

**LEGAL NOTICE NO. ....**

**THE SMALL CLAIMS COURT ACT (No. 2 of 2016)**

**THE SMALL CLAIMS COURTS RULES, 2017**

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**LEGAL NOTICE NO.**

**THE SMALL CLAIMS COURT ACT (No. 2 of 2016)**

**THE SMALL CLAIMS COURTS RULES, 2017**

IN EXERCISE of powers conferred by section 50 of the Small Claims Court Act, the Chief Justice makes the following Rules—

Short title and commencement

1. These Rules may be cited as the Small Claims Courts Rules, 2017 and shall come into force on such date as the Chief Justice may, by notice in the Gazette, appoint.

Interpretation

2. In these Rules unless the context otherwise requires—

“Act” means the Small Claims Courts Act;

“Adjudicator” means an Adjudicator appointed under section 5 of the Act;

"claimant" means a person who is making the claim;

“creditor” means a person who, by order of the Court, a debtor is required to pay;

“Court” means the Small Claims Court established under section 5 of the Act;

“debtor” means a person who, by order of the Court, is required to pay a creditor;

“electronic document” means a document that has been transmitted for filing in Court electronically;

“intermediary” means a person approved by the Court who acts in a matter on behalf of a minor;

“Registrar” means the Registrar of the Small Claims Court appointed pursuant to section 8 of the Act; and

“respondent” means a person against whom a claim is made.

Filing a claim

3. (1) To file a claim a person shall complete a statement of claim following the instructions on the prescribed form.

(2) A claimant shall file a statement of claim and pay the required fee at the Court nearest to where—

(a) the transaction or event that resulted in the claim took place; or

(b) the respondent lives or carries on business.

(3) A claimant may name more than one respondent in a statement of claim where the claim against each respondent is related to or connected with the original subject matter of the claim.

(4) A claimant who has a claim amounting to more than one hundred thousand shillings may abandon that part of the claim that is in excess of one hundred thousand shillings.

(5) To abandon part of a claim, the claimant shall state on the statement of claim that the amount over one hundred thousand shillings is abandoned.

(6) A claimant who abandons part of a claim may not at any time sue for the abandoned part of the claim, unless the whole of the claim is withdrawn under rule 6(8) and then the claim is pursued in the Magistrates Court.

(7) A claimant whose claim is based on damage to the claimant's vehicle, resulting from a motor vehicle accident, shall attach to the statement of claim either—

(a) an itemized estimate of damage from a qualified mechanic; or

(b) a receipt for repairs completed by a qualified mechanic.

(8) An Adjudicator may refuse—

(a) to accept an itemized estimate of damage; or

(b) full recovery of a claim based on a receipt submitted under rule 3(7).

(9) A claimant making a claim against a deceased person shall make the claim against the estate of the deceased.

Serving the  
statement of claim

4. (1) The claimant shall serve, in the manner set out in rule 23, each respondent named in the statement of claim with the respondent's copy of the statement of claim.

(2) Where a statement of claim has not been served within twelve months after it was issued by the Court, it expires but the claimant may apply to have it renewed under rule 20(3).

(3) A statement of claim may be served on an individual outside local limits of the jurisdiction of the Court where—

- (a) the individual normally resides in the local limits of the jurisdiction of the Court;
- (b) the transaction or event that resulted in the claim took place in the local limits of the jurisdiction of the Court; or
- (c) the Court gives permission.

(4) Before a statement of claim is served outside local limits of the jurisdiction of the Court, the claimant shall indicate the time limit for filing a response from outside local limits of the jurisdiction of the Court on the statement of claim as set out in rule 5(5) and file a copy, within that time limit on the statement of claim, at the Court.

(5) Where a statement of claim cannot be served, the claimant may apply to the Court to—

- (a) permit another method of service to be used; and
- (b) set the time limit for filing a response.

(6) Where another method of service is permitted, a copy of the Court order shall be served with the statement of claim unless the Court—

- (a) orders otherwise; or
- (b) orders notice to be given by advertisement in a newspaper with national circulation.

(7) A statement of claim that is served as permitted by a Court order is validly served.

(8) Where the Court permits a notice to be given by advertisement, the party who obtained the order shall pay for the advertisement.

Responding to a claim

5. (1) A respondent who receives a statement of claim may take one or more of the following actions—

- (a) pay the amount claimed directly to the claimant and ask the claimant to withdraw the claim under rule 11;
  - (b) admit all or part of the claim;
  - (c) admit all or part of the claim and propose a payment schedule following the requirements of rule 15;
  - (d) oppose all or part of the claim by listing reasons why the claim is opposed;
  - (e) make a counterclaim against the claimant under rule 6;
  - (f) apply to transfer the proceeding as set out in rule 5(6); and
  - (g) make a claim against a third party under rule 7.
- (2) A respondent who intends on taking an action under rule 5(1)(b) to (g) shall complete a response in the prescribed form.
- (3) A respondent shall file a response at the Court where the statement of claim was filed.
- (4) A respondent shall serve a copy of the response on all parties named in the statement of claim in the manner set out in rule 23.
- (5) A response to a statement of claim shall be filed by a respondent within—
- (a) ten days of service, where the respondent was served in local limits of the jurisdiction of the Court; or
  - (b) within thirty days of service where the respondent was served outside local limits of the jurisdiction of the Court.
- (6) Where a respondent resides a considerable distance from the Court where the statement of claim was filed, and the respondent has outlined in the response a defence that is more than a bare denial, the respondent may apply to the Court under rule 20(2)(f) to have the case transferred to a Court near where the respondent resides.
- (7) Further to sub rule (6), the respondent shall satisfy the Court that there is a reason for the transfer and the Court shall give notice of the application to transfer to the claimant, and the claimant may, within fourteen days of receiving the notice, respond.

(8) Where a respondent admits all or part of the claim in a response and proposes a payment schedule, the respondent shall serve a copy of the response with the section entitled “Agreement with Claim” complete.

(9) Before the settlement conference, a claimant may accept an admission in full settlement of a claim by applying to the Court in the prescribed form for a judgment in the same terms as the respondent’s admission.

(10) Where a claimant accepts the admission of a respondent, but the respondent has not proposed how the amount owed shall be paid, the claimant may apply to the Court for a judgment, and follow the steps set out in rule 15 to enforce the judgment including requesting a payment hearing to determine how the money will be paid.

(11) A default judgment shall not issue against the State without leave of the Court.

Making a  
counterclaim

**6.** (1) A counterclaim is a claim made by a respondent against a claimant that can be conveniently tried at the same time as the claimant’s claim, and includes a set-off.

(2) A respondent may make a counterclaim against a claimant in the response following the instructions on prescribed form.

(3) A respondent shall serve a counterclaim which is contained in the response on all parties named in the statement of claim in the manner set out in rule 23.

(4) A claimant who receives a response which makes a counterclaim may take one or more of the following actions—

(a) pay the amount of the counterclaim directly to the respondent and ask the respondent to withdraw the counterclaim;

(b) admit all or part of the counterclaim;

(c) admit all or part of the counterclaim and propose a payment schedule under rule 15; and

(d) oppose all or part of the claim by listing reasons why the claim is opposed.

(5) A respondent who has a counterclaim amounting to more than one hundred thousand shillings may—

(a) abandon part of the counterclaim so it may be heard in the Court;  
or

(b) commence an action in a Magistrates Court.

(6) To abandon part of a counterclaim, the respondent shall state on the counterclaim part of the response that the amount over one hundred thousand shillings is abandoned.

(7) A respondent who abandons part of a counterclaim may not at any time sue for that part.

(8) A respondent who commences an action in a Magistrates Court against a claimant may apply to the magistrate for orders suspending the claim.

(9) Where the small claims trial is held and a judgment is entered or other order is made against the respondent, the Adjudicator may order the claimant not to take any action to enforce the judgment or order—

(a) until a date set by the Adjudicator; or

(b) until a decision is given by the Magistrate Court on the respondents action, whichever comes first.

(10) Where a respondent commences an action in the Magistrate Court against a claimant who has abandoned part of a claim under rule 3(5), the claimant may withdraw the claim from the Court, and—

(a) commence an action in the Magistrate Court and claim the higher amount; or

(b) participate in the action began by the respondent in the Magistrate Court and claim the higher amount.

Third parties

7. (1) Where a respondent who has filed a response believes that another person is liable to pay all or part of the claim, the respondent may make a claim against the other person by—

(a) completing a third party notice following the instructions in the prescribed form, where the settlement conference has not been held; or

(b) applying to an Adjudicator under rule 20(3) for an order permitting a claim to be made against the other person where the settlement conference has been held.

(2) A respondent shall file a third party notice at the Court where the statement of claim was filed.

(3) The respondent shall serve, in the manner set out in rule 23, a person named as the third party with the following—

- (a) a copy of the third party notice;
- (b) a copy of the statement of claim;
- (c) a copy of the response to the statement of claim; and
- (d) a copy of the notice of settlement conference or trial, where one has been issued.

(4) A respondent shall serve the documents referred to in rule 7(3) on a third party in the same way as required for service of a statement of claim under rule 23.

(5) Within twenty-one days after filing a third party notice, the respondent shall file a certificate of service in the prescribed form at the Court to prove that the documents have been served as required, unless the third party has filed a response.

(6) Where a respondent does not file a certificate of service as required under rule 7(5), the third party notice shall expire, unless renewed for a further twenty-one days by the Court upon the application of the respondent, under rule 20(3).

(7) A respondent shall serve a copy of the third party notice on each of the other parties within twenty-one days after it is filed in the manner set out in rule 23.

(8) To respond to a third party notice, the person named as a third party shall follow the rules for responding to a claim under rule 5.

(9) An Adjudicator may make an order involving any of the parties.

(10) Where a third party files a response after a settlement conference another settlement conference shall be held, unless an Adjudicator orders otherwise.

Where a respondent does not respond to a claim

**8.** (1) Where a respondent does not file a response within the time limit under rule 5(5), the claimant may ask the Court for a default judgment.

(2) A default judgment shall not be made on a counterclaim or third party notice, except under rule 20(2)(j).

(3) To apply for a default judgment under rule 8(1), a claimant shall complete the prescribed form following the instructions on the form, and file it at the Court, together with a copy of the certificate of service for the statement of claim.

(4) Where a claimant completes the steps in rule 8(3), the Court may—

(a) enter a default judgment where it is satisfied that there is sufficient proof; or

(b) set a hearing date for the claimant to prove the claim.

(5) A default judgment shall require a respondent to pay the amount claimed plus amounts expended for filing and service of documents as allowed under rule 26.

(6) Where another respondent has filed a response and a date is set for a settlement conference or trial of the claim, the hearing shall be held at that time, unless an Adjudicator orders otherwise.

(7) A respondent who has not filed a response is not entitled to receive notice of a hearing under this rule.

(8) After a date is set for a hearing under this rule, a respondent may not file a response without the permission of an Adjudicator under rule 20(3).

(9) After hearing the claimant, the Adjudicator may—

(a) where the claim is for money, make a default judgment that requires the respondent to pay the amount determined by the Adjudicator plus expenses under rule 25; or

(b) in any other case, make the appropriate order.

(10) Where a claimant does not attend Court at the time set for a hearing under this rule, the Adjudicator may cancel the hearing, but the claimant may ask the Court to reschedule it.

(11) The creditor may collect payment under the default judgment in accordance with rule 15.

(12) Despite rule 20(5), where an application has been made to set aside a default judgment the Adjudicator may, where appropriate, dispense with a hearing.

Documents that shall be served

9. (1) Where a claim has been scheduled for a trial, hearing of an application or settlement conference, the parties to that claim shall file with the Court a list of documents that the party is going to rely on at the trial, hearing of an application or settlement conference.
- (2) A list of documents and a copy of each document shall be served, in the manner set out in rule 21, on the other party at least three days before a trial, application or settlement conference unless rule 13 provides otherwise.
- (3) Where a party claims that a document is privileged or not admissible in Court, the party so claiming shall state this on their list of documents.
- (4) Where a party does not file their list of documents with the Court or serve copies on the other parties named in the statement of claim in the manner set out in rule 23, the Court may order that party to do so.
- (5) Where a party has filed and served their list of documents and realized the list was not correct or was incomplete, that party shall file a supplementary list of documents and provide the other party with copies of the documents not included in the first list.
- (6) Where a party does not file and serve their list and copies of the documents in the manner set out in rule 21, the Court may make an order it considers just, including an order that the proceeding be dismissed, or an order that the defence be struck and judgment entered.

Settlement conference

10. (1) Before a trial date is set, a settlement conference may be held at the time and place set by the Court, unless the Court orders otherwise.
- (2) The Court shall serve a notice of settlement conference on the parties at least fourteen days before the date set for the settlement conference.
- (3) All parties to a claim shall attend the settlement conference.
- (4) A party who is not a natural person shall be represented at a settlement conference by a person who has authority to settle the claim.
- (5) A party to a claim shall bring to the settlement conference all documents and reports that the party shall rely on at trial.

(6) Where, despite the best efforts of a party, a document or report cannot be brought to a settlement conference, that party may apply to the Court for an order postponing the conference under rule 20(3) as long as the application is filed at least seven days before the date set for the conference.

(7) Where a settlement conference cannot be conducted properly because a party is not prepared for it, the Adjudicator may order that party to pay the reasonable expenses of the other party or parties.

(8) A party may change a settlement conference date—

- (a) with the prior consent of all parties, by contacting the Court to determine a suitable date;
- (b) by filing a consent to change the date under rule 20(1); or
- (c) by applying for an order changing the date of the settlement conference under rule 20(3) at least seven days before the date set for the settlement conference, unless the Court orders otherwise and giving notice to the other party as the Court requires.

(9) Where the date of the settlement conference is changed, the Court shall notify the parties of the place and time of the rescheduled conference.

(10) At a settlement conference where the person hearing the matter is an Adjudicator, the Adjudicator may do one or more of the following—

- (a) facilitate settlement of the matter;
- (b) decide on issues that do not require evidence;
- (c) enter a judgment or make another appropriate order, in terms agreed to by the parties, in accordance with rule 15;
- (d) set a trial date where a trial is necessary;
- (e) discuss evidence that shall be required and the procedure that shall be followed where a trial is necessary;
- (f) order a party to produce any information at the settlement conference or anything as evidence at the trial;
- (g) where damage to property is involved in the dispute, order a party to permit a person chosen by another party to examine the property damage;

- (h) adjourn the settlement conference and make an order for examination of property or records or disclosure of evidence between the parties to occur before the next settlement conference;
- (i) adjourn the settlement conference to pursue further settlement discussions; and
- (j) make an order for the just, speedy and inexpensive resolution of the claim.

(11) An Adjudicator who presides over a settlement conference shall not hear the matter where it proceeds to trial, unless the parties agree to have that Adjudicator preside at the trial.

(12) Where the person hearing the matter is not an Adjudicator, that person who has been designated by the Registrar may do one or more of the following—

- (a) facilitate settlement of the matter;
  - (i) decide on issues that do not require evidence,
  - (ii) set a trial date where a trial date is necessary;
  - (iii) discuss the evidence that shall be required and the procedure that shall be followed where a trial is necessary;
  - (iv) make recommendations to an Adjudicator to order a party to produce any information at the settlement conference or anything as evidence at the trial, and
  - (v) where damage to property is involved in the dispute, make recommendation to an Adjudicator to order a party to permit a person chosen by another party to examine the property damage;
- (b) file a report with the Court which may contain a question or issue arising from the Court's decision, or make a statement of the facts from which the Court may draw inference it considers just; and
- (c) may recommend to an Adjudicator that an order be made.

(13) On receipt of the report or recommendation referred to in rule 10(12), the Adjudicator may—

- (a) adopt a report or recommendation in whole or in part;

- (b) vary or reverse a report or recommendation;
  - (c) require a supplemental report;
  - (d) remit the report or any part of it for further consideration to the same or another person designated by the Registrar;
  - (e) decide a question or issue raised by the settlement conference or the evidence taken at the settlement conference, with or without additional evidence;
  - (f) order the entry of the judgment based on the report, recommendation or otherwise as he or she considers just, in accordance with rule 15; or
  - (g) enter judgment or make an order that is just, in accordance with rule 15.
- (14) Where a party does not disclose evidence as required by an Adjudicator's order, an Adjudicator at the adjourned settlement conference or at the trial may—
- (a) grant an adjournment and order that the defaulting party pay all the reasonable expenses of the other party or parties incurred as a result of the adjournment;
  - (b) order the matter to proceed without permitting the defaulting party to produce the evidence at trial; or
  - (c) dismiss the claim, counterclaim, response or third party notice where the conduct of the defaulting party amounts to a refusal to comply with an Adjudicator's order or to an abuse of the Court's process.
- (15) Where judgment is entered at a settlement conference, rule 15 applies as though the judgment was entered following a trial.
- (16) An Adjudicator may dismiss a claim or enter a judgment or other appropriate order against a party who does not attend a settlement conference.
- (17) Where a trial date is set at a settlement conference and a party is absent, the Court shall serve a notice of the trial date on that party unless the Adjudicator orders otherwise.

(18) Where either party does not comply with a settlement agreement other than a payment schedule, either party may apply to the Court for an appropriate remedy and the Court shall make an order that it deems just.

Amending or withdrawing a statement of claim or response or other document

- 11.** (1) Anything in a statement of claim, response or other document that has been filed by a party may be amended by that party—
- (a) without permission, before the settlement conference commences; and
  - (b) with the permission of an Adjudicator under rule 20(3), after the commencement of a settlement conference.
- (2) All amendments shall be underlined, initialled and dated on the revised document and, where there is an order authorizing the amendment, the document shall contain a reference to that order.
- (3) A party who amends a filed document shall—
- (a) file a copy of the revised document at the Court; and
  - (b) before taking any other step in the claim, serve in the manner set out in rule 23, a copy of the amended document on each party to the claim and the time period for response to a revised statement of claim shall be as set out in rule 5.
- (4) A party may withdraw a claim, counterclaim, response or third party notice at any time.
- (5) A party who withdraws a claim, counterclaim, response or third party notice shall serve in the manner set out in rule 23, notice of the withdrawal on all parties who were served with the claim, counterclaim, response or third party notice and file a copy of the notice with the Court.
- (6) A party who withdraws a claim, counterclaim, response or third party notice may not proceed with it or file another notice with respect to the claim, counterclaim, response or third party notice unless that party applies for an order using prescribed form and is granted that order.

Witnesses

- 12.** (1) To require a witness to attend Court, a party shall—
- (a) complete a summon to a witness in prescribed form; and
  - (b) serve in the manner set out in rule 23, a copy of the summon to the witness.

(2) At the time a summon is served, the party summoning the witness shall offer the witness reasonable estimated travelling expenses and the prescribed witness fee.

(3) Where a witness will attend Court voluntarily, a summon is not necessary.

(4) A person who is served with a witness summon shall—

(a) attend Court at the time and place stated on the summon; and

(b) bring to Court any records and other things required by the summon.

(5) A person who is served with a witness summon may apply to an Adjudicator under rule 20(3) who may cancel the summon where—

(a) the person is not needed as a witness; or

(b) it would be a hardship for the person to attend Court as required by the summon.

(6) An Adjudicator who cancels a witness summon may make another order that the Adjudicator considers just, including an order changing the date of the hearing.

(7) An Adjudicator may issue a warrant for the arrest of a witness who does not attend Court as required by a witness summon where the Adjudicator is satisfied that—

(a) the summon was served on the witness;

(b) reasonable travelling expenses and the required witness fee were offered to the witness;

(c) no just cause is shown for the failure of the witness to attend; and

(d) justice requires the presence of the witness.

(8) Where a witness named in a warrant attends Court voluntarily, the Adjudicator may cancel the warrant.

(9) Where a witness is brought to Court under a warrant for arrest or attends voluntarily, and the witness's evidence is still required, an Adjudicator may—

- (a) release the witness on conditions set by the Adjudicator;
- (b) order the witness to be detained until his or her presence is no longer required; or
- (c) make any other order the Adjudicator considers just.

Hearing

- 13.** (1) An Adjudicator may conduct a hearing without complying with the formal rules of procedure and in doing so may—
- (a) ask the parties to explain their cases, to respond to each other and to call witnesses; and
  - (b) receive evidence in the way prescribed by the Act.
- (2) Oral evidence shall be given under oath or affirmation.
- (3) A party shall not call an expert to give evidence of their opinion unless—
- (a) that party serves, in the manner set out in rule 23, a summary of the expert’s evidence on all other parties at least fourteen days before the expert is called to give evidence; or
  - (b) an Adjudicator grants permission.
- (4) Instead of calling an expert to give evidence, a party may introduce a report stating opinions of an expert, where—
- (a) the party serves in the manner set out in rule 23, a copy of the report on all other parties at least fourteen days before the report is introduced; or
  - (b) an Adjudicator grants permission.
- (5) A statement of qualifications in an expert’s report is proof that the expert has those qualifications unless there is evidence to the contrary.
- (6) A party receiving another party’s expert report may serve on the other party in the manner set out in rule 23, at least seven days before the trial date, a notice requiring the expert to attend the trial for cross-examination.

(7) Where an Adjudicator determines that calling another party's expert was unnecessary, the Adjudicator may order the party who required the expert to attend to pay the expert's expenses.

(8) Repair estimates and value of property estimates are not considered to be expert evidence, but shall be served in the manner set out in rule 23, on all other parties at least fourteen days before trial unless an Adjudicator orders otherwise.

(9) Where a respondent or third party does not attend the trial, the Adjudicator may—

(a) allow the claim; and

(b) enter judgment or make another appropriate order against that respondent or third party.

(10) Where a claimant does not attend the trial, the Adjudicator may dismiss the claim.

(11) The Adjudicator shall give a decision—

(a) in Court orally at the end of the hearing or on a later date; or

(b) in writing.

(12) Where an Adjudicator's decision is to be given orally on a later date, the Court shall notify the parties of the date.

(13) An Adjudicator's written decision is effective on the date it is read and signed in Court.

Offer to settle

**14.** (1) A party may offer to settle one or more claims by serving on the other party in the manner prescribed in rule 23, an offer to settle in the prescribed form.

(2) An offer to settle for an amount of money includes expenses under rule 25 and expenses a party has been awarded from a prior hearing in the same action.

(3) An offer to settle may be filed up to seven days before the date of hearing or at a later time where permitted by an Adjudicator under rule 20(6).

(4) The party to whom the offer to settle is made, may accept the offer by serving in the manner prescribed in rule 21, the acceptance of offer in the

prescribed form on the other party and by filing a copy with the Court anytime before the trial date.

(5) Where an acceptance of offer is filed within the time limited, an Adjudicator may enter a judgment in the terms of acceptance.

(6) This rule applies to claims, counterclaims and third party claims.

(7) Where several respondents are sued together, a claimant may not make an offer to settle except jointly to all respondents and a respondent may not make an offer to settle except jointly with all other respondents.

(8) Where there is more than one claimant, a separate offer to settle may be made by or to a claimant.

(9) Where an offer to settle made by a third party is accepted by a respondent, money shall be paid into Court by the third party and not paid directly to that respondent, and that money shall not be taken out of Court without an Adjudicator's order or consent of all parties.

(10) Where the time limited by this rule, or by an Adjudicator's order, for offering and accepting a settlement has passed, an offer to settle may still be made.

(11) Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may apply to an Adjudicator for a judgment in the terms of the accepted offer under rule 20(3).

(12) A party whose claim has been satisfied may file a notification of satisfaction with the Court.

(13) A party, against whom a claim is made, who satisfies the claim may file a notification of satisfaction of the claim, together with proof that the claim has been satisfied, with the Court.

Satisfaction piece

**15.** A satisfaction piece, in a form acceptable to the Court, indicating that a judgment has been satisfied may be filed—

(a) by the creditor; or

(b) by the debtor upon proof of settlement of the debt.

Payment of the judgment

**16.** (1) Judgment shall be entered against a party, in favour of another party where—

- (a) the Adjudicator decides at a trial that one party shall pay money to the other party;
  - (b) one party admits all or part of a claim under rule 5 or 6, and the person making the claim has applied for a judgment;
  - (c) a default judgment is entered under rule 8; or
  - (d) one party has made an offer to settle under rule 14 and the person making the claim has applied under rule 14(12) for a judgment.
- (3) A judgment may be enforced—
- (a) by an order of the Court under these rules for payment, including an order that a judgment be paid in full; or
  - (b) under the Civil Procedure Rules.
- (4) Where judgment is entered without an instalment order, the Adjudicator may, after judgment is entered, ask the debtor whether they require time to pay, and where the debtor states that time is required to fulfil the judgment, the debtor may propose a payment schedule.
- (5) Where a debtor makes a proposal to pay under sub rule (4) of rule 16, the Adjudicator shall ask the creditor whether or not the creditor agrees with the debtor's proposal.
- (6) Where a creditor agrees with a debtor's proposal, the Adjudicator may order a payment schedule requiring the debt to be paid by a set date or by instalments.
- (7) Where a creditor does not agree with a debtor's proposal, the Adjudicator may order—
- (a) a payment hearing; or
  - (b) a payment schedule.
- (8) A debtor or creditor may apply to the Magistrates Court.
- (9) The Adjudicator may without a hearing—
- (a) enter judgment in an amount agreed between the parties plus costs and expenses under rule 26 where—

(i) the respondent agrees to pay all or part of a claim on a response, and

(ii) the claimant consents; and

(b) where no instalment order is in place—

(i) make an order establishing a payment schedule where the respondent proposes or requests a payment schedule in the response and the claimant consents to the order, and

(ii) make an order issuing a summons to a respondent to attend a payment hearing where a proposed payment schedule is not agreed to by the claimant.

(10) Where a debtor defaults on the payments under a payment schedule or an order to pay the judgment in full, the enforcement provisions of the Civil Procedure Rules apply.

(11) Where a judgment is entered in the absence of the parties because the Adjudicator reserved the decision—

(a) the creditor may take any of the steps listed in rule 16(3); and

(b) the debtor may ask for a payment hearing under rule 17(9).

(12) Where an Adjudicator issues a warrant for the arrest of a debtor or an officer, director or employee of a corporate debtor, the creditor may take any steps for the collection of the judgment as if a payment hearing was not outstanding.

Payment hearing

**17.** (1) The purpose of a payment hearing is to allow an Adjudicator to—

(a) assess the debtors ability to pay; and

(b) consider whether a payment schedule should be ordered.

(2) A payment hearing shall be held where it is—

(a) requested by the creditor under rule 16(3);

(b) requested by the debtor under rule 16(9); or

(c) ordered by the Adjudicator under rule 15(10).

(3) To ask for a payment hearing, a creditor shall complete the prescribed form, and file it in Court.

(4) Where the debtor is a corporation, an authorized officer of the corporation may be summoned to the payment hearing.

(5) Where the debtor is a partnership, a partner may be summoned to the payment hearing.

(6) A person named in a summons to a payment hearing shall be served by the person requesting the hearing in the manner set out in rule 23 at least five days before the date of the payment hearing and proof of service shall be filed with the Court by the person requesting the hearing at least two days before the date of the payment hearing.

(7) A person who is served with a summons to a payment hearing may apply to an Adjudicator under rule 20(6), and the Adjudicator may where necessary—

(a) cancel the summons where the person is not the right person to provide information on behalf of the debtor; and

(b) issue a new summons to another person to provide the information on behalf of the debtor.

(8) A debtor or a person summoned may be required, either by a summons issued under rule 16(3) or by an Adjudicator when ordering a payment hearing, to bring to the payment hearing records and other things which relate to the subjects listed in rule 16(11).

(9) To ask for a payment hearing, a debtor shall complete a notice of payment hearing in the prescribed form following the instructions on the form, and file it in Court.

(10) The debtor shall serve in the manner set out in rule 23 the notice on the creditor at least five days before the date of the payment hearing.

(11) At any payment hearing under these rules, evidence may be heard on any of the following—

(a) the income and assets of the debtor;

(b) the debts owed to and by the debtor;

(c) assets that the debtor has disposed of since the claim arose; and

(d) the means that the debtor has, or may have in the future, of paying the amount owed.

(12) After hearing the evidence and submissions by the parties, the Adjudicator may order a payment schedule specifying

- (a) the date by which the debt shall be paid; or
- (b) the amounts and dates of the instalments.

(13) Where a creditor does not attend a payment hearing, the Adjudicator may hold the hearing, cancel or postpone it.

(14) Where a creditor applies, an Adjudicator may issue a warrant for the arrest of a person who does not attend a payment hearing and who was—

- (a) served with a summons to attend; or
- (b) ordered in person by an Adjudicator to attend,

and just cause is not shown for the failure or refusal to attend.

(15) The creditor may apply to the Court to have a payment hearing at a Court in another location from where the file is located where that Court is nearest to where the debtor lives or carries on business or is temporarily employed.

Warrant of arrest for not attending Court

**18.** (1) A police officer who arrests a person under a warrant of arrest issued under rule 12 (7) or rule 16(14) of shall promptly bring the person to Court.

(2) Where a person named in a warrant attends Court voluntarily, the warrant is cancelled.

(3) A warrant of arrest remains in force for three years from the date an Adjudicator issues the warrant, but at the end of that period it expires and a person shall not be arrested under it unless the warrant is renewed.

Where a warrant of imprisonment is issued

**19.** (1) Where a warrant of imprisonment is issued under rule 25(1), a police officer may arrest the person named in the warrant.

(2) A warrant of imprisonment remains in force for two years from the date of its issue, but at the end of that period it expires and a person shall not be imprisoned under it.

- 20.** (1) The Court may make a consent order where one of the parties—
- (a) files an application that contains the particulars of the order requested; and
  - (b) satisfies the Court that all parties are consenting.
- (2) Without a hearing, the Court may make—
- (a) a consent order under rule 19(1);
  - (b) an order renewing a statement of claim or a third party notice under rules 4(2) and 7(6);
  - (c) an order changing the date of the settlement conference under rule 10(8);
  - (d) an order permitting service of a statement of claim outside local limits of the jurisdiction of the Court under rule 4(3);
  - (e) an order permitting alternative method of service under rule 4(6);
  - (f) an order transferring the matter to another Court under rule 5(6);
  - (g) an order for appointment of a intermediary under rule 20(16);
  - (h) an order changing the date of the hearing under rule 6(8) or 12(6);
  - (i) an order permitting a third party claim to be made under rule 7(1);
  - (j) a default judgment where a response to a counterclaim or third party notice is not filed under rule 8(2);
  - (k) an order permitting a late response to be filed under rule 8(8);
  - (l) an order cancelling a witness summon under rule 12(5);
  - (m) an order permitting the changing of a document under rule 11(1);
  - (n) a review of a decision of a person designated by the registrar to hear a settlement conference under rule 20(20); or
  - (o) any other order that the Court is authorized to make without notice to another party.

(3) To apply for an order listed in rule 20(2), a party shall complete an application in the prescribed form following the instructions on the form, and file it at the Court.

(4) The Adjudicator may make the order or direct the applicant to appear before the Court to support the application.

(5) After a hearing, an Adjudicator may make—

- (a) an order changing or cancelling an order made in the absence of a party under rule 21(1);
- (b) an order cancelling a default judgment or dismissal order under rule 21(2), and where the application is granted the Adjudicator may order payment of reasonable expenses of the other party related to the cancellation;
- (c) an order changing or cancelling the terms of a payment schedule under rule 21(3);
- (d) an order extending or shortening a time limit under rule 21(11);
- (e) an order for failing to obey a rule under rule 21(12); or
- (f) any other order that an Adjudicator has the power to make and notice of which is served in the manner set out in rule 23, on another party.

(6) To apply for an order listed in rule 20(5), a party shall complete an application in the prescribed form, and file it at the Court where the claim was made unless the Court allows the application to be filed at another Court under rule 20(7).

(7) A Court may allow an application under rule 20(6), to be filed at another Court where—

- (a) all the parties consent; or
- (b) the Court is satisfied that the application is urgent.

(8) At least seven days before the date set for hearing an application under rule 20, an applicant shall serve, in the manner set out in rule 21, a copy of the application, and the affidavit where required under rule 20(2), on each party that would be affected by the order requested, and service of notice is not required where the application is for a default order where a response to a third party notice has not been filed.

(9) Where the Court is satisfied that an application is urgent, it may allow an application to be made under rule 20(6) even though the other parties have not been served but a satisfactory attempt to give some form of notice has been made.

(10) An application under rule 20(7) shall be heard at the Court where the Court file is located, except where—

(a) all the parties agree to have the application heard in another Court;  
or

(b) the Court is satisfied that the application is urgent.

Review or  
cancellation of an  
order

**21.** (1) An Adjudicator may review or cancel an order made in the absence of a party other than a dismissal order or a default judgment where—

(a) a party applies under rule 20(6) within a reasonable time; and

(b) there is a good reason for changing or cancelling the order.

(2) An Adjudicator may review a dismissal order or default judgment if—

(a) the order or judgment was made without evidence having been taken; and

(b) the party applies under rule 20(6) and attaches to the application an affidavit containing—

(i) the reason the party did not file a response or attend the settlement conference or trial;

(ii) the reason for a delay where there has been delay in filing the application; and

(iii) the facts that support the claim or the defence.

(3) The terms of a payment schedule may be changed or cancelled where an instalment order has not been issued, by applying to an Adjudicator under rule 20(6) and the Adjudicator may make an order that the Adjudicator considers fair.

(4) In making an order under these rules, an Adjudicator may impose a condition or give a direction that the Adjudicator considers fair.

(5) An Adjudicator may cancel, postpone or adjourn a settlement conference, trial or hearing—

- (a) to a specified date;
- (b) to a date to be set by the Court; or
- (c) without setting a date.

(6) An Adjudicator may direct that a trial or hearing that is set for one place be held at another place.

(7) An Adjudicator may order that a settlement conference and trial set at one place be heard at another place.

(8) An order takes effect on the day it was made unless otherwise ordered by the Adjudicator who made the order.

(9) In calculating time under these rules or an order, the number of days between two events is counted by excluding the days on which those events happen.

(10) Where the last day of a period of time for filing or serving a document or doing any other thing under these rules or an order, falls on a Saturday, Sunday or a day when the Court is closed for a holiday, the time ends on the next day that the Court is open.

(11) An Adjudicator may extend or shorten a time limit set by these rules or by any order of the Court, on the terms that the Adjudicator considers fair.

(12) A party who believes that another party has not complied with the provisions of these rules may apply to an Adjudicator under rule 20(6) or at a hearing, and the Adjudicator may make an order or give a direction that the Adjudicator considers fair.

(13) An Adjudicator may, at the request of either party, correct any error on the face of it or omission in an order and may add provisions on expenses, or anything else that was not but should have been adjudicated on.

(14) Where a claimant or respondent is a person who is under eighteen years of age, a consent of intermediary form shall be obtained from the Court, completed and filed in Court before a matter relating to that person can proceed.

(15) Where there is no consent filed to allow a person under eighteen years of age to defend an action the claimant may apply to the Court in prescribed form requesting that the Court appoint the parent or guardian or some other person to act as intermediary for the respondent.

(16) Unless otherwise stated, where a document is required to be signed by the Court it may be signed by an officer of the Court, who is authorized to do so.

(17) Where a party is dissatisfied with the decision of a person designated by the Registrar to hear a matter under rule 10(12) the party may apply under rule 20(6) to an Adjudicator for a review of the decision.

(18) After hearing those parties who attend, the Adjudicator may confirm or vary the decision of the person designated to hear the matter under rule 10(12).

Electronic filing

**22.** (1) An electronic document shall be filed with the appropriate Court as set out in rule 3(2).

(2) A person shall complete a remote access client application to become a registered user for remote access to the Court and that application must be approved by the Court prior to a person filing an electronic document with the Court.

(3) A remote access client application, when accepted by the Court, shall constitute an agreement between the registered user and the Court for remote access to the Court.

(4) A registered user may electronically transmit a document to the appropriate Court for filing when the document is accompanied by payment of the applicable filing fees or when prior arrangements are made with the Court for payment of the applicable fees.

(5) A document that has been transmitted for filing electronically under this rule may be treated by the Court for all purposes as an original document.

(6) Only the following documents may be completed and filed electronically under this rule—

(a) Statement of claim;

(b) Response;

- (c) Certificate of Service;
- (d) Application for Default Judgment;
- (e) Judgment;
- (f) Application to an Adjudicator;
- (g) Notice of Withdrawal;
- (h) Affidavit under rule 24;
- (i) Electronic Filing Statement;
- (j) Judgment Registration Form and
- (k) Satisfaction Piece, in a form acceptable to the Court, under rule 15.

(7) When completing forms to be filed electronically, required attachments to the forms shall be uploaded as attachments and converted to Portable Document Format (PDF).

(8) An affidavit may be submitted for filing electronically where—

- (a) it clearly identifies the person signing, and
- (b) it is accompanied by an Electronic Filing Statement in a form acceptable to the Court completed by the advocate acting for the person on whose behalf that document is being filed or, where that person is unrepresented, by that person.

(9) A person who submits an affidavit for filing under rule 23(7) shall—

- (a) keep the original paper version of the document until the earliest of—
  - (i) the date on which the proceeding, including appeals, is finally disposed of;
  - (ii) the date on which the appeal period for that proceeding has expired and no appeals of the proceeding have been brought within that period; and

- (iii) the date on which the Court clerk requests that the original paper version be filed, and
  - (b) where a request is made under paragraph (a)(iii), file the original paper version immediately after that request is made.
- (10) Where an electronic document is accepted for filing by the clerk, the document is considered to have been filed—
- (a) where the document is received by the Court at or before 4 p.m. on a day on which the Court is open for business, on the day of its receipt, or
  - (b) where the document is not received by the Court before 4 p.m., on the next day on which the Court is open for business.
- (11) Despite rule 23(9), a document is considered to have been originally signed where it has been authenticated in the manner contemplated by the remote access client application.
- (12) Where a document in paper form is filed with the Court, the clerk may convert the document into electronic form by—
- (a) storing the conversion in a computer or in another electronic system that the clerk considers appropriate; and
  - (b) retaining the paper form of the document.
- (13) Where the original documents were filed electronically in accordance with this rule, there is no requirement to initial changes made under rule 11.
- (14) Where a document has been filed in accordance with this rule, a person entitled to view and obtain a copy of the document may, on payment of the proper fee—
- (a) obtain from the Court a paper copy of the document;
  - (b) where the Court has provided a public access computer terminal, view the document on that terminal; or
  - (c) where the person is a registered user, access the document in accordance with the terms of the remote access client application.
- (15) A document that is required to be served on a person may, where it is an electronic document, be served electronically on that person—

- (a) where the person has provided an email address for service, by emailing it to that person's email address for service; and
- (b) where the representative for that person has provided an email address for service, by emailing it to that representative's email address for service.

(16) A document transmitted by email in accordance with rule 23(6) is considered to have been served—

- (a) where the document is transmitted before 4 p.m., on the day of the transmission; or
- (b) where the document is transmitted after 4 p.m. or on a Saturday, Sunday or a public holiday, on the next day that is not a Saturday, Sunday or a public holiday.

(17) The Court may use email to provide notification on a matter to registered users.

(18) Notwithstanding that a document has been delivered in accordance with rule 24(6), a person may—

- (a) apply to set aside a default judgment;
- (b) apply for extension of time; or
- (c) in support of a request for an adjournment, provide evidence that the document—
  - (i) did not come to the person's notice;
  - (ii) did come to the person's notice later than when it was delivered or effectively delivered; or
  - (iii) was incomplete or illegible.

Service of documents

**23.** (1) Where a person to be served is a natural person, the document shall be served by—

- (a) leaving a copy of it with the respondent; or
- (b) mailing a copy to the respondent at the respondent's last known address and obtaining a signed document acknowledging receipt.

(2) Where the respondent is a corporation, the claimant may—

- (a) mail a copy of it to the registered office of the corporation and obtaining a signed document acknowledging receipt; or
  - (b) leave a copy of it—
    - (i) at the registered office of the corporation;
    - (ii) the place of business of the corporation, with a receptionist or a person who appears to manage or control the corporation's business; or
    - (iii) with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.
- (3) Where a respondent is a partnership, a document shall be served by—
- (a) mailing a copy to a partner and obtaining a signed document acknowledging receipt; or
  - (b) by leaving a copy—
    - (i) with a partner;
    - (ii) at a place of business of the partnership, with a person who appears to manage or control the partnership business there; or
    - (iii) with a receptionist who works at a place of business of the partnership.
- (4) Where a respondent is a county government or its organ or agency, the document shall be served by—
- (a) mailing a copy of it to the office of the County Attorney and obtaining a signed document acknowledging receipt; or
  - (b) giving a copy to—
    - (i) the ward administrator;
    - (ii) sub-county administrator; or
    - (iii) someone acting in a similar capacity.

(5) A party shall promptly notify, in writing, the Court and all other parties to a claim of a change in that party's address.

(6) A party shall, in the statement of claim or response, give the party's address for service which shall be—

(a) the party's residence, place of business or the party's advocate's or representative's office, where the party is not incorporated and not a partnership; or

(b) its registered office, place of business or the party's advocate's or representative's office, where the party is incorporated or is a partnership.

(7) Where the respondent is the national government, documents shall be served on the Attorney-General.

Proof of service

**24.** Service of a document may be proved by filing at the Court any or all of the following—

(a) for personal service, a certificate of service in the prescribed form with a copy of the document attached;

(b) for service by mail, a certificate of service in the prescribed form accompanied by—

(i) a signed document acknowledging receipt, and

(ii) a copy of the document that was served; or

(c) for personal service on an advocate or representative, a copy of the document signed by the advocate.

Contempt of court

**25.** (1) Where a person—

(a) refuses to be sworn, affirm or answer a question;

(b) refuses to produce a record or other evidence;

(c) does not obey a direction or an order of the Adjudicator; or

(d) fails to attend Court when summoned or ordered to do so and does not provide adequate reasons for failing to attend,

the Adjudicator may issue a warrant requiring the person to be imprisoned for a specified period of not more than three days.

- (2) Where a person who does anything referred to in rule 26(1) is—
- (a) the claimant or applicant;
  - (b) an authorized representative of the claimant or applicant;
  - (c) a partner or a manager of a partnership that is the claimant or applicant; or
  - (d) an agent of the claimant or applicant,
- the Adjudicator may also dismiss the claim or application.

- (3) Where a person who commits an act referred to in rule 26(1) is—
- (a) the respondent or a third party;
  - (b) an authorized representative of the respondent or a third party;
  - (c) a partner or a manager of a partnership that is the respondent or third party; or
  - (d) an agent of the respondent or third party,
- the Adjudicator may also continue with the proceeding as if no response had been filed.

(4) Before the expiration of a sentence imposed under rule 26(1), a person imprisoned may request to be brought before the sentencing Adjudicator to comply with the provisions of the rules, and where the Adjudicator is unavailable a person may apply to the Court to be released upon conditions until the person can appear before the sentencing Adjudicator.

Costs, fees and expenses

- 26.** (1) The fees for issuing documents and costs for service shall be paid by the party preparing and serving them, but the Court may allow a party to later recover those amounts.
- (2) The Court may permit a party to recover costs where the party provides receipts for costs claimed, and those costs may include the costs of serving documents as set out in the Schedule, but a party cannot recover more than 10 per cent of the amount of the claim as costs, unless an Adjudicator orders otherwise.
- (3) The costs and fees a party can recover are limited to the amounts that are set out in the Schedule unless an Adjudicator orders otherwise.

(4) An Adjudicator may order a party or witness whose conduct causes another party or witness to incur expenses to pay all or part of these expenses.

Forms

27. The forms referred to throughout these rules may be obtained from the Court, or from the Court's website.

**Dated.....2017**

**DAVID K. MARAGA**  
**Chief Justice and President of the Supreme Court**