharged from his debts scheduled under such Order.

This _____ day of _____
19 ____ .
(Magistrate)

56. ORDER ADDING DEBT TO SCHEDULE

In the Subordinate Court (Class _____) holden at _____

Composition Order No. _____

The Court having been informed that _____ of _____ claims to be scheduled as a creditor for K _____ and on the Court being informed that notice of the said claim has been forwarded under registered post in the prescribed form to the debtor, it is hereby ordered that this debt be added to the schedule of creditors.

This _____ day of _____
19 ____ .
(Magistrate)

57. NOTICE TO DEBTOR TO ATTEND AND SHOW CAUSE WHY COMPOSITION ORDER SHOULD NOT BE RESCINDED

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ of _____

Take notice that you are hereby required to attend personally in this Court at _____ on the _____ day of _____

19 _____ at the hour of _____ in the _____ noon, to show cause why the _____ Composition Order made against you in this Court on the _____ day of _____ 19 _____ should not be set aside or rescinded on the following grounds:

Dated this _____ day of _____ 19 _____
(Clerk of the Court)

To _____

58. NOTICE TO DEBTOR AND OTHER COURTS OF RESCISSION OF COMPOSITION ORDER

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ of _____

Take notice that by Order dated _____ day of _____ 19____ the Composition Order made against (you) (the above-named debtor) in this Court on the _____ day of _____ 19____ has been rescinded on the following grounds:

Dated this _____ day of _____ 19____

(Clerk of the Court)

59. NOTICE OF INSTALMENTS DUE

(Composition Order)

In the Subordinate Court (Class _____) holden at

No. of Composition Order _____

debtor of _____ (1st, 2nd, 3rd, 4th) demand.

Take notice that you are in arrear with your instalments under the Order made in this Court on the _____ day of _____ 19

Unless the sum of K _____ is paid on or before the _____ day of

19 _____ or unless you forward a sworn statement of your reasons for not complying with the Order on or before the above-mentioned date application will be made for the issue of a judgment summons, at the hearing of which the Order may be rescinded.

Date _____
(Clerk of the Court)

60. CERTIFICATE THAT REQUEST HAS BEEN FILED

Sch. 1

In the Subordinate Court (Class _____) holden at _____
. In the matter of a request for a Composition Order against _____ of
, debtor.

I hereby certify that a request for a Composition Order against
of _____,
, under the provisions of section 53 of the Subordinate Courts Act,
has been filed in this Court, and will be heard on the _____ day of
19_____, and that a debt of K_____ stated to be due to
*(here insert name, address and description of the creditor whose name the debtor wishes to
be inserted)* under a judgment *(or an order)* of the _____ *(here
insert name of court in which the judgment or order was obtained)* has been included by the
said _____
in the list of debts owing by him.

Dated this _____ day of _____
19_____.
(Clerk of the Court)

61. NOTICE TO CREDITOR THAT HIS CLAIM IS NOT OBJECTED TO

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against
debtor.

Take notice, that the debtor has not given notice of his intention to dispute your claim,
and that the same has been added to the schedule of debts proved.

Dated this _____ day of _____

19 _____

(*Clerk of the Court*)

To _____

You must retain this notice and produce it when you come to the Court Office to receive
dividends or for any other purpose.

62. NOTICE OF HEARING OF OBJECTION TO CLAIM

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ debtor.

You (*or* the debtor) having given notice of your (*or* his) intention to dispute the claim of
E.F. _____ of _____ against you (*or*
your claim against him).

Take notice, that the objection will be heard at the Court House at
on the _____ day of _____ at the hour
of _____ in the _____ noon.

You should bring with you to the Court on the day above mentioned any witnesses,
books, etc., necessary to defeat (*or* prove) the claim.

(*Clerk of the Court*)

To _____
(*the debtor*) and
(*the claimant*).

63. ORDER SETTING ASIDE OR RESCINDING COMPOSITION ORDER

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ debtor.

It is hereby ordered that the Composition Order made against the above-named debtor in this Court on the _____

_____ day of _____ 19 _____, be and the same is hereby set aside (*or* rescinded) on the following grounds:

(Here state grounds)

Dated this _____ day of _____ 19 _____
(Magistrate)

64. ORDER RESCINDING COMPOSITION ORDER UNLESS DEBTOR PAYS
INSTALMENTS IN ARREAR WITHIN A SPECIFIED TIME OR BY INSTALMENTS

Sch. 1

In the Subordinate Court (Class _____) holden at _____

No. of Composition Order _____

In the matter of a Composition Order against _____ debtor.

It is hereby ordered that the Composition Order made against the above-named debtor in this Court on the

_____ day of _____ 19_____, be
rescinded without further notice to the debtor unless the sum of K _____ in
payment of which the debtor has made default be paid on or before the
day of _____ 19_____, (or by instalments of K _____
for every _____, the first of such instalments to be paid on the
day of _____ 19_____.).

Dated this _____ day of _____
19_____.
(Magistrate)

65. CERTIFIED COPY OF PROCEEDINGS

(General Title)

I, _____, Clerk of the Court of _____, hereby certify and declare that the attached is a true copy of the proceedings in the above cause.

Dated this _____ day of _____ 19____.

(Clerk of the Court)

67. NOTICE BY UNDER-SHERIFF TO EXECUTION CREDITOR OF CLAIM TO GOODS SEIZED

Sch. 1

(General Title)

To A.B.

Whereas on your suit a Writ of *Fieri Facias* in the above entitled cause was issued on the _____ day of _____, 19____, and whereas in accordance with the said Writ certain goods were seized and attached by me on the _____ day of 19____.

Take notice that a claim to such of the said goods as are mentioned in the schedule hereto has been made by _____ of _____.

And take notice that, in accordance with Order XLI, rule 53, of the Subordinate Courts (Civil Jurisdiction) Rules, you are required to inform me in writing within five days of the delivery to you of this notice whether you admit or do not admit the said claim or any part thereof.

(Under-Sheriff)

68. REQUEST TO SEARCH JUDGMENTS REGISTER OR JUDGMENTS SECTION OF THE CIVIL CAUSES REGISTER (INDIVIDUAL SEARCH)

In the Subordinate Court (Class _____) of the _____

To: The Clerk of the Court.

I desire to make personal search in the Judgments Register\Judgments Section of the Civil Causes Register* at your office for the record of any entries against the following
(state the names):

*Delete
whichever is
inapplicable

For the fees, I attach hereunder K

(Signature)

(Address)

(Date)

(No. 323 of 1960)

70. PERMIT FOR GENERAL SEARCHES IN JUDGMENTS REGISTERS
(AGAINST UNSPECIFIED NUMBER OF NAMES)

High Court for Zambia,

Lusaka.

To: All Senior Clerks of Court and
All Clerks of Court.

This is to certify that
(a specimen of whose signature is affixed hereto) is for the year ending the 31st day of
December, 19____, hereby authorised to search for entries against any number of
unspecified judgment debtors in the Judgments Register at any Subordinate Court office in
Zambia, the prescribed fees having been paid to me.

Dated at Lusaka the _____ day of
19____.

(Registrar of the High Court)

NOTE.-This permit is issued subject to the conditions and to the right of indemnity
contained, mentioned or referred to in the application made by _____
, and dated the _____ day of _____, 19____,
being an application for a permit for general searches to be made in the Judgments Registers
of any Subordinate Court office in Zambia.

Specimen signature

(No. 323 of 1960)

71. CERTIFICATE OF CLERK OF SUBORDINATE COURT AS TO AMOUNT DUE AND UNPAID

(Maintenance Orders Act, section 4 (3))

(General Title)

I hereby certify that the amount due and unpaid at the date of this certificate under*
made on the
day of _____, 19____, by the †Court of the (Senior)
‡Resident Magistrate

Subordinate Court, Class

sitting at

the payments whereunder are at present required to be made to me, is.

Dated the _____ day of _____,
19____.

(Clerk of the Court)

* Insert particulars of maintenance order.

† Delete whichever is inapplicable.

‡ Delete if inapplicable.

(No. 247 of 1961)

72. CERTIFICATE OF CLERK OF SUBORDINATE COURT THAT NO PROCESS FOR ENFORCEMENT REMAINS IN FORCE

(Maintenance Orders Act, section 4 (4) (c))

(General Title)

I hereby certify that at the date of this certificate no process remains in force for the enforcement of*

day of _____, 19____, by the †Court of the (Senior)

‡Resident Magistrate

Subordinate Court, Class

sitting at

the payments whereunder are at present required to be made to me.

Dated the _____ day of _____, 19____

(Clerk of the Court)

* Insert particulars of maintenance order.

† Delete whichever is inapplicable.

‡ Delete if inapplicable.

(No. 247 of 1961)

73. CERTIFICATE OF CLERK OF A MAGISTRATE'S COURT THAT NO PROCESS FOR ENFORCEMENT REMAINS IN FORCE AND NO PROCEEDINGS FOR VARIATION ARE PENDING

Sch. 1

(Maintenance Orders Act, section 7 (4) (c))

(General Title)

I hereby certify that at the date of this certificate no process remains in force for the enforcement and no proceedings are pending in a Magistrate's Court for the variation of*

made on the

day of , 19 ,

by the High Court (at the

District Registry)† the payments whereunder are at present required to be made through me.

Dated the day of , 19

(Clerk of the Court)

* Insert particulars of maintenance order.

† Delete if inapplicable.

(No. 247 of 1961)

74. DECLARATION AS TO THE AMOUNT DUE AND UNPAID

(Maintenance Orders Act, section 4 (3))

(General Title)

I. * _____, of _____,
, do solemnly and
sincerely declare that the amount due and unpaid at the date of this declaration
under †
made on the _____
day of _____, 19____, †Court of the (Senior) ‡Resident
Magistrate

Subordinate Court, Class

sitting at _____
whereunder I am entitled to receive payments, is

And I make this solemn declaration, conscientiously believing the same to be true by
virtue of the provisions of the Statutory Declarations Act, 1835, of the United Kingdom.

(Signed)

Declared at _____, the _____
day of _____, 19____,
before me,

(Commissioner for Oaths)

(or other description)

* Full names.

† Insert particulars of maintenance order.

‡ Delete whichever is inapplicable.

§ Delete if inapplicable.

(No. 247 of 1961)

75. DECLARATION THAT NO PROCESS FOR ENFORCEMENT REMAINS IN FORCE

(Maintenance Orders Act, section 4 (3))

(General Title)

I, * _____, of _____,
, do solemnly and sincerely declare that at the date of this declaration no process remains in force for the enforcement of _____ made on the _____ day of † _____, 19 _____, by the ‡ Court of the (Senior) Resident Magistrate

Subordinate Court, Class

sitting at _____ whereunder I am entitled to receive payments.

And I make this solemn declaration, conscientiously believing the same to be true by virtue of the provisions of the Statutory Declarations Act, 1835, of the United Kingdom.

(Signed)

Declared at _____, the _____ day of _____, 19 _____,

before me,
(Commissioner for Oaths)
(or other description)

* Full names.

† Insert particulars of maintenance order.

‡ Delete whichever is inapplicable.

§ Delete if inapplicable.

(No. 247 of 1961)

76. DECLARATION THAT NO PROCESS FOR ENFORCEMENT REMAINS IN FORCE **Sch. 1**
AND NO PROCEEDINGS FOR VARIATION ARE PENDING

(Maintenance Orders Act, section 7 (4) (c))

(General Title)

I, * _____, of _____,
, do solemnly and
sincerely declare that at the date of this declaration no process remains in force for the
enforcement and no proceedings are pending in a Magistrates' Court for the variation
of†
made on the _____
day of _____, 19 __, by
the High Court (at the _____
District Registry)‡ whereunder I am entitled to receive
payments.

And I make this solemn declaration, conscientiously believing the same to be true by
virtue of the provisions of the Statutory Declarations Act, 1835, of the United Kingdom.

(Signed)

Declared at _____, the
day of _____, 19 __,
before me,

(Commissioner for Oaths)

(or other description)

* Full names.

† Insert particulars of maintenance order.

‡ Delete if inapplicable.

(No. 247 of 1961)

77. CERTIFICATE OF CLERK OF SUBORDINATE COURT THAT COPY OF
MAINTENANCE ORDER IS A TRUE COPY SENT FOR REGISTRATION

(Maintenance Orders Act, section 4(4) (c).)

(General Title)

I hereby certify that this is a true copy of*
and that it is sent to the Registrar/District Registrar† of the High Court at
, in accordance with the provisions of section 4 (4) (c) of the Maintenance Orders Act and of
Order XXXVII, rule 4, of the Subordinate Courts (Civil Jurisdiction) Rules.

Dated the _____ day of _____
, 19 ____ .

(Clerk of the Court)

* Insert particulars of maintenance order.

† Delete whichever is inapplicable.

(No. 247 of 1961)

78. NOTICE THAT PAYMENTS HAVE BECOME PAYABLE THROUGH THE CLERK OF A MAGISTRATE'S COURT

(Maintenance Orders Act, section 4 (7))

(General Title)

To* _____ of

You are hereby given notice that the sums payable by you under†
_____ made on the

day of

_____, 19_____, by the High Court (at the District Registry)‡ and registered in this Court under Part II of the Maintenance Orders Act, have under an order of the Court dated the day of _____, 19_____, become payable through (me)§ Section (the clerk of the (Senior)‡ Resident Magistrate's Court, at _____)§.

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be sent to the clerk of the (Senior)‡ Resident Magistrate's Court at ||

Dated the _____ day of _____, 19_____.

(Clerk of the Court)

* Insert full names of defendant.

† Insert particulars of maintenance order.

‡ Delete if inapplicable.

§ Delete whichever is inapplicable.

|| State address.

(No. 247 of 1961)

79. NOTICE THAT PAYMENTS UNDER A SUBORDINATE COURT ORDER HAVE
CEASED TO BE PAYABLE THROUGH THE CLERK OF A SUBORDINATE COURT

Sch. 1

(Maintenance Orders Act, section 4 (6))

(General Title)

To* of.

You are hereby given notice that the sums payable by you under†
made on the
day of 19 , by this Court have by reason of the registration of the said order in the
High Court (at the District Registry)‡ ceased to be payable
to §

Payments under the order (including payments in respect of any sums due at the date of
the receipt by you of this notice) should henceforth be paid to ||

Dated the day of
, 19 .

(Clerk of the Court)

* Insert full names of defendant.

† Insert particulars of maintenance order.

‡ Delete if inapplicable.

§ State clerk of Subordinate Court to whom payments have hitherto been required to be
made.

|| State name and address of the person entitled to payments under the order.

(No. 247 of 1961)

80. NOTICE OF CANCELLATION OF REGISTRATION OF A HIGH COURT ORDER

(Maintenance Orders Act, section 7 (5))

(General Title)

To* _____ of.

You are hereby given notice that the registration in this Court under Part II of the Maintenance Orders Act of † made on the _____ day of _____, 19____, by the High Court (at the _____ District Registry)‡ has been cancelled.

Sums payable by you under the said order have by reason of the cancellation of the registration of the said order ceased to be payable through §

Payments under the order (including payments in respect of any sums due on the date of the receipt by you of this notice) should henceforth be paid to ||

Dated the _____ day of _____, 19____.

(Clerk of the Court)

* State full names of defendant.

† Insert particulars of maintenance order.

‡ Delete if inapplicable.

§ State clerk of Magistrate's Court through whom payments have hitherto been required to be made.

|| State name and address of person entitled to payments under the order.

(No. 247 of 1961)

81. ORDER REMITTING TO THE ORIGINAL COURT APPLICATION FOR VARIATION OF REGISTERED MAINTENANCE ORDER

Sch. 1

(Maintenance Orders Act, section 6 (4))

(General Title)

Complaint has been made by *
of
(hereinafter called the complainant)
who states that by †
made on the _____ day of _____
, 19 _____, by the High Court (at the _____ District
Registry)‡ and registered on the _____ day of _____
, 19 _____, in the Magistrate's Court sitting at _____
, § *(hereinafter called the defendant)* was
ordered ||

:
And the complainant has applied for the said order to be varied by an order requiring on the ground that

(And the said complaint has been sent to the Clerk of this Court in pursuance of rule 34 of the Magistrates' Courts Rules, 1952, of the United Kingdom).‡

It appearing to this Court that it is appropriate to remit the application to the High Court (at the _____ District Registry)‡, it is ordered that the application be so remitted.

Dated the _____ day of _____, 19 _____.

(Magistrate)

* Insert full names.

† Insert particulars of maintenance order.

‡ Delete if inapplicable.

§ Insert full names of defendant.

|| State shortly terms of original order, and mention any subsequent order and effect thereof.

(No. 247 of 1961)

82. ENDORSEMENT THAT NO ARREARS REMAIN TO BE RECOVERED

(Maintenance Orders Act, section 7 (3))

(General Title)

Whereas it appeared to this Court this day on discharging *
that
no arrears remain to be recovered thereunder, notice is hereby given under section 7 (3) of
the Maintenance Orders Act.

Dated the _____ day of _____, 19

(Clerk of the Court)

* Insert particulars of maintenance order.
(No. 247 of 1961)

83. ATTACHMENT OF EARNINGS ORDER

(Maintenance Orders Act, sections 8 and 9)

(General Title)

To *
of
.
of
years, who is
and
employed by
who works at
a
(hereinafter called the defendant) is
under a maintenance order made on the
day of
, 19
, by the ‡

required to make payments of
a week/month § to ||

And on the complaint of ¶
of

, a person entitled to
receive the said payments, it appears that at the time the complaint was made there was due
under the order and unpaid an amount equal to not less than four weekly payments required
by the order (or if the maintenance order is not for weekly payments, not less than two of
the payments required by the order) and that earnings fall to be paid by you to the
defendant.

It is hereby ordered that out of those earnings you shall make payments in accordance
with the Schedule to the Maintenance Orders Act to the clerk of ‡
for transmission to ||
of

, a person entitled to
receive payments under the maintenance order.

And it is further ordered that for the purpose of calculating the said payments the normal
deduction rate
shall be
a week/month § and the protected earnings rate
shall be a week/month §.

Dated the
day of
, 19
.

(Magistrate)

- * Insert full names of employer.
† Insert full names of defendant.
‡ Insert name of court.
§ Delete whichever inapplicable.
|| Insert full names of person to whom payments ordered to be made.
¶ Insert full names of complainant.

NOTE-(1) This order does not come into force until the expiration of *seven* days from the date when a copy is served on the person to whom it is directed.

(2) Any queries arising in connection with this order should be directed to the clerk of the court for the above-mentioned court.

(No. 247 of 1961)

84. NOTICE THAT DEFENDANT IS NOT EMPLOYED BY PERSON TO WHOM AN ATTACHMENT OF EARNINGS ORDER IS DIRECTED Sch. 1

(Maintenance Orders Act, section 12 (4))

(General Title)

To *

An attachment of earnings order made by the Court on the day of _____, 19____ relating to earnings falling to be paid to †

_____ of
(hereinafter called the defendant), was directed to, and served on me ‡:

I give notice that on no occasion during the period of four weeks immediately preceding the day of _____, 19____ have I been the defendant's employer, that is to say, a person by whom as a principal and not as a servant or agent earnings within the meaning of the Maintenance Orders Act fell to be paid to the defendant.

Dated the _____ day of _____ 19____.

(Signed)

* Insert appropriate court.

† Insert name of defendant.

‡ Insert name of person to whom the attachment of earnings order was directed.

(No. 247 of 1961)

SECOND SCHEDULE

Sch. 2

(Rule 5)
PART I

FEES

SUMMONS, MOTIONS, ETC.

<i>No.</i>	<i>First Column</i> <i>Item</i>	<i>Second Column</i> <i>Fee units</i>	<i>Third Column</i> <i>Document to be received</i>
1.	On-(i) any claim not exceeding K6,000,000	139	The filed copy
2.	On a counter-claim (including hearing fee)	111	The filed copy
3.	On issue of a judgment summons (including hearing fee and actual committal, if any)	83	The filed copy Document to be Stamped
4.	On entering garnishee proceedings (including hearing fee and entering and issuing judgment or order given or made thereon)	111	The filed copy
5.	On application for relief by way of interpleader otherwise than under execution (including hearing entering and issuing judgment or order given or made thereon)	111	The filed copy
6.	On application to review order under judgment summons copy		28 The filed
7.	On sealing warrants, commission in examining witness or other documents	28	The filed copy
8.	On interrogatories-every set	28	The filed copy
9.	On interrogatories-every set of answers to	19	The filed copy
10.	On every summons to witness	19	The filed copy
11.	On every affidavit filed or deposition used at trial	17	The filed copy
12.	On issuing every order not otherwise provided for	22	The filed copy
13.	On certifying a copy of a document as an office copy	11	The filed copy
14.	On copies of proceedings per page or part thereof	56	The filed copy
15.	On taxation of costs	For every 56 or portion of 56 allowed 11	The bill

	Maximum	417	
16.	On warrant for prisoners to give evidence	22	The filed copy
17.	On every writ of execution	44	The filed copy
18.	On order of reference under O.XIX	44	The filed copy
19.	Per page of transcript of record	6	
20.	On filing notice of change of advocate	22	The filed copy
21.	On commission to take evidence	44	The Commission
22.	On an examination of a witness before the court or an officer of the court		
	For each hour or part thereof	44	The order
23.	An application (including registration) to register a Judgment when no fee provided by the Act providing for registration certificate		44 The
24.	On personal individual search in a Judgment Register or in the Judgment Section of a Civil Causes Register:		
	For every name	11	The search
25.	On personal general searchers in the Judgments Register or an unspecified number of names in any one calendar year, in any court office		
		556 for a year or part thereof (in cash payable to the Registrar of the High Court)	

PART II

Sch. 2

APPEALS

(Including Appeals from Local Courts)

(These fees are payable in cash)

Fee units

1. On notice of intention to appeal or application for leave to appeal
44
2. On leave being granted
44

PART III

Fees, etc. on Execution and on service

(The fees are payable in cash)

1. For an arrest by Sherrif's Officer
83
2. For seizure by Sherrif's Officer
83
3. For travelling allowances to effect arrest or seizure per Km
17
4. For man or, when necessary, man in possession, the sum actually and reasonably paid.
5. For removal of goods or animals to a place of safekeeping when necessary and for warehousing or taking charge of same when removed, the sum actually and reasonably paid.
6. For advertising and giving publicity to the printing catalogues, bills and notices and distributing and posting same, the sum actually and reasonably paid.
7. On sale under writ or warrant, 5 per centum of the amount realised or of the amount due under the writ or warrant, whichever is the less.
8. For commission to the auctioneer on sale to include inventory and valuation, compiling catalogue and preparing for sale, 10 per centum of the amount realised or of the amount due under the writ or warrant whichever is the less.
9. Where execution is withdrawn, satisfied or stopped after seizures but before sale 2.5 per centum of the amount due under the writ or warrant.
10. For commission to the auctioneer where execution is withdrawn, satisfied or stopped after he has been instructed to sell, to include inventory, valuation compiling catalogue and preparing for sale, 5 per centum of the

amount due under the writ or warrant.

11. For commission on obtaining possession under writ of possession,
2.5 per centum of gross rateable value.

12. Fee for service of a summons, order, writ or other process of the court
by a bailiff or court messenger:

(1) not more than three kilometres from the office of the bailiff
or messenger, as the case may be

44

(2) more than three kilometres from such office

44

(a) fee 44

(b) and actual out-of-pocket expenses (other than subsistence) to
be receipted. 44

(3) In any case where-

(a) a court has directed that service shall be affected by register
letter or advertisement, the provisions herein as to fees, expenses
and allowances shall not apply; the cost of the advertisement
shall be allowed to the party paying for same;

(b) it is apparent that a bailiff or messenger cannot reasonably be
expected to effect service and return to his office within a
period of twelve hours, the party on whose behalf service
is to be effected shall first apply to the court for direction as
to the manner in which service is to be called out.

NOTE: The person at whose instance the above action is instigated shall be liable in the first
place for all the above items, subject to any right of recovery against the person in
respect of whom they are issued.

(As amended by S.I. No. 87 of 1997)

THIRD SCHEDULE
(o.l.r.12)

Sch. 3

WITNESS' ALLOWANCES

(1) The allowance for witnesses shall be as follows:

<i>Class of person</i>	<i>Minimum payable per day</i>	<i>Maximum payable per day</i>
	K	K
Professional persons, owners, directors or managers of business and expert witness	3,800	7,500
Clerks, artisans and others	2,300	5,300

(As amended by S.I. No. 87 of 1997)

LAWS OF THE REPUBLIC OF ZAMBIA

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Volume 4

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