



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE MAGISTRATE'S COURT
(CIVIL PROCEEDINGS) RULES 1986**

CHAPTER B.5

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Magistrate’s Court (Civil Proceedings) Rules 1986 – SI No.4 of 1986

As amended by:

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CHAPTER B.5

Rules of court made by the Chief Justice in exercise of the powers conferred on him by section 48 of the Courts Ordinance 1983, and of all other enabling powers.

Citation.

1. These rules of court may be cited as the Magistrate's Court (Civil Proceedings) Rules 1986, RRBIOT c.B.5.

Definitions.

2. In these rules –

appear means appear in person or by counsel or solicitor;

court means the Magistrate's Court;

court room includes any place where a hearing takes place;

hearing means the hearing of the parties and their witnesses whether in the course of an arbitration or a trial.

Proceedings preliminary to hearing

Delivery of claim.

3. (1) A person who wishes to institute a civil suit in the court shall deliver to the clerk of the court a claim in the prescribed form, accompanied by as many copies of the claim as there are defendants named in it and by the prescribed fee.

(2) A claim shall include –

(a) The name and address of the claimant or the name of the claimant and the name and address of his employer;

(b) the name and address of the defendant or the name of the defendant and the name and address of his employer, or of each defendant where there are more than one;

(c) a plain and concise statement of the material facts on which the claim is based;

(d) the relief claimed and, where the claim is for money, the precise amount claimed, so far as the nature of the claim allows;

(e) where the claim is not for money, such estimate of value as is necessary to show that the claim is within the jurisdiction of the court.

Entry of claim.

4. (1) On receipt of a claim, the clerk of the court shall make an entry relating to it in a book, to be kept for this purpose in his office, showing the names and addresses of the parties and the nature of the suit.

(2) Every claim shall be given a number according to the year and the order in which it is entered.

Service of claim.

5. The clerk of the court shall, as soon as practicable after receiving a claim, cause a copy of it to be served on the defendant named in it, or on each defendant where there are more than one, together with a notice informing the defendant that he must, within seven days of the service or such further time as the court may allow –

(a) if he intends to defend that suit, give notice of his intention;
or

(b) in the case of a suit for money, if he does not intend to defend the suit but prays time to pay or leave to pay by instalments, give notice of admission,

and that, if he fails to do so, judgment may be given against him without further notice.

Notice of intention to defend.

6. (1) A notice of intention to defend shall be in the prescribed form, shall state whether the defendant intends to contest the whole or part only of the claim and shall include a plain and concise statement of the material facts on which the defendant will rely.

(2) A notice of intention to defend shall be delivered in duplicate to the clerk of the court, who shall, as soon as practicable, serve one copy of it on the claimant.

Notice of admission.

7. (1) A notice of admission shall be in the prescribed form and shall –
- (a) where the defendant prays for time to pay, state the date by which he expects to be able to pay;
 - (b) where he prays leave to pay by instalments, state the amounts which he expects to be able to pay by way of instalment and the dates on which he proposes to pay them.

(2) A notice of admission shall be delivered in duplicate to the clerk of the court, who shall, as soon as practicable, serve one copy of it on the claimant.

Judgement in default.

8. (1) Where a defendant who has been served with a claim and notice in accordance with rule 5, fails to give notice of intention to defend or notice of admission within seven days of the service, or such further time as the court may allow, the court may at any time thereafter, on the application of the claimant and on proof of the service, enter judgment for the claimant.

(2) Where judgment has been entered for a claimant under subrule (1), the court may, on the application of the defendant, set aside the judgment, if it is satisfied that there was reasonable cause for the failure to give notice, and thereupon the proceedings shall continue as if judgment had never been entered.

Judgement in admission.

9. The court may, at any time after receiving a notice of admission, on the application of the claimant, enter judgment for him but shall at the same time order a stay of execution.

Settlement.

10. Despite any other provisions of these rules, the parties to any suit may at any time notify the clerk of the court in writing or may appear in person before a Magistrate and state that the suit has been settled and thereupon the suit shall be struck out and no suit shall thereafter be brought between the same parties in respect of the same cause of action.

Notice of date for hearing.

11. Where a defendant has given notice of intention to defend or notice of admission and provided that judgment has not been entered under rule 8, the clerk of the court shall fix a date for the hearing of the suit or for determining when or by what instalments the judgment debt is to be paid, as the case may be, and shall give notice of the date, time and place for the hearing to all parties concerned, such notice to be given not less than 48 hours before the time of the hearing, except with the special leave of the court.

Summoning of witnesses.

12. (1) The clerk of the court shall, on the application of any party to the suit, issue a summons and cause it to be served on any person required as a witness by that party.

(2) A summons served under this rule shall –

(a) specify the time and place at which the person summoned is required to attend; and

(b) where he is required to produce any document, describe that document with reasonable accuracy.

(3) A summons shall not be issued less than 24 hours before the time when the attendance of the witness is required, except with the special leave of the court.

Witness about to leave the Territory.

13. At any time after a claim has been delivered under rule 3, the court may, on the application of any party or of its own motion, take the evidence of any witness who is about to leave the Territory, giving all parties an opportunity to be present and to examine the witness.

The hearing

Appearances.

14. (1) A party to a suit may appear at the hearing in person or by counsel or solicitor.

(2) The court may, for sufficient reason, allow any other person to appear on behalf of any party.

Failure of the parties to appear.

15. (1) If at the time and place fixed for the hearing, or at any time and place to which the hearing may be adjourned –

(a) the claimant appears but the defendant does not and proof is given of compliance with rule 5, the hearing may proceed and judgment may be given in the absence of the defendant;

(b) the defendant appears but the claimant does not, or if neither party appears, the suit may be dismissed,

unless in any such case the court sees fit to adjourn the hearing.

(2) If there are more defendants than one and one or more of them appear and the other or others do not appear, the hearing may proceed and the court shall, at the time of giving judgment, make such order as it thinks fit with respect to the defendant or defendants who did not appear.

(3) Where judgment has been given for a claimant in the absence of the defendant or a suit has been dismissed in the absence of the claimant, the court may, on the application of the defendant or of the claimant, as the case may be, set aside the judgment or order and restore the suit for hearing, if it is satisfied that the defendant or the claimant, as the case may be, was prevented by any sufficient cause from appearing when the suit was called on for hearing.

Suits to be determined by arbitration.

16. (1) A suit in which the amount claimed or the value of the subject matter does not exceed £200 shall be determined by a Magistrate sitting as an arbitrator.

(2) A suit in which the amount claimed or the value of the subject matter exceeds £200 but does not exceed £500 may be determined by a Magistrate sitting as an arbitrator, if both or all the parties to the suit so agree:

Provided that the Magistrate may, on the application of any party or of his own motion, refer the suit for arbitration by the Senior Magistrate, if he is of the opinion –

- (a) that a difficult question of law is involved; or
- (b) that a charge of fraud is in issue.

Procedure for arbitration.

17. (1) Where a suit is to be determined by arbitration, the hearing shall be informal and the strict rules of evidence shall not apply.

(2) The hearing may take place in the courtroom or at such other place as the Magistrate may decide.

(3) At the hearing, the Magistrate may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity for each party to present his case.

Procedure at trial.

18. (1) When a suit to be tried by the court is called on for hearing, the claimant shall begin and, if he is represented, his counsel or solicitor may open his case and, whether he is represented or not, his witnesses shall then be called.

(2) At the close of the evidence for the claimant, the court may, if of the opinion that no case has been made out that requires to be answered by the defendant, enter judgment for the defendant.

(3) In any other case, if the defendant is represented, his counsel or solicitor may open his case and, whether he is represented or not, the witnesses for the defence shall then be called.

(4) At the close of the evidence for the defence, the counsel or solicitor for the defendant, or the defendant himself if he is unrepresented, may address the court and the counsel or solicitor for the claimant, or the claimant himself if he is unrepresented, may address the court in reply.

Attendance of parties.

19. (1) The parties, whether witnesses or not, may remain in the court room if they so desire, throughout the hearing.

(2) A party who is represented by counsel or a solicitor need not attend any stage of the hearing, except when he is required as a witness.

(3) Where any party intends to give evidence, he shall testify before any other witness is called on his behalf.

Witnesses to remain until released.

20. A person who has been summoned as a witness –

(a) who has not yet testified, shall be kept out of ear-shot of the court until called to testify;

(b) who has testified, shall remain in the court room, and no such person shall depart without the leave of the court.

Judgement.

21. (1) At the conclusion of the evidence and of the addresses, if any, the Magistrate shall, either immediately or at some future date –

(a) record a brief note of his findings on the main points in controversy and of the principal reasons for such findings; and

(b) deliver an oral award or judgment. as may be appropriate.

(2) If the hearing has been in open court, the judgment shall be delivered in open court.

(3) Where the award or judgment is reserved to a future date, the Magistrate shall either –

(a) announce the date before rising; or

(b) cause notice of it to be given to the parties and their counsel or solicitors, if any.

(4) No award or judgment shall be deemed to be invalid by reason only, of the absence of any party, or his counsel or solicitor, on the day or from the place notified for the delivery thereof, or of any omission to give, or defect in giving, notice of such day or place to any party or to his counsel or solicitor, if any.

Execution

Execution.

22. (1) Where the court makes an order for the payment of money, the amount shall be recoverable in case of default by an order of execution under the hand of a Magistrate against the movable property of the party against whom the order was made.

(2) An officer executing such an order may seize and take any movable property of the party against whom execution was ordered (except the wearing apparel and bedding of such person and the tools and implements of his trade to the value of £200, which shall be to that extent protected from seizure).

(3) If the judgment debt and costs, if any, remain unsatisfied, a Magistrate may, at any time after 14 days from the date of seizure, order the sale of any movable property sufficient to realize the necessary amount and any moneys over after paying the judgment debt and costs, if any, and any expenses of the sale, shall be paid to the judgment debtor.

Execution where payment by instalments was ordered.

23. Where an order has been made for the payment of money by instalments, an order of execution shall not be made until after default in paying some instalment but execution may then be ordered for the whole amount or for such portion thereof as the Magistrate may decide.

Attachment of wages.

24. (1) A judgment creditor may apply for an order attaching part of the future wages that will accrue due to the judgment debtor from his employers and the clerk of the court shall thereupon issue and serve on the judgment debtor and his employer notices summoning them to appear on a date to be specified in the notices to show cause why the judgment debt should not be satisfied out of any such future wages as they become due.

(2) On the appointed day, the court shall hear all the parties who appear and shall then either –

(a) refuse to make any order; or

(b) order the payment by the employer to the judgment creditor of such periodical sums out of the future wages of the judgment debtor as to the court may seem reasonable.

Attachment of debts, etc.

25. (1) A judgment creditor may apply for an order of attachment of any money or movable property due to or belonging to the judgment debtor in the hands of any third person and the clerk of the court shall thereupon issue and serve on that person an order –

(a) prohibiting him from paying such money or delivering such property to any other person pending the further order of the Magistrate; and

(b) summoning him to appear on a date to be specified in the order to show cause why the money should not be paid to the judgment creditor or the property be seized and sold to satisfy the judgment debt and costs, if any.

(2) A copy of such order shall at the same time, as nearly as may be, be served on the judgment debtor and the judgment creditor, who shall be entitled to be heard in the matter.

(3) On the appointed day, the court shall hear all the parties who appear and any witnesses they may call and shall then –

(a) if it is satisfied that the money or other property is due to or belongs to the judgment debtor –

(i) order that the judgment debts and costs, if any be paid out of the money in the hands of the third person;

(ii) if there is insufficient money for that purpose, order that the movable property or any sufficient part thereof be sold and the judgment debt and costs, if any, be paid thereout; and

(iii) make such order as it may consider proper in respect of any money or property remaining over, or

(b) if not so satisfied, release the money or other property from the attachment.

General provisions

Power of Magistrates.

26. A Magistrate shall have power at any time, and whether a suit is to be determined by arbitration or at a trial before the court –

- (a) to order any party to produce any document or thing in his possession or under his control;
- (b) to inspect any property or thing concerning which any question may arise in the suit;
- (c) to extend the time for doing any act, whether before or after the expiry of the time prescribed;
- (d) to adjourn a hearing, whether before or after it has begun;
- (e) to order the payment of any money which it finds to be due, either immediately or at any future time or by instalments, or to order that any movable property be delivered to the person whom the Magistrate may find to be entitled thereto;
- (f) to make such orders, requiring or prohibiting the doing of any act, as may be necessary to give effect to the determination by the Magistrate of any suit.

Court to be open.

27. All sittings of the court during the trial of a suit shall be open to the public:

Provided that the court may, in any particular suit, in the interest of public order or decency, order all persons not directly interested in the suit, or any particular class of persons to leave the court during the hearing.

Service.

28. (1) A summons required to be served under these rules shall, if practicable, be served personally on the person being summoned by delivering or tendering to him the original or a duplicate of the summons:

Provided that –

- (a) where the person to be served is a member of the armed forces of Her Majesty or of the United States of America, service may be effected on the officer commanding the unit in which that person is serving and shall be deemed to be service on that person if he is within the Territory; and
- (b) in any other case, if the summons cannot, by the exercise of due diligence, be served personally, it may be served on the employer of the person to be served.

(2) No summons shall be served on a public holiday, or between the hours of six in the evening and six in the morning, except in case of urgency and with the leave of the court.

(3) A public holiday shall be counted in any computation of time required by these rules, unless it is the last day of such time, in which case it shall be excluded.

(4) The provisions of this rule shall apply to the giving of notice, as they apply to the service of a summons.

Offences.

29. A person who, having been summoned to appear before the court or before a Magistrate sitting as an arbitrator –

(a) fails without lawful excuse to attend the court or Magistrate, or to produce any document which he was required by the summons to produce; or

(b) having attended –

(i) refuses to take an oath or be affirmed; or

(ii) refuses to give evidence or to answer any lawful question, or

(c) departs without the leave of the court or of the Magistrate before the end of the hearing,

is guilty of an offence and is liable on summary conviction to a fine of £100 or to imprisonment for seven days.

Forms.

30. The forms contained in the Schedule shall be used for the purposes to which they are expressed to relate, with such modifications as the circumstances may require.

Deleted on revision.

31. *Deleted on revision.*

SCHEDULE
FORMS (Rule 30)

Form MC/1

In the Magistrate's Court

Civil suit No. of 20

(To be accompanied by as many copies as there are defendants)

CLAIM

Claimant: Name
Address

Defendant: Name
Address

Facts on which the claim is based:

Relief claimed:

Value of the subject matter of the suit, where the claim is not to recover money:

Signature of claimant (or counsel or solicitor)

Date:

For official use
Date of delivery:
Time:

Form MC/2

In the Magistrate's Court

(To be delivered in duplicate)

Civil suit No. of 20

NOTICE OF INTENTION TO DEFEND

Claimant: Name
Address

Defendant: Name
Address

Take notice that I intend to defend the above suit

in whole
so far as the claim is for
The material facts on which I rely are:

Signature of defendant (or counsel or solicitor)

Date:

For official use
Date of delivery:

Form MC/3

In the Magistrate's Court

(To be delivered in duplicate)

Civil suit No. of 20

NOTICE OF ADMISSION

Defendant: Name
Address

Claimant: Name
Address

Take notice that I admit the right of the claimant to judgment in this suit but I ask

(Delete as appropriate)

for time to pay.

for leave to pay by instalments

(Complete and delete as appropriate)

I expect to be able to pay on or before the

I propose to pay by instalments of £ each

Signature of defendant (or counsel or solicitor)

Date:

For official use
Date of delivery:

