



LAWS OF SEYCHELLES

COURTS ACT

CHAPTER 52

(SUBSIDIARY LEGISLATION)

REVISED EDITION 1991

**PRINTED FOR THE GOVERNMENT OF SEYCHELLES
BY SPACE**

THE GOVERNMENT PRINTER

49. Any person who, having been lawfully summoned or otherwise required to attend any sitting of a court not being a court within the meaning of Part III, fails, without reasonable excuse, to attend that sittings shall be liable to be summarily punished by a fine of R.500 or by imprisonment for one month or by both such fine and imprisonment.

Amendment
G.N. 100/1967
G.N. 200/1967
7/4/1967

50. Nothing in this Act shall be held to deprive a court of any jurisdiction or power it had at the time this Act came into operation.

Amendment
and powers of
court
unaltered by
this Act

SCHEDULE

MAGISTRATES' COURT HOUSES

Sec. 30

G.N. 450/1967
G.N. 300/1968
G.N. 282/1969
G.N. 195/1970
S.I. 60/1965

Victoria	The Law Courts Building, Victoria (formerly known as the Supreme Court Building, Victoria)
Anse Royale	The room known as the Court Room in the Administrative Block of buildings at Anse Royale.
Praslin	The Social Centre at Grand'Anse. The Court House in Grand'Anse (former Medical Clinic)
La Digue	The room known as the Court Room in the Administrative Block of buildings at La Digue.

- (f) create and regulate summary procedure for the recovery of debts due to the Republic and for the enforcement of judgments obtained by such procedure.

PART IV

Justices of the Peace

Appointment
of Justices of
the Peace,
S.I. 95/1975
S.I. 72/1976

45.(1) The Minister acting after consultation with the Chief Justice may, by instrument under the Public Seal, appoint as many fit and proper persons as may be necessary to be Justices of the Peace.

(2) A Justice of the Peace shall have jurisdiction throughout Seychelles or in such part thereof as may be specified in the instrument of appointment.

Oaths to be
taken by Jus-
tices of the
Peace,
Cap. 153

46. A Justice of the Peace shall, as soon as may be after his appointment, take the oaths prescribed by the Official Oaths Act.

Powers and
duties of Jus-
tices of the
Peace,
Cap. 54
Cap. 157

47. The powers and duties of Justices of the Peace shall be as set out in the Criminal Procedure Code, the Peace Officers (Inner Islands and Outlying Islands) Act, and in such other enactments as may vest powers in or impose duties on Justices of the Peace.

PART V

Miscellaneous

Recording of
evidence,
5/6/1983

48.(1) Where by virtue any written law there is a requirement that evidence in any proceedings be taken down in writing or recorded, or that any other record of the proceedings be made at the time of the proceedings, that requirement shall be satisfied by the evidence being recorded or the record being made in shorthand by a duly appointed shorthand writer.

(2) A transcription of the shorthand record of any proceedings, shall where so certified by a judge or magistrate be, for all purposes, a true record of those proceedings, and copies of the transcription shall be available to any party to the proceedings at such charge as the Registrar may determine.

(3) This section shall have effect in relation to the record of any proceedings (including proceedings prior to the commencement of the Administration of Justice Act, 1983*) in respect of which a shorthand record has been made.

Act 6 of 1983

* 7th July, 1983

42. A judgment or order of the court may, without prejudice to the provisions of any enactment prescribing other ways of execution or enforcement of a judgment or order of a court, be executed and enforced by the court and the provisions of the Seychelles Code of Civil Procedure relating to execution and enforcement of judgments and orders of the Supreme Court shall, *mutatis mutandis*, apply to execution and enforcement of judgments of the court.

Execution of
judgment or
order of the
court.
24/1986
Cap. 213

43.(1) Any person aggrieved by a final judgment of the court in any civil cause or matter to which he is a party may appeal to the Supreme Court.

Appeals

(2) There shall be no appeal from any interlocutory judgment of the court except where, in the circumstances of a particular case, the interlocutory judgment has the effect of disposing of the claim, or of one of the claims, in the suit, in which event the Supreme Court may give leave to appeal on such terms as to security, costs and otherwise as may be just.

(3) No appeal under this section shall operate as a stay of execution, but the court, or after an appeal has been lodged, the Supreme Court, may stay execution on such terms as to security, costs and otherwise as may be just.

44.(1) The Chief Justice may make rules to regulate the practice and procedure of the court in its civil jurisdiction, the giving of security and the practice and procedure in appeals from the court to the Supreme Court.

Rules of court.
S.I. 95/1975
11/13/1976
S.I. 72/1976

(2) Without prejudice to the generality of the foregoing powers such rules may —

- (a) prescribe the fees to be taken in proceedings in the court or on appeal;
- (b) regulate and provide for any matters relating to costs of proceedings in the court or on appeal, including the allowances and expenses to be paid to witnesses;
- (c) regulate and provide for any matters which are provided for in the Seychelles Code of Civil Procedure;
- (d) regulate and provide for the transfer of civil cases from the Supreme Court to the court and *vice versa*;
- (e) extend, curtail, amend, add to or alter the civil jurisdiction of the court;

and having heard the evidence adduced on the question of value only the court shall determine or estimate the value as at the date of filing of the plaint and, for the purpose of founding jurisdiction in that suit but for no other purpose, the opinion of the court as to that value shall be conclusive.

(3) Where by reason of any *bona fide* mistake in stating an amount of money or making an estimate of value the court has assumed jurisdiction in a suit and it subsequently appears that the suit is beyond the jurisdiction of the court, then if the mistake is discovered before witnesses have been summoned for the first hearing the court shall call upon the plaintiff to elect whether he will amend and reserve the plaint, if necessary relinquishing the excess, or transfer the suit to the Supreme Court and in either event the plaintiff shall bear the costs occasioned by the mistake, but if the mistake is not discovered until after the witnesses have been summoned, the court shall have jurisdiction and the suit shall proceed, provided that no relief exceeding that which it is within the ordinary jurisdiction of the court to give shall be given.

(4) If in any suit doubt arises before witnesses have been summoned for the first hearing as to whether the court has jurisdiction and the doubt cannot be resolved under the provisions of this part, the court may refer the question to the Supreme Court.

(5) If at any stage of the hearing of a suit doubt arises as to whether the court has jurisdiction, the hearing shall proceed and if at the conclusion of the hearing the doubt has not been resolved, the court shall, after consideration, deliver a written judgment including findings on all the issues of fact in controversy, both as to matters affecting the jurisdiction and as to the merits of the claims pleaded, and if in the opinion of the court the suit was not within the jurisdiction, the suit shall be dismissed on that ground, with or without an order for costs.

Costs.
S.I. 72/1976

41.(1) The court may make such order as to the whole or any part of the costs in any proceedings before it as may be just and may assess the same or direct taxation thereof.

(2) The Republic shall be entitled to have costs and costs may be given against the Republic to the like extent and in the same way as costs may be had by and against any other party.

(4) The court has jurisdiction in any suit for the payment of alimony in a case where the law gives a right to an alimony irrespective of the sum claimed.

(5) The court has jurisdiction to entertain a claim made to goods seized in execution of a judgement of the court, or of the Supreme Court, provided that the value of such goods does not exceed ten thousand rupees and the claim is made within such period and in such form as may be prescribed by rules of court.

(6) The court has no jurisdiction in any suit concerning divorce, guardianship, interdiction, appointment of a curator, adoption, civil status, successions, wills, bankruptcy or insolvency, or concerning rights or interests arising out of the ownership or usufruct of immovable property or servitude thereon except in a suit under subsection (2) or (3) of this section.

39.(1) Claims may not be split nor more than one suit instituted in respect of the same cause of action against the same party.

Provisions
relating to or
affecting juris-
diction.
S.I. 98/1973
S.I. 15/1990

(2) A plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court, but he shall not afterwards sue in respect of the portion so relinquished.

(3) The court has jurisdiction to decide a suit where the original claim exceeds the limit of its jurisdiction if the claim is brought within the limit by a set-off admitted by both parties.

(4) The jurisdiction shall not be ousted when in order to adjudicate upon a claim within the jurisdiction it is necessary for the court to decide upon a right to, or contract concerning, money or movable property exceeding twenty five thousand rupees in value.

40.(1) Where the jurisdiction of the court depends upon the value of any property and such value cannot be precisely ascertained the plaintiff shall state in the plaint his estimate of the value and if the defendant does not deliver, in time for service on the plaintiff before the first hearing, either a written objection to the plaintiff's estimate or a written defence including a distinct plea alleging a greater value, he shall be deemed to have admitted the plaintiff's estimate and subject to this section, the court shall decide the suit.

Valuation of
claims

(2) Where the jurisdiction depends upon a value which is in dispute the court shall try the question of value as a preliminary issue

B. CIVIL MATTERS

Jurisdiction.
S.I. 99/1973
16/13/1976
S.I. 15/1990

36.(1) The court has and shall exercise jurisdiction to decide any civil suit, except as hereinafter provided, in which the amount claimed or the value of the subject matter does not exceed twenty five thousand rupees, exclusive of interest and costs.

(2) The court has jurisdiction in any suit by a landlord to obtain cancellation of a lease, with or without damages, or to recover possession of immovable property from a tenant or occupier, including suits where the value of such property exceeds twenty five thousand rupees. Such cancellation of lease, damages and possession may be claimed in the same plaint in which rent is claimed;

Provided always that the yearly rent or the rental value of the property shall not exceed twenty five thousand rupees and the sum claimed for damages, if any, and for rent do not together exceed twenty five thousand rupees.

- (3) (i) The court has jurisdiction in possessory actions concerning any land, premises, runs of water or other immovable property or any other right arising out of immovable property including actions where such property or right exceeds fifty thousand rupees in value, when the plaintiff claims to be maintained or restored to the quiet enjoyment and possession of such property or right:

Provided —

- (a) the possessory action has been entered within one year from the imputed trespass, and
- (b) the plaintiff has been in quiet possession for at least one full year.
- (ii) In such possessory action damages not exceeding twenty five thousand rupees may also be claimed.
- (iii) When the value of the property or right concerning which a possessory action is brought does not exceed fifty thousand rupees, the court may inquire into and decide upon the question of ownership if the same be raised.

33. The clerk of the court shall issue all process of the court and register all orders, all judgements and keep records of all proceedings and shall keep account of all fees, fines and money paid into or out of court and keep such other books or accounts as the Chief Justice may direct.

Issue of
process; books

34. Costs shall be taxed by the clerk of the court.

Clerk to tax
costs

35. All process of the court may be served by a process server or by a member of the police force.

Process

36.(1) Any party to a cause, inquiry, inquest or other proceeding may obtain on application at the registry of the Supreme Court or at the office of the court a summons to a witness or witnesses, with or without a clause requiring the production of books, documents or any *corpus delicti*.

Summons to
witness

(2) Any person on whom such a summons has been served who refuses or neglects without sufficient cause to appear or to produce any books or documents or any *corpus delicti* required by the summons to be produced, and any person present before the magistrate who on being required to give evidence refuses to be examined upon oath or affirmation concerning the matter at issue or refuses to take the oath or affirmation concerning the matter at issue or been affirmed refuses to answer questions concerning the matter or refuses or neglects to produce any such books, documents or *corpus delicti*, is liable to be summarily fined and committed to prison by the magistrate:

Provided that such fine and term of imprisonment shall not exceed two hundred and fifty rupees and fifteen days respectively.

(3) A witness not appearing though served personally with a summons may be arrested by order of the magistrate and brought before him to give evidence.

37. Any person who wilfully insults a magistrate during his sitting or attendance in court or during any inquiry or who wilfully interrupts the proceedings of the court or otherwise misbehaves in court or before the magistrate, is liable to be summarily fined and committed to prison by the magistrate:

Power to
punish for mis-
behaviour
before the court

Provided that such fine and term of imprisonment shall not exceed two hundred and fifty rupees and fifteen days respectively.

Extent of jurisdiction.
Bench to consist of one magistrate.
5/6/1974

26.(1) The court is one court having jurisdiction throughout Seychelles.

(2) A bench of the court consists of a Senior Magistrate or a magistrate sitting alone.

B. JURISDICTION AND POWERS

Jurisdiction in civil matters

27.(1) The jurisdiction and powers of the court in civil matters shall be as laid down in sections 38 to 44 of this Act and in any other law now in force or to be enacted.

Cap. 223
Cap. 28

(2) The court has jurisdiction to hear and determine complaints and applications under Summary Jurisdiction (Wives and Children) Act, and the Children Act.

Jurisdiction in criminal matters.
Cap. 54

28. The jurisdiction and powers of the court in criminal matters shall be as laid down in the Criminal Procedure Code.

C. SITTINGS

Sittings

29. The Sittings of the court may be appointed for and held on any day and at any time at the discretion of the magistrate.

Court houses

30. The court shall hold its sittings in the court houses specified

guilty of an offence and is liable on conviction to a fine of R.1000 or to 2 years imprisonment or to both such fine and imprisonment.

(3) Any reference in any written law to an usher shall be construed and have effect —

- (a) in respect of any matter concerning the keeping of order in any court, as if it were a reference to an orderly;
- (b) in respect of any other matter, as if it were a reference to a process server.

PART III Magistrates' Court

A. GENERAL.

24. In this Part, unless the context otherwise requires —

"clerk" means in respect of the court

- (a) in Victoria, the Registrar or Assistant Registrar of the Supreme Court;
- (b) in Anse Royale and in Praslin and La Digue, the Sub-Accountant or such other officer or person as the Minister after consultation with the Chief Justice may by notice published in the *Gazette* appoint;

"court" means the Magistrates' Court;

"magistrate" includes a person appointed to hold an inquest or a preliminary inquiry and includes a Senior Magistrate;

"Senior Magistrate" means a person appointed by the Minister after consultation with the Chief Justice to be a Senior Magistrate.

25.(1) The Minister acting after Consultation with the Chief Justice may appoint as many fit and proper persons as may be necessary to be Senior Magistrates or magistrates.

(2) A Senior Magistrate and a magistrate shall, as soon as may be after appointment take the judicial oath prescribed by the Official Oaths Act.

Interpretation
applicable to
Part III
3/6/1974
S.I. 95/1975
S.I. 72/1976

Appointment
of Senior
Magistrates
and Magistrates
4/6/1974
S.I. 95/1975
S.I. 72/1976
Cap. 153

- (f) any other matter or proceeding which, by virtue of any enactment or rule of law other than those specified in subsection (2), is required to be dealt with only by a judge.

Process Servers
4/6/1983

20.(1) One of the process servers appointed under section 18 shall be appointed by the Chief Justice to be Chief Process Server.

(2) The duties of the process servers shall be --

- (a) to execute all orders, writs and warrants which may be issued to them by the Registrar or other competent officer of the Supreme Court;
- (b) to serve all processes and execute all orders of the Magistrate's Court;
- (c) to perform all duties required of them by any written law; and
- (d) to undertake such other duties as may be assigned to them by the Chief Justice or the Registrar.

Orderlies
4/6/1983

21.(1) One of the orderlies appointed under section 18 shall be appointed by the Chief Justice to be Chief Orderly.

(2) The duties of the orderlies shall be --

- (a) to attend and keep order at all sittings of the Supreme Court and the Magistrate's Court; and
- (b) to undertake such other duties as may be assigned to them by the Chief Justice or the Registrar.

Process Servers to take
oath of office
Cap. 153
4/6/1983
Offences
4/6/1983

22. A Process Server shall, upon his appointment, take the oath of office in the manner prescribed by the Official Oaths Act.

23.(1) Any Process Server who fraudulently or negligently fails to duly draw up, serve or notify and return any notice, summons or other document whether judicial or extra judicial which is entrusted to him is guilty of an offence and is liable on conviction to a fine of R.2000 or to 5 years imprisonment or to both such fine and imprisonment.

(2) Any Process Server who fails to deliver personally to any party or to serve at the place of abode of the party any document, summons, judgement or copy which he is required to deliver or serve is

17. in civil matters whenever the laws and rules of procedure applicable to the Supreme Court are silent, the procedure, rules, and practice of the High Court of Justice in England shall be followed as far as practicable.

Practice and procedure of the High Court of Justice in England when to apply
8/13/1976

D. OFFICERS OF THE SUPREME COURT

18.(1) The officers of the Supreme Court shall be the Registrar, the Deputy Registrar, the Assistant Registrar, the Process Servers, the Orderlies and such other officers as may be appointed.

Registrar and other officers of the Supreme Court
3/6/1983

(2) The Registrar shall be appointed by the President after consultation with the Chief Justice.

(3) Where the Registrar is a person who is qualified for admission as a barrister or attorney in Seychelles, the Chief Justice may, if he considers it appropriate to do so, appoint the Registrar as a Master of the Supreme Court.

(4) The Chief Justice may, by rules of Court, prescribe that any thing which, by virtue of any written law, is required to be done by the Registrar, may lawfully be done by the Deputy Registrar or by an assistant Registrar.

19.(1) The powers and functions of the Registrar shall be such as prescribed by any law now in force or to be enacted.

Powers and functions of the Registrar
3/6/1983

(2) Where the Registrar is appointed as a Master of the Supreme Court he shall, subject to subsection (3), have power to do anything which, by virtue of the Seychelles Code of Civil Procedure or the Matrimonial Causes Act, may be done by a judge in chambers.

Cap. 213
Cap. 124

(3) Nothing in this section shall empower the Registrar to do anything which he could not otherwise do in relation to —

- (a) anything affecting the liberty of the citizen;
- (b) proceedings for the appointment of a receiver or the granting of an injunction;
- (c) applications for leave to institute legal proceedings;
- (d) applications under section 207 of the Seychelles Code of Civil Procedure to sue as a pauper;
- (e) applications under the Status of Married Women Act or the Children Act; or

Cap. 213

Cap. 231
Cap. 28

(3) For all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the Supreme Court of Seychelles and of the Court of Appeal in England.

(4) In this section the expression "civil matters" includes all non-criminal matters.

Case stated in
civil matters
2/13/1967
6/13/1976
3/D18/1978

13.(1) A Judge may in his discretion, irrespective of any appeal and whether a case be appealable or not reserve any question of law decided by him in the course of any civil cause or matter for the ruling of the Court of Appeal. The question so reserved shall be stated in the form of a case prepared and signed by the Judge himself, and, such case shall be transmitted to the said court.

(2) A case reserved and stated shall not operate as a stay of execution or of proceedings unless the Supreme Court or the Court of Appeal so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.

Appeals in
criminal
matters
Cap. 54

14. Appeals from decisions of the Supreme Court in criminal matters shall be governed by the Criminal Procedure Code and by any other law now in force or to be enacted.

C. PRACTICE AND PROCEDURE

Practice and
procedure of
the Supreme
Court

15. The practice and procedure in all the jurisdictions of the Supreme Court shall be such as are now in force or as may thereafter be provided by law.

Rules of court
for civil or ad-
miralty juris-
diction
6/13/1976
2/6/1983

16.(1) Notwithstanding anything to the contrary in any law, the Chief Justice may make rules to regulate the practice and procedure of the Supreme Court in its civil or its admiralty jurisdiction.

(2) Rules made under this section may amend the Seychelles Code of Civil Procedure, but nothing in this subsection shall authorise the making of any rule which affects any substantive right attaching or accruing to any person by reason of anything in the Seychelles Code of Civil Procedure.

sentence and make orders in all prosecutions for offences of whatever nature and in exercising such criminal jurisdiction the Supreme Court shall have and exercise all the powers and shall enjoy all the privileges vested in the High Court of Justice in England.

10.(1) The Supreme Court shall have power to hear and decide appeals from all other courts and shall exercise general powers of supervision over such courts and may at any time call for and inspect their records.

Appellate
jurisdiction

(2) The Supreme Court shall also have power to hear and decide appeals from any other bodies and persons as provided by any law now in force or to be enacted.

11. The jurisdiction of the Supreme Court in all its functions shall extend throughout Seychelles:

Extent of
jurisdiction of
the Supreme
Court

Provided that this section shall not be construed as diminishing any jurisdiction of the Supreme Court relating to persons being, or to matters arising, outside Seychelles.

B. APPEALS

12.(1) Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.

Appeals in
civil matters
2/D18/1978

(2) (a) In civil matters no appeal shall lie as of right —

- (i) from any interlocutory judgment or order of the Supreme Court; or
- (ii) from any final judgment or order of the Supreme Court where the only subject matter of the appeal has a monetary value and that value does not exceed ten thousand rupees.

(b) In any such cases as aforesaid the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involved in the appeal is one which ought to be the subject matter of an appeal.

(c) Should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, the Court of Appeal may grant special leave to appeal.

law, shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England.

Jurisdiction in
civil matters

5. The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes, and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a Curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the High Court of Justice in England.

Equitable
powers

6. The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.

Admiralty
jurisdiction
4/13/1976
4 & 5 Eliz.
2C. 46

7.(1) The Supreme Court shall have the Admiralty jurisdiction of the High Court of Justice in England as stated in section 1 of the Administration of Justice Act, 1956 of the United Kingdom Parliament (hereinafter in this section called "the Act").

(2) Subject to subsection (3), the Act shall have force and effect in Seychelles.

(3) The Chief Justice may make rules modifying and adapting the Act to such an extent as may appear to him to be necessary to allow the Act to have effect in Seychelles.

Jurisdiction in
disciplinary
matters

8. The Supreme Court shall continue to have, and is hereby invested with full jurisdiction to hear and determine all cases of breach of duty or misconduct committed by any barrister or advocate, attorney, notary, land surveyor or other ministerial officer and in such cases to suspend any such person provisionally or permanently from practising within Seychelles.

Jurisdiction in
criminal
matters

9. The Supreme Court shall continue to have, and is hereby invested with full original jurisdiction, to hear, try, determine, pass

SECTION

46. Oaths to be taken by Justices of the Peace.
 47. Powers and duties of Justices of the Peace.

PART V

Miscellaneous

48. Jurisdiction and powers of courts unaffected by this Act.

PART I

General

1. This Act may be cited as the Courts Act.
 2. In this Act unless the context otherwise requires —

"Chief Justice" means the Chief Justice of the Supreme Court;

"Court of Appeal" means the Court of Appeal constituted under section 70 of the Constitution;

"Judge" means a judge of the Supreme Court and includes the Chief Justice and a Puisne Judge;

"Magistrates' Court" means a court presided over by a Senior Magistrate or a magistrate;

"Registrar" means the Registrar of the Supreme Court;

"Supreme Court" means the Supreme Court constituted under section 63 of the Constitution.

Short title

3/23/1976

Interpretation.

S.I. 123/1970

2/6/1974

S.I. 95/1975

2/13/1976

3/23/1976

Sch/D14/1979

3.(1) The courts for the general administration of justice in Seychelles are the Supreme Court and the Magistrates' Court.

Courts

(2) Local courts exercise jurisdiction under the Peace Officers (Inner Islands and Outlying Islands) Act.

Cap. 157

PART II

Supreme Court

A. JURISDICTION AND POWERS

4. The Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other

General juris-

diction

3/13/1976

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PART IV

Justices of the Peace

- 45. Appointment of Justices of the Peace.

CHAPTER 52
COURTS ACT

[30th November, 1964]

ARRANGEMENT OF SECTIONS

SECTION

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PART II

Supreme Court

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Act 21 of 1964
Act 13 of 1967
S.L. 123 of 1970
S.L. 98 of 1973
Act 6 of 1974
S.L. 95 of 1975
Act 13 of 1976
S.L. 72 of 1976
Act 23 of 1976
Dec. 18 of 1978
Act 6 of 1983
S.L. 60 of 1985
Act 4 of 1986
S.L. 15 of 1990



LAWS OF SEYCHELLES

COURTS ACT

CHAPTER 52

REVISED EDITION 1991

PRINTED FOR THE GOVERNMENT OF SEYCHELLES
BY SPACE

THE GOVERNMENT PRINTER

SECTION 7

The Admiralty Jurisdiction Rules

SI. 50 of 1976

[19th July, 1976]

1. These rules may be cited as the Admiralty Jurisdiction Rules.

Citation

2. Sections 1, 3, 4, 6, 7 and 8 of the Administration of Justice Act, 1956, of the United Kingdom Parliament, shall have force and effect in Seychelles subject to the modification specified in Column II of the Schedule hereto. Sections 2 and 5, Parts II to V and the Schedules of that Act shall be omitted.*

Modification
and adapta-
tions of
Administration
of Justice Act,
1956
4 & 5 Eliz.
2: 46

SCHEDULE

Column I	Column II
Section 3	In subsections (1), (3), (5), (6) and (7), the words "the High Court, the Liverpool Court of Passage, and any county court" shall be deleted and the words "the Supreme Court of Seychelles" shall be substituted;
	In subsection (2) the words "the High Court" shall be deleted and the words "the Supreme Court of Seychelles" shall be substituted;
	In subsection (4) the words "High Court and (where there is such jurisdiction) the admiralty jurisdiction of the Liverpool Court of Passage or any county court" shall be deleted and the words "Supreme Court of Seychelles" shall be substituted;
	In subsection (8) the words "England and Wales" shall be deleted and the words "Seychelles" shall be substituted.
Section 4	Subsection (1) shall be deleted and the following subsection shall be substituted: —
	(1) No court in Seychelles shall entertain an action in person to enforce a claim to which this section applies unless —

*For convenience of reference the relevant provisions of the United Kingdom Administration of Justice Act, 1956 as amended by this statutory instrument are reproduced at the end of this statutory instrument.

Column I

Column II

- (a) the defendant has his habitual residence or a place of business in Seychelles; or
- (b) the cause of action arose within the territorial waters of Seychelles; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection "territorial waters of Seychelles" include any port, dock or harbour in Seychelles."

In subsection (2) the words "in England and Wales" shall be deleted and the words "in Seychelles" shall be substituted, and the words "outside England and Wales" shall be deleted and the words "outside Seychelles" shall be substituted;

In subsection (5) the words "the High Court" shall be deleted and the words "the Supreme Court of Seychelles" shall be substituted.

Subsection (6) shall be omitted.

Section 6 The words "England and Wales" shall be deleted and word "Seychelles" shall be substituted, and the words "Secretary of State" shall be deleted and the word "Minister" shall be substituted.

Section 7 Subsections (1) and (2) shall be omitted.

Subsection (3) shall be deleted and the following subsection shall be substituted —

"(3) Nothing in this Part of this Act shall authorise proceedings in rem in respect of any claim against the Government of Seychelles, or the arrest, detention or sale of any ship, aircraft, cargo or other property belonging to the Government of Seychelles."

Subsection (4) shall be omitted.

Section 1, 3, 4, 6, 7 and 8 of the United Kingdom Administration of Justice Act, 1956 as modified by S.I. 60 of 1976. This does not form a part of the Admiralty Jurisdiction Rules (S.I. 60 of 1976).

PART I

ADMIRALTY JURISDICTION AND OTHER PROVISIONS AS
TO SHIPS

1. Admiralty jurisdiction of the Supreme Court of Seychelles

(1) The Admiralty jurisdiction of the Supreme Court of Seychelles shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims -

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage done by a ship;
- (e) any claim for damage received by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew therefor or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (g) any claim for loss of or damage to goods carried in a ship;
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to use or hire of a ship;
- (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section fifty-one of the Civil Aviation Act, 1949, of the law relating to salvage to aircraft and their apparel and cargo;

- (j) any claim in the nature of towage in respect of a ship or an aircraft;
- (k) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts, 1894 to 1954 is recoverable as wages or in the court and in the manner in which wages may be recovered;
- (o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (p) any claim arising out of an act which is or is claimed to be a general average act;
- (q) any claim arising out of bottomry;
- (r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty,

together with any other jurisdiction which either was vested in the High Court of Admiralty in England immediately before the date of the commencement of the Supreme Court of Judicature Act, 1873 (that is to say, the first day of November, eighteen hundred and seventy-five) or is conferred by or under an Act which came into operation on or after that date on the High Court of Justice in England as being a court with Admiralty jurisdiction and any other jurisdiction connected with ships or aircraft vested in the High Court of Jurisdiction in England apart from this section which is for the time being assigned by rules of court to the Probate, Divorce and Admiralty Division.

(2) The jurisdiction of the Supreme Court of Seychelles under paragraph (b) of subsection (1) of this section includes power to set-

the any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.

(3) The reference in paragraph (i) of subsection (1) of this section to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections five hundred and forty-four to five hundred and forty-six of the Merchant Shipping Act, 1894, or any Order in Council made under section fifty-one of the Civil Aviation Act, 1949, are authorised to be made in connection with a ship or an aircraft.

(4) The preceding provisions of this section apply —

- (a) in relation to all ships or aircraft, whether Seychelles or not and whether registered or not and wherever the residence or domicile of their owners may be;
- (b) in relation to all claims wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (c) so far as they relate to mortgage and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Acts, 1894 to 1954.

3. Mode of exercise of Admiralty jurisdiction

(1) Subject to the provisions of the next following section, the Admiralty jurisdiction of the Supreme Court of Seychelles may in all cases be invoked by an action in personam.

(2) The Admiralty jurisdiction of the Supreme Court of Seychelles may in the cases mentioned in paragraphs (a) to (c) and (r) of subsection (1) of section one of this Act be invoked by an action in rem against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property of the amount claimed, the

Admiralty jurisdiction of the Supreme Court of Seychelles may be invoked by an action in rem against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (I) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam, was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the Supreme Court of Seychelles may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against - -

- (a) that ship, if at the time when the action is brought it is beneficially owned as respect all the shares therein by that person; or
- (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, the Admiralty jurisdiction of the Supreme Court of Seychelles may be invoked by an action in rem against that aircraft if at the time when the action is brought it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Notwithstanding anything in the preceding provisions of this section, the Admiralty jurisdiction of the Supreme Court of Seychelles shall not be invoked by an action in rem in the case of any such claim as is mentioned in paragraph (n) of subsection (I) of section one of this Act unless the claim relates wholly or partly to wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages).

(7) Where, in the exercise of its Admiralty jurisdiction, the Supreme Court of Seychelles, orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(8) In determining for the purposes of subsections (4) and (5) of this section whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within Seychelles.

1. Jurisdiction in personam of courts in collision and other similar case

(1) No court in Seychelles shall entertain an action in personam to enforce a claim to which this section applies unless —

- (a) the defendant has his habitual residence or a place of business in Seychelles; or
- (b) the cause of action arose within the territorial waters of Seychelles; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection "territorial waters of Seychelles" include any port, dock or harbour in Seychelles.

(2) No court in Seychelles shall entertain an action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Seychelles against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) The preceding provisions of this section shall apply to counter-claims (not being counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions in personam, but as if the references to the plaintiff and the defendant were respectively references to the plaintiff on the counterclaim and the defendant to the counter-claim.

(4) The preceding provisions of this section shall not apply to any action or counter-claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(5) Subject to the provisions of subsection (2) of this section, the Supreme Court of Seychelles shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in paragraphs (a) to (c) of subsection (1) of this section are satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(6) The claims to which this section applies are claims for damage, loss of life or personal injury arising out of a collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or out of non compliance, on the part of one or more of two or more ships, with the collision regulations.

(7) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of any court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction, if any.

6. Courts in Seychelles not to have jurisdiction in cases falling within Rhine Convention.

No court in Seychelles shall have jurisdiction to determine any claim or question certified by the Minister to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions thereof and any proceedings to enforce such a claim which are commenced in any such court shall be set aside.

7. Savings

Nothing in this Part of this Act shall authorise proceedings in rem in respect of any claim against the Government of Seychelles, or the arrest, detention or sale of any ship, aircraft, cargo or other property belonging to the Government of Seychelles.

8. Supplemental and transitional provisions

(1) In this Part of this act, unless the context otherwise requires, —

“ship” includes any description of vessel used in navigation;

“goods” includes baggages;

“collision regulations” means regulations under section four hundred and eighteen of the Merchant Shipping Act, 1894, or any such rules as are mentioned in

subsection (3) of section four hundred and twenty-one of that Act or any rules made under subsection (2) of the said section four hundred and twenty-one;

"master" has the same meaning as in the Merchant Shipping Act, 1894, and accordingly includes every person (except a pilot) having command or charge of a ship;

"towage" and "pilotage", in relation to an aircraft, mean towage and pilotage while the aircraft is water-borne;

"the Rhine Navigation Convention" means the Convention of the seventh of October, eighteen hundred and sixty-eight, as revised by any subsequent Convention.

(2) Nothing in any provision in this Part of this Act or in any repeal consequential thereon shall affect proceedings in respect of any cause of action arising before the coming into operation thereof.

SECTION 44

THE MAGISTRATES' COURT (FEES AND COSTS IN CIVIL PROCEEDINGS) RULES

[4th July, 1960]

ARRANGEMENT OF RULES

Rule

1. Citation
2. Interpretation
3. Court and process servers' fees
4. Advocate's fees
5. Witnesses' fees

S.I. 48 of 1960
S.I. 116 of 1968
S.I. 6 of 1980
S.I. 16 of 1981
S.I. 36 of 1990

1. These rules may be cited as the Magistrates' Court (Fees and Costs in Civil Proceedings) Rules.

Citation

2. In these rules unless the context otherwise requires the words and expressions used shall have the meanings ascribed to them in rule 2 of the Magistrates' Court (Civil Procedure) Rules.

Interpretation
Cap. 52
Sub. Leg.

Court and
proceedings
fees
S.L. 11/6/1968
S.L. 6/19/83
S.L. 16/1981

5. The several fees specified in the First Schedule to these rules shall be payable in the office of the clerk of the court on civil proceedings in the court. Such fees shall be paid in the first instance by the party on whose behalf such proceeding is to be taken, on or before such proceeding.

Advocate's fees

4. The advocacy fees to be allowed as between party and party and included in the judgment in civil proceedings in the court shall be in the discretion of the court but shall not exceed the scale set out in the Second Schedule to these rules.

Witnesses' fees
Cap. 243

5. Notwithstanding anything to the contrary in the witnesses Tariff Act and in rules of court made thereunder, there shall be paid to witnesses summoned in civil case in the court the same expenses and allowances as would be payable to such witnesses if they had been summoned in a criminal case.

FIRST SCHEDULE

(RULE 3)

- | | |
|--|--|
| 1. Entering plaint including issue and service of summons within two miles of the court house and incidental matters for which no separate fee is prescribed | Two per cent of value of property, claim or demand with a minimum fee of R. 60 |
| 2. On filing any petition, motion or application, whether to the court or in chambers, including application to a Magistrate | R. 40 |
| 3. On issuing order for attachment, warrant or other order | R. 40 |
| 4. On order amending any pleadings | R. 20 |
| 5. On issue of summons to give personal answers | R. 25 |
| 6. On issue of summons to provisional garnish | R. 15 |
| 7. On summons to witness (each witness) | R. 10 |
| 8. On attendance of any officer of the court to produce records or documents to be given in evidence | R. 30 |
| 9. On issue of any summons unless otherwise provided | R. 10 |

10. On drawing up any order, decree, judgment, warrant, memorandum or notice or any other document not specially provided for R. 30
11. On taking any bond, recognition or security unless otherwise provided R. 25
12. On every hearing of any plaint or other original proceeding before the court for each day or part thereof (to be paid before the hearing by the party originating the proceedings); R. 50
Provided that, when judgment is consented to before the hearing actually commencement, no hearing fee shall be charged.
13. On every adjournment of the hearing of a cause or matter at the request of either party when no hearing fee has become payable; R. 20
Provided that for extraordinary cause shown at the time of request for adjournment to be beyond the control of the party so requesting, the court may exempt such party from payment of this fee
14. On hearing before the court of ex parte petitions, motions or application or where an order is made for judgment given by consent R. 30
15. On moving the court for judgment or making any other incidental application to the court or a Magistrate not otherwise provided for R. 25
16. On taking any affidavit, affirmation, declaration etc.
(a) for use in a proceeding before the court or a Magistrate in chambers, for each deponent R. 15
(b) for any other purpose, for each deponent R. 15

- | | |
|--|-------|
| 17. On marking any exhibit referred to in any affidavit, affirmation or declaration, etc., referred to in item 16(b) | R. 10 |
| 18. On filing, or taking off the file, any document unless otherwise provided | R. 5 |
| 19. In the case of money paid into court, on the same being paid out where the amount exceeds R. 25 - | |
| (a) up to R. 100 | R. 10 |
| (b) above R. 100 | 2% |
| 20. An office copy of every document, record, evidence, or other proceeding, for every thirty lines or fractional part thereof, in respect of each copy required | R. 10 |
| 21. Process servers' fee for serving any summons, warrant, sub-poena, notice or other document - | |
| (a) within two miles of the court house | R. 10 |
| (b) above two miles, for every extra mile charge each way: | R. 5 |
| Provided that, for service in Praslin or La Digue of a document issued in Mahe, and vice versa, a fixed fee of R. 150 and R. 200 respectively will be payable. | |

APPEALS

- | | |
|---|-------|
| 22. On filing notice of appeal | R. 75 |
| 23. On taking recognisance of appellant | R. 25 |
| 24. On typing record of appeal, for every thirty lines or fractional part thereof, in respect of each copy required | R. 10 |

SECOND SCHEDULE

Advocates' Fees

Where the total amount of the claim including interest but excluding costs, or the value of the subject matter as estimated in the plaint -

- (a) does not exceed R. 1000, no fees shall be allowed;
- (b) exceeds R. 1000 but does not exceed R. 10,000, fees may be allowed as hereafter set out in the first column;
- (c) exceeds R. 10,000, fees may be allowed as hereafter set out in the second column;

Drawing plaint or defence and generally preparing for trial	R. 75	R. 150
Drawing application or motion paper	R. 25	R. 40
Attending summons to answer	R. 40	R. 40
Attending trial on each occasion when witness or arguments are heard —		
(a) half day or less	R. 100	R. 200
(b) full day	R. 200	R. 400
Attending on delivery of reserved judgment	R. 40	R. 40
Attending where adjournment granted at instance of another party	R. 40	R. 40

THE COURTS (TRANSFER OF CIVIL SUITS) RULES

SL. 49 of 1960

[4th July, 1960]

ARRANGEMENT OF RULES

- | | |
|-------|---|
| Rule. | |
| 1. | Citation |
| 2. | Transfer from Supreme Court to Magistrates' Court |
| 3. | Transfer from Magistrates' Court to Supreme Court |
| 4. | Appeal and continuation |

1. These rules may be cited as the Courts (Transfer of Civil Suits) Rules. Citation

Transfer from
Supreme Court
to Magistrates'
Court

2.(1) Where a suit has been instituted in the Supreme Court and it appears that the suit could have been instituted in the Magistrates' Court, the Supreme Court shall require the plaintiff to show cause why the suit should not be transferred to the Magistrates' Court and unless the plaintiff satisfies the Supreme Court that the suit is one which, if instituted in the Magistrates' Court ought to be transferred to the Supreme Court in accordance with these rules, the Supreme Court shall order the suit to be transferred to the Magistrates' Court.

(2) Where a suit is so transferred all the costs incurred which would not have been incurred if the suit had been instituted in the Magistrates' Court shall be paid by the plaintiff in any event.

Transfer from
Magistrates'
Court to
Supreme Court

3.(1) Where a suit in the Magistrates' Court raises issues connected with those in a suit in the Supreme Court any party to either suit may apply to the Supreme Court to order that the suit in the Magistrates' Court be transferred to the Supreme Court and there consolidated with, or tried concurrently with, the connected suit in the Supreme Court and, if it appears that such transfer would tend to the shortening or expediting of the litigation or the saving of costs or the convenience of the witnesses or be otherwise in the interests of efficient administration of justice, the Supreme Court shall order the suit to be transferred and give such directions for consolidation or separate trial as the circumstances require.

(2) On an application under this rule the Supreme Court may, in the exercise of discretion, instead of making an order for transfer make an order that proceedings in any suit concerned in the application be stayed until the conclusion of the proceedings in the Supreme Court, or in the Magistrates' Court, as the case may be, in any other suit so concerned.

(3) An application under this rule, if made by a party to the suit in the Supreme Court, shall be made by an interlocutory motion in that suit and in any other event such an application shall be made by originating motion.

(4) Unless the court otherwise orders, the costs of a successful application under this rule shall be paid by the party ultimately ordered to pay the costs of the suit transferred or of the consolidated proceedings, as the case may be, and the costs of an unsuccessful application shall be paid by the applicant.

(5) A copy of the order of the Supreme Court on every application under this rule shall be sent by the Registrar to the Magistrates' Court and there filed in the suit concerned.

4.(1) Where a suit instituted and heard in the Magistrates' Court has been dismissed under subsection (5) of section 46 of the Courts Act and no appeal against such dismissal is pending any party to the suit may apply to the Supreme Court by originating motion to order that the suit be transferred to the Supreme Court and there continued.

Appeal and
continuation

(2) Where an appeal against such dismissal is brought, any party may make such an application at the hearing of the appeal, without other process.

(3) Where a suit is continued in the Supreme Court under this rule the parties shall be bound by their pleadings and by the evidence recorded by the Magistrate unless for special reasons the Supreme Court grants leave to amend the pleadings or to adduce further evidence. On the hearing of a suit so continued the Supreme Court shall ordinarily act on the evidence recorded by the Magistrate but may, in the exercise of discretion, call any particular witness for further examination *ex vivo voce*. In deciding questions of fact the Supreme Court shall consider, but shall not be bound by, the Magistrate's findings of fact.

(4) Where a suit is continued in the Supreme Court under this rule the applicant shall pay to the registrar the difference between the total amount of the fees actually charged on all the proceedings in the suit in the Magistrates Court and the amount chargeable thereon according to the Supreme Court scale.

(5) Unless the Supreme Court otherwise orders—

- (a) the costs of a successful application under paragraph (1) of this rule shall be costs in the continued suit;
- (b) the costs of an unsuccessful application under paragraph (1) shall be paid by the applicant;
- (c) the costs of an application under paragraph (2) shall be costs in the appeal.

THE APPEAL RULES

30.11.1961

[27th February, 1961]

ARRANGEMENT OF RULES

RULES

1. Citation.
2. Interpretation.
3. Scope.
4. Service and proof of service of process.
5. Extention of time.

Civil Appeals from Magistrates

6. Notice of appeal.

Preparation of the Record of Appeal

7. Preparation of the record.
8. List of exhibits.
9. Directions as to copying of documents.
10. Copy of record to be served on applicant.
11. Memorandum of appeal.
12. Contents of memorandum.
13. Security.
14. When appeal deemed withdrawn.
15. Service of memorandum.
16. Despatch of record.
17. Exhibits.
18. Notice of hearing.
19. Written answer.

Procedure at Hearing

20. Hearing.
21. Only grounds pleaded may be argued.
22. Further evidence.
23. Judgment on appeal.
24. Costs.
25. Execution.
26. Leave for further evidence.

Appeals from other Tribunals

27. Application of rules.

1. These rules may be cited as the Appeal Rules.

Citation

2. In these rules, unless the context otherwise requires

Interpretation

"advocate" means a barrister or attorney;

"appellant" includes a party intending to appeal;

"court" means the trial court;

"Registrar" means the Registrar of the Supreme Court and includes an Assistant Registrar

3.(1) These rules govern all civil appeals from the Magistrates Court and apply to all other appeals to the Supreme Court as provided in rule 27.

Scope

(2) An appeal from the Registrar to the Judge is not an appeal to the Supreme Court.

4. Service, and proof of service, of process shall be in accordance with the Magistrates' Court (Civil Procedure) Rules, and with rules amending or replacing the same.

Service and
proof of ser-
vice of process
S.I. 114/1968

5. Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.

Extension of
time

Civil Appeals from Magistrates

6.(1) Every appeal shall be commenced by a notice of appeal.

Notice of ap-
peal

(2) The notice of appeal shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal.

(3) The notice shall be accompanied by as many copies as there are respondents.

(4) The appellant shall pay the prescribed fees and deposit the amount of the cost of preparation of the record as estimated by the clerk of the court.

(5) The clerk of the court shall cause the notice to be served on each respondent as soon as is practicable.

(5) If there are two or more appellants they may sign a joint notice of appeal with one address for service or each may sign a separate notice.

Preparation of the Record of Appeal

Preparation of the record

7. The clerk of the court shall prepare the record as soon as is practicable.

List of exhibits

8. The record shall contain a list of the exhibits.

Directions as to copying of documents

9. Where documentary exhibits are lengthy the magistrate shall to copying of give directions for such portions only as are necessary to be copied for the record.

Copy of record to be served on appellant

10. The clerk of the court shall cause to be served on the appellant or his advocate a copy of the record complete save for the memorandum of appeal hereinafter referred to.

Memorandum of appeal

11. If the appellant wishes to proceed with the appeal he shall, within fourteen days from the date of the service of the copy of the record referred to in the preceding rule, deliver to the clerk of the court a memorandum of appeal.

Contents of memorandum

12. The memorandum shall contain a concise statement in numbered paragraphs of the point or points on which the judgment is alleged to be erroneous, without any argument or narrative, and a concise prayer for the relief claimed.

Security

13. The appellant shall deliver with the original memorandum as many copies as there are respondents and shall at the same time pay the fees for service and hearing and give security for the costs of the appeal. Such security shall be to the amount of Rs. 50 and shall be given, as the Registrar may decide, by deposit of money or by bond with one surety to the satisfaction of the Registrar.

When appeal deemed withdrawn

14. If the appellant has not complied with rules 11, 12 and 13 within the time prescribed, the appeal shall be deemed to have been withdrawn.

Service of memorandum

15. The clerk of the court shall forthwith cause the memorandum to be served on the respondent.

Despatch of record

16. As soon as the memorandum has been served, the clerk of the court shall add it to the record and send the record to the Registrar, and shall at the same time send the file of the suit and, subject to rule 17, the original exhibits.

17.(1) The originals of any documentary or other exhibits which can conveniently be sent to the Supreme Court shall be sent with the record.

Records

(2) Books of accounts or other bulky exhibits shall not be sent unless and until the Supreme Court so directs.

18. The Registrar shall set the appeal down for hearing and notify the parties or their advocates of the date fixed.

Notice of hearing

19. The respondent is not required to file any answer to the memorandum but he may, at any time before the hearing, file a written answer with a copy thereof for each separate appellant and the Registrar shall send the copies to the appellants.

Written answer

Procedure at Hearing

20.(1) When the appeal is called for hearing the appellant or his advocate, if present, shall be heard in support of the appeal; the respondent or his advocate, if present, shall be heard if necessary and in that event the appellant or his advocate may reply.

Hearing

(2) If the appellant does not appear but the respondent appears, the Judge shall consider the record and if necessary hear the respondent and may allow the appeal, in whole in part, or vary the judgment and may make any order as to the merits or as to costs which the justice of the case requires.

(3) If neither party appears the appeal shall be dismissed unless for special reasons the Judge orders an adjournment.

21. An appellant shall not be permitted to put forward at the hearing any grounds of appeal not explicitly stated in his memorandum of appeal, unless in special circumstances by leave of the Supreme Court and subject to such terms as the Supreme Court thinks fit, but in deciding the appeal the Supreme Court shall not be restricted to issues raised by the memorandum.

Only grounds pleaded may be argued

22. No further evidence either oral or documentary, shall be adduced at the hearing of the appeal without the leave of the Supreme Court previously given under rule 26.

Further evidence

23. If the judgment appealed from is reversed or varied the Judge shall record the reasons.

Judgement on appeal

Costs 24. The Supreme Court may make such order as to the whole or any part of the costs of an appeal as may be just and may assess the same or direct taxation thereof.

Execution 25. The Registrar shall send a copy of the judgment or order finally disposing of the appeal to the trial court and thereupon the judgment or order, and subject to its terms the judgment or order of the trial court, may be enforced as an order of the trial court.

Leave for further evidence

26.(1) Any party to an appeal desiring to adduce at the hearing further evidence, either oral or documentary, or to contend that a new trial should be ordered by reason of such evidence having become available may apply to the Supreme Court, by motion, for leave so to do.

(2) The affidavit shall state the substance of the proposed evidence and exhibit a copy of the material parts of any relevant document.

(3) Such a motion shall, if practicable, be heard before the day fixed for the hearing of the appeal.

(4) If the applicant satisfies the Judge —

- (a) that he could not by the exercise of reasonable diligence, have adduced the proposed evidence at the trial, and
- (b) that the proposed evidence is cogent and likely to be decisive of the appeal, or at least of one of the main issues in the appeal, and
- (c) that he made the application at the earliest reasonable opportunity, the Judge may, in his discretion, grant leave to adduce such evidence on such terms as he thinks fit.

(5) If leave is granted the respondent shall have a reasonable opportunity to answer or rebut the further evidence and the hearing of the appeal shall be adjourned or postponed if necessary for that purpose.

APPEALS FROM OTHER TRIBUNALS

Application rules

27.(1) Where an Act allows an appeal to the Supreme Court from an order or decision of any commissioner or other tribunal or officer the procedure in such an appeal shall be in accordance with such Act and regulations thereunder and subject thereto, and in respect of all matters for which they do not provide, in accordance with these rules.

(2) For the purpose of any such appeal the terms "magistrate" "court" and "clerk of the court" mean respectively the officer who, or the presiding officer of the tribunal which, made the order or decision, the office or other place where the records of the proceedings are kept and the clerk or other person in charge of those records and these rules shall be construed accordingly and with any other modifications required in the circumstances of particular cases.

THE MAGISTRATES' COURT (CIVIL PROCEDURE) RULES

S.L. 114 of
1968
S.L. 95 of 1975
S.L. 72 of 1976

[1st December, 1968]

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1. These rules may be cited as the Magistrates' Court (Civil Procedure) Rules.

Short title

2. In these rules unless the context otherwise requires —

Interpretation.

"advocate" means a barrister or an attorney admitted to practice in the Supreme Court;

"cause" shall include any action, suit or other original proceedings between a plaintiff and a defendant;

"clerk" has the same meaning as in Part III of the Courts Act;

"Code" means the Seychelles Code of Civil Procedure;

Cap. 213

"court" means the Magistrates' Court;

"Government" means the Government of Seychelles;

Cap. 111

"law officer" means the Attorney General or any other person appointed by the Attorney General under section 13 of the Legal Practitioners Act;

"matter" shall include every proceeding in the court not in a cause;

"process server" means a process server of the Supreme Court and includes any person by whom process may be served under the provisions of section 35 of the Act;

"suit" or "action" means a civil proceeding commenced by a plaintiff.

Commencement of Action

Suits to be
commenced by
plaintiff

3. Every suit shall be instituted by filing a plaintiff with the clerk.

Plaint to be
signed or
marked

4. Every such plaintiff shall be signed by the plaintiff or by his advocate. In case the plaintiff is unable to sign, he shall mark the plaintiff in the presence of the clerk who shall certify under his signature that the mark has been affixed in his presence.

Copies of
plaint

5. The plaintiff shall in addition file as many copies of the plaintiff, as there are defendants.

Pre payment
of fees

6. Subject as otherwise provided, no proceeding shall be had and no process shall be issued by the clerk except on prepayment of the fees prescribed in respect of such proceeding or process.

Proceedings
by the
Republic or
the
Government
S.I. 95/1975
S.I. 72/1976

7.(1) Any claim of the Republic or the Government falling within the jurisdiction of the court, whether or not the claim is, or might be, enforceable under rules made in pursuance of paragraph (f) of section 44(2) of the Act, may be enforced by suit under these rules.

(2) Such claims shall be brought in the name of the Attorney General and, subject as hereinafter provided, shall be carried on in the same manner in every respect as suits between private parties:

Provided that no personal liability shall attach to the Attorney General in respect of costs awarded in any suit against the Republic or the Government.

(3) Every plaintiff under this rule shall be signed by the Attorney General.

(4) Every suit under this rule shall be conducted on behalf of the Republic or the Government by a law officer or by an advocate or

by a government officer generally or specially authorised in writing by the Attorney General.

(5) No proceeding founded on rules made in pursuance of paragraph (f) of section 44(2) of the Act shall be commenced or continued in respect of any claim or item of a claim included in a plaint presented under this rule.

8. On receipt of a plaint the clerk shall enter in a register the names and places of residence of the parties, the nature of the action and the relief sought. Such entries shall be numbered in every year according to the order in which the plaints are received and the suit shall bear the same number. The judgment or final order of the court shall likewise be entered against such suit.

Particulars of
plaint to be
registered

Issue and Service of Summons

9. When the plaint has been entered in the register, the clerk shall issue a summons, under the seal of the court and signed by him, to each defendant calling upon him to appear in the court at a date and time therein stated, to answer the claim. A copy of the plaint shall be served with each summons.

Summons

10. The summons to appear to a plaint shall be dated on the day on which the suit was entered and such date shall be the date of commencement of the suit.

Commence-
ment of suit

11. The day for the appearance of the defendant shall be fixed by the clerk so as to allow the defendant sufficient time to enable him to appear and answer on such day. The time fixed for appearance shall not be earlier than 48 hours after the service of the summons, except by leave of the court.

Day for ap-
pearance of
defendant

12. The provisions of sections 34, 35, 37 to 43 of the Code shall apply to the service of summonses to appear to a plaint in the court. All summonses to witnesses, orders of the court and other process requiring service may be served in the same manner as summonses to appear to a plaint except where a special mode of service is directed by these rules or by any other law in force.

Sections 34,
35, 37 to 43 of
the Code to
apply

13. All summonses, notices, orders or order process of the court required by these rules or any law in force or hereafter enacted to be served by a process server, shall within twenty-four hours after such service be returned to the clerk and the process server by

Process
servers' to
make return of
service to clerk

when such service has been effected shall certify thereon over his signature the day and hour of service and the place and manner of service.

Service on defendant

14. No summons, notices or other process 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, with the leave of the court. A public holiday shall be counted in any computation of time required by these rules, unless any such day shall be the fast of such time, in which case it shall be excluded from such computation.

Service on parties on certain islands

15.(1) Service of any document whether personal or otherwise, where the party to be served is on any of the inner islands or of the outlying islands shall be effected by leaving two copies thereof with the Attorney General, unless such person has in Mahe an attorney or agent who may be served on his behalf. The two copies so left with the Attorney General shall be forwarded by him for service by a person designated by him. Such service shall be effected in the manner provided by section 34 of the Code and shall be as valid as service by an usher. The person designated by the Attorney General shall be bound to effect service on prepayment of a fee of Rs. 5 by the party at whose instance the service is to be effected.

(2) In this rule —

"inner island" means the islands of Silhouette, North, Frigate, l'Ilot and Recif;

"outlying islands" means those outlying islands listed in the First Schedule to the Peace Officers (Inner Islands and Outlying Islands) Act;

Cap. 157

Appearance of Parties

Parties to appear on date fixed in summons

16. On the day fixed in the summons for the defendant to appear and answer to the claim, the parties shall be in attendance at the court in person or by their respective advocates or agents.

Procedure if neither party appears

17. If on the day fixed for the defendant to appear and answer the claim, or on any other subsequent day to which the hearing of the suit is adjourned, when the case is called on, neither party appears, the suit shall then be dismissed unless the court for reasons to be recorded, otherwise directs. When a suit is dismissed under this rule, the plaintiff may bring a fresh suit, subject to the law as to prescription.

18. If on the day so fixed in the summons when the case is called on the plaintiff appears but the defendant does not appear or sufficiently excuse his absence, the court after due proof of the service of the summons, may proceed to the hearing of the suit and may give judgment in the absence of the defendant, or may adjourn the hearing of the suit *ex-parte*.

If defendant
does not appear

19. If the court has adjourned the hearing of the suit *ex-parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

If defendant
subsequently
appears

20. If on the day so fixed in the summons, when the case is not called on, the defendant appears and the plaintiff does not appear or sufficiently excuse his absence, the plaintiff's suit shall be dismissed. If the defendant admits the plaintiff's claim or part thereof, the court shall give judgment for the plaintiff for so much of the claim as is admitted. If the defendant had claimed a set-off (*compensation*), the court may proceed to the hearing of the set-off and may give judgment thereon.

If plaintiff
does not appear

21. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit may proceed, and the court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

If only some of
the defendants
appear

22. If in any case where one party does not appear on the day fixed in the summons, judgment has been given by the court, the party against whom judgment has been given may apply to the court to set it aside by motion made within one month after the date of the judgment if the case has been dismissed, or within one month after execution has been effected if judgment has been given against the defendant, and if he satisfies the court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall set aside the judgment upon such terms as to costs, payment into court or otherwise as it thinks fit and shall order the suit to be restored to the list of cases for hearing. Notice of such motion shall be given to the other side.

Setting aside
judgment
given *ex-parte*

How party appears

23. A party to a cause or matter may appear in person or by advocate. A party not resident in Seychelles may appoint some other person to appear on his behalf;

Provided that the court may for sufficient reasons allow any other person to appear on behalf of any party.

Pleadings and Inspection

Particulars to be contained in plaint

24.(1) The plaint must contain the following particulars:

- (a) the name of the court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) a plain and concise statement of the material facts alleged by the plaintiff which are necessary to sustain the action without any statement of the evidence by which such facts may be proved;
- (e) a demand of the relief which the plaintiff claims;
- (f) if the plaintiff has allowed a set-off or has relinquished a portion of his claim, the amount so allowed or relinquished.

(2) Where any matter of law is pleaded, such matter shall be mentioned in the briefest possible terms, with a reference to the short title and the number of the section or rule containing the relevant statutory provision.

(3) Estimate of value, relinquishment or any other matter necessary to show that the claim is within the jurisdiction of the court shall be distinctly pleaded.

(4) If the plaintiff sues upon a document other than a document transcribed in the Registry of Deeds or registered in the land register he shall annex a copy thereof to his plaint. If he relies on any other documents as evidence in support of his claim, he shall annex a list thereof to his plaint and shall state where the same may be seen a reasonable time before the hearing.

(5) If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

(3) If the plaintiff sues, or the defendant or any of the defendant is sued, in a representative character, the plaintiff must state in what capacity the plaintiff or defendant sues or is sued.

25. The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alleged in the plaintiff must be distinctly denied or they will be taken to be admitted.

Statement of defence

26. The statement of defence shall be filed with the clerk and shall form part of the records. The defendant shall supply one copy to the plaintiff or there be more than one plaintiff, to each plaintiff, unless the court directs otherwise.

Statement of defence must be filed with the clerk

27. If the defendant intends to produce any documentary evidence, he shall annex a list thereof to his statement of defence and shall state where the same may be seen a reasonable time before the hearing.

List of defendant's documents

28. If the defendant relies upon a set-off (*compensation*), his statement of defence must contain particulars of such set-off and a statement of the material facts necessary to sustain the same. If the set-off depends upon a document, he must annex a copy of such document to his statement of defence.

Set-off

29. If the defendant desires to make a counterclaim (*demande reconventionnelle*) to the plaintiff's claim, he must enter a separate suit in respect of such counterclaim. If judgment be given for the plaintiff in respect of his claim the court may grant a stay of execution of such judgment pending the hearing of the counterclaim.

Counterclaim

30. If either the plaintiff or the defendant omits to comply with paragraph (4) of rule 24 or with rule 27 he shall not be allowed to produce in evidence on his behalf at the hearing, any document in respect of which such omission has been made, without the leave of the court and subject to such terms as the court may direct.

Failure to comply with rules 24(4) and 27

31. The provisions of rule 24(4) and of rule 27 shall not apply to documents produced for cross-examination of the witnesses of the other party, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

Exception to rule 30

32. If any document included in the list of documents attached to the plaintiff or the statement of defence is not in the possession or power of the plaintiff or the defendant, as the case may be, the

Document not in possession of party

plaintiff or the defendant, shall state, if possible in whose possession it is.

Inspection of documents

33. Each party shall be entitled to demand of the other inspection of any deed, agreement, bill or other documents mentioned or referred to in his pleading or in the list of documents annexed thereto or which are or have been in his possession or power, relating to the matter in question, and, in the event of such inspection not being granted, the party desiring the same may apply to the court by motion, of which notice shall be given at least two clear days before the hearing, for an order for such inspection, and the court may make an order for inspection in such place and in such manner as it may think fit:

Provided that the court shall not make an order if it is of opinion that it is not necessary for disposing fairly of the cause or matter or to save costs.

Non-compliance with order for inspection

34. If any party fails to comply with an order for inspection of documents, he shall be liable, if a plaintiff, to have his suit dismissed and, if a defendant, to be placed in the same position as if he had not appeared on the day fixed in the summons to answer the claim.

Particulars

35. (1) A defendant may apply on the day fixed in the summons to appear and answer to the claim or prior thereto, for particulars of the plaintiff's claim, and the court shall direct the furnishing of such particulars as appear to be necessary and may make such order as to costs and the time within which particulars shall be furnished, as may seem just.

(2) The plaintiff may apply for particulars of the defence or set off and the court shall direct the furnishing of such particulars as appear to be necessary and make such order as to costs and the time within which particulars shall be furnished as may seem just.

(3) The court may at any time, of its own motion or on the application of either party order particulars or further particulars to be supplied and may adjourn the hearing for that purpose and may make such order as to costs and the time within which such particulars shall be supplied as appears to be just.

Plans

36. The court may order plans of any *locus in quo* to be supplied by either party in the same manner as particulars.

37. When particulars are ordered to be furnished, one copy shall be filed with the clerk and shall form part of the record, and one copy shall be supplied to each plaintiff or each defendant, as the case may be, by the party ordered to supply such particulars, unless the court directs otherwise.

Copies of particular to be supplied

38. Any point of law raised by the pleadings shall be disposed of at the trial, provided that by consent of the parties, or by order of the court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. If in the opinion of the court the decision of such point of law substantially disposes of the whole cause of action, ground of defence or set off, the court may thereupon dismiss the action, or make such other order therein as may be just.

Point of law

39. The court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious the court may order the action to be stayed or dismissed or may give judgment, on such terms as may be just.

Striking out pleadings

40. Every party who is represented by an advocate shall elect domicile in the office of his advocate. If he is not represented, he shall be deemed to have elected domicile at the place of residence endorsed by him on the pleadings or other application as the case may be unless he files with the clerk a written declaration electing domicile elsewhere within Seychelles.

Election of domicile

Possessory Actions

41. In possessory actions, if the possession and trespass are denied by the defendant, it shall not be competent for him to raise the question of title or ownership.

Title or ownership not to be raised in defence when possession or trespass are denied

42. It shall not be lawful for an unsuccessful plaintiff in a petitory action (*action petitoire*) in the Supreme Court to enter a possessory action in the court.

Unsuccessful plaintiff in a Supreme Court petitory action debarred from entering possessory action in the court

Payment into Court

Payment into court in full satisfaction of demand

43. The defendant in any suit may pay into court, at any stage of the suit, such sum of money as he shall consider a full satisfaction for the demand of the plaintiff. Notice of such payment shall be given forthwith by the clerk to the plaintiff in writing, and the amount shall be paid out to the plaintiff on his application.

Acceptance in part satisfaction

44. If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the court decides that the amount paid into court was a full satisfaction of the plaintiff's claim, the plaintiff shall pay to the defendant the costs of the suit incurred by him after such payment and the costs incurred by him previous thereto, so far as they were caused by excess in the plaintiff's claim.

Acceptance in full satisfaction

45. If the plaintiff accepts such amount as satisfaction in full of his claim, he shall file in court a statement to that effect and the court shall pass judgment accordingly, and shall make such order as to the costs of the suit as shall appear to the court to be just under the circumstances.

Joinder of Causes of Action, Consolidation, Parties and Intervention

Sections 105 to 120 of the Code to apply Cap. 213

46. The provisions of sections 105 to 120 of the Code shall apply in any cause or matter in the court.

Incidental Demands

Application to be made by motion

47. Either party to a suit may, in the course of such suit, apply to the court by way of motion to make an incidental demand.

Manner of presenting motion

48. The motion may be made verbally, but the court may order the motion to be made in writing and to be supported by affidavit.

Hearing

If defendant admits claim

49. If on the day fixed in the summons for the defendant to appear the defendant appears and admits the plaintiff's claim, judgment shall be given for the plaintiff.

If claim denied, statement of defence to be filed

50. If the defendant denies the plaintiff's claim or any part thereof, the court shall adjourn the case to a date to be fixed by the court and shall order the defendant to file a statement of defence on or before such date. If there are more than one defendant, with different defences, separate statements of defence shall be filed by

such defendant. The court may, if it thinks fit, give judgment for the plaintiff for such part of the claim as is admitted by the defendant to be due:

Provided however, that, if the defendant appears in person, the court if it thinks fit, may allow him to make his statement of defence verbally, which statement shall be recorded by the clerk or by the Magistrate, and the court may either hear the suit forthwith or fix another date for hearing:

Provided further that the court may, at any time after the parties have appeared, proceed to hear the suit, if the parties are ready and consent thereto.

51. On the day to which the suit has been adjourned under the last preceding rule, the parties shall appear and the court shall then adjourn the suit to a date to be fixed by the court for the hearing. If the defendant has neglected to file his statement of defence within the time ordered by the court, the court may either give judgment for the plaintiff on his claim or grant further time, subject to such order as to costs, as to the court may seem fit.

Failure to file
statement of
defence

52. On the date fixed by the court for the hearing of the suit, the parties shall appear and the court shall proceed to the hearing of the suit. The court may, at any stage of the suit, if sufficient cause be shown and subject to such order as to costs as to the court may seem fit, grant time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may adjourn the hearing of the suit.

Hearing and
adjournment

53. If on the day fixed in the summons for the defendant to appear, or on any subsequent day before judgment has been given, the parties, or the plaintiff if no set off has been pleaded, appear in court and state that the suit has been settled, 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.

Procedure
when suit is
settled

54. The parties may at any stage of the suit before judgment, appear in court, and file a judgment by consent signed by both parties, stating the terms and conditions agreed upon between them in settlement of the suit and the amount, if any, to be paid by either party to the other, and the court, unless it sees cause not to do so, shall give judgment in accordance with such settlement.

Judgement by
consent

Adjournment of
Magistrate

53. When by reason of the illness or unavoidable absence of the Magistrate, the court cannot be held, the clerk shall call at the parties to the cases fixed for the day and all witnesses summoned for such day, and shall adjourn the court to such other day as he may deem expedient.

Non ap-
pearance at ad-
journed hearing

55. If on the day to which the hearing of the suit has been adjourned by the court, or by the clerk under the provisions of the last preceding rule, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the manners directed in that behalf by rules 16, 17 and 19 or may make such order as it thinks fit.

Procedure if
parties fail to
produce
evidence, etc.

57. If any party to a suit to whom time has been granted, fails to produce his evidence or to cause the attendance of his witnesses or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.

Hearing of
suits *in situ*

58. The court may in any suit, either of its own motion or at the request of any party to the suit, if the court be of opinion that the hearing of the suit will be facilitated thereby :-

- (a) direct that such suit or any witnesses in the suit be heard on the land or premises in dispute between the parties to the suit or at any place where any matter in dispute in such suit has occurred; or
- (b) the court may proceed to such land or premises or place for the purpose of inspection only, without hearing witnesses, but the parties shall have the right to be present at such inspection.

The court shall notify the parties of the place and the date and time of such hearing or inspection, in sufficient time to enable them to be present.

Court to be
open

59. All sittings of the court shall be open to the public but the court may, in any particular cause or matter, if the court thinks necessary in the interests of public order or decency, order all persons not directly interested in such cause or matter, or any particular class of persons, to leave the court during the hearing.

Procedure at
trial

60.(1) When the suit is called on for hearing, except in cases to which paragraph (4) applies, the plaintiff shall begin and his advo-

case if present may, if he so desires, open his case. The evidence for the plaintiff shall then be adduced.

(2) At the close of the evidence for the plaintiff, if the plaintiff failed to make out a case which, in the opinion of the court, the defendant is required to answer, judgment shall be entered for the defendant.

(3) If the court calls upon the defendant, his advocate, if present may open his case and the evidence for the defendant shall then be adduced, after which his advocate may address the court. The advocate for the plaintiff may address the court in reply.

(4) Where the court decides on the pleadings that the initial onus is on the defendant, the defendant shall begin and the preceding paragraphs shall apply mutatis mutandis.

(5) When any party to a cause or matter applies to examine the adverse party on his personal answers such examination shall take place as set out in rule 81.

61.(1) When the evidence and the address, if any, have been completed, the court shall either immediately or at some subsequent time record a brief note of the findings of the court on the main points in controversy and of the principal reasons of such findings and shall deliver an oral judgment in open court either immediately after the termination of the hearing or at some subsequent time of which notice shall be given to the parties and their advocates, if any.

Judgment

(2) No judgment delivered by the court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

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

Attendance of parties

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

63.(1) Where the plaintiffs are witnesses they shall testify before other witnesses are called on their behalf but as between themselves they may testify in any order.

Parties as witnesses

(2) Where the defendant and witnesses may all testify before other witnesses are called on their behalf but as between themselves they may testify in any order.

Parties to be
made on record

54. The Magistrate shall enter in the record of every cause or matter, the date or dates on which it is called on, the names of parties appearing and of the advocates, if any, by whom they are represented, and the name, description and place of residence of every person who has given evidence. The Magistrate shall also make an entry of all the authorities cited by either party, of all the orders and judgments of the court, of all admissions made, of all objections taken and the ruling of the court thereon and of any other matter which appears to him to be requisite.

Record and in-
terpretation of
evidence and
personal
answers

65.(1) The evidence of the witnesses and the answers of a party examined on personal answers shall be recorded in the following manner: —

- (a) such evidence or answers shall be taken down in writing in English by the Magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate and shall form part of the record;
- (b) such evidence or answers shall ordinarily be taken down in the form of a narrative, but the Magistrate may, in his discretion, take down or cause to be taken down questions and answers where that form is more convenient or specially significant;
- (c) whenever such evidence or answers are given in French or Creole, the Magistrate may, if he is satisfied that he is sufficiently conversant with these languages, take down or cause to be taken down such evidence or answers in English in accordance with the provisions of the preceding sub-paragraphs without the use of a sworn interpreter.

(2) The Magistrate may record or cause to be recorded such remarks (if any) as he thinks material respecting the demeanour of a witness or party under examination.

- (3) (a) Whenever any evidence or personal answers are given in a language not understood by a party, and he is present in person and is not represented by an advocate, the evidence or answers shall be interpreted to him in a language understood by him.

- (b) If he is represented by an advocate and the evidence or answers are given in a language other than English, and not understood by the advocate, it shall be interpreted to such advocate in English.
- (c) When documents are put in for the purpose of formal proof it shall be in the discretion of the Magistrate to interpret or cause to be interpreted as much thereof as appears necessary.
- (d) When the Magistrate is satisfied that he is sufficiently conversant with English, French or Creole, the Magistrate may, without the use of a sworn interpreter, undertake any interpretation required under this paragraph or which may be necessary in any cause or matter, from one into any other of the aforementioned languages with which the Magistrate is conversant.

66. Any document admitted in evidence shall be marked by the Magistrate or the clerk with a distinguishing number or letter and with the title of the cause or matter to which it relates and shall be attached to the record.

Documents admitted to be marked

67. Any document tendered in evidence but not admitted by rejected to be the court shall be similarly marked by the Magistrate or the clerk for the purpose of identification and as having been rejected and shall be attached to the record, if the party tendering the same requires.

Documents rejected to be marked for identification at party's request.

Amendments

68. The provisions of section 146 to 150 of the Code shall apply in a suit in the court.

Sections 146 to 150 inclusive of the Code to apply. Cap. 213

Witnesses

69. Any party to a cause or matter may obtain a witness summons as provided under section 36(1) of the Act.

Witness summonses

70. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes; and any particular document which the

Particulars to be contained in witness summons

person summoned is called upon to produce shall be described in the summons with reasonable certainty.

Summons to
produce docu-
ments

71. Any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Evidence of
person present
in court

72. Any person present in court may be required by the court to give evidence or to produce any document then and there in his actual possession or power.

Witness sum-
mons to be
served by a
process server

73. Every summons to a witness to give evidence or produce a document shall be served by a process server as nearly as may be in the manner prescribed by section 34 of the Code for the service of the summons on a defendant.

Time for ser-
vice

74. The summons shall in all cases be served a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the court. A summons shall not be issued less than 24 hours before the time when the attendance of the witness is required, without the special leave of the court.

When witness
may depart

75. No person so summoned and attending shall depart unless and until —

- (a) he has been examined or has produced the document and the court has risen; or
- (b) he has obtained the leave of the court to depart.

Witness to be
kept out of ear-
shot of the
court

76. Witnesses who have been summoned and who have not yet testified shall be kept out of ear-shot of the court witnesses who have testified shall remain in the court-room until they have obtained a leave of the court to depart.

Witness about
to leave the
jurisdiction

77. If a witness be about to leave the jurisdiction of the court, or if other sufficient cause be shown to the satisfaction of the court why his evidence should be taken immediately, the court may upon the application of either party, take the evidence of such witness at any time after the commencement of the cause or matter. Sufficient notice of the application shall be given to the adverse party.

Personal answers

78.(1) Any party to a cause or matter may examine the adverse to examination party on his personal answers as to anything relevant to the matter at issue between the parties.

Rules relating to examination of parties on personal answers.

(2) If a party to any cause or matter be the Republic or the Government or a body establishment (établissement public), a corporation or body having legal entity, such party shall be bound to appoint a special attorney to give his personal answers in such cause or matter. If on the day fixed for the appearance of any such party to give his personal answers, no such attorney appears on behalf of such party, and no satisfactory reason for such attorney's non-appearance is given, the facts, matters and things alleged by the adverse party may be held to have been admitted:

Provided however that administrators, managers or agents of such party may also be called upon to give their personal answers to matters which are within their personal knowledge and the court may in its discretion attach whatever weight it thinks fit to such answers.

(3) If a party to a cause or matter be incapable in law of contracting (incapable), he shall give his personal answers through his guardian, curator or other legal representative.

79. Whenever a party is desirous of obtaining the personal answers not upon oath of the adverse party, he may apply to the court on the day fixed for the defendant to file his statement of defence, or prior thereto, or he may apply to the court ex-parte at any time prior to the date fixed for hearing of the cause or matter, to obtain the attendance of such adverse party and the court on sufficient ground being shown shall make an order granting the application. And the party having obtained such order shall serve a summons, together with a copy of the order, on the adverse party to appear in court on the day stated therein.

Procedure to obtain attendance of adverse party for examination.

80. If a party to the cause or matter is present in court at the hearing of the case, he may be examined on his personal answers with the permission of the Magistrate, without any previous application.

Party present in court may be examined

81. The examination on personal answers shall be in open court at the hearing of the cause or matter, but no party having closed his case shall be allowed thereafter to examine the adverse party on his personal answers.

Examination when to take place

Examination
may be
separate

82. If more than one person be called by either party to a cause or matter to give personal answers, the court may direct that each such person shall give his answers out of the hearing of the others.

Opposition by Third Parties

Sections 172 to
175 of the
Code to apply.
Cap. 213

83. The provisions of sections 172 to 175 of the Code shall apply to judgments rendered in a suit by the court.

Abatement

No abatement
if cause of ac-
tion survives

84. A cause or matter shall not become abated by reason of the death, bankruptcy or insolvency, or change of status or of capacity, of any of the parties, if the cause of action survives; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the hearing and the judgment.

Death,
bankruptcy,
etc., of a party

85. In case of the death, bankruptcy or insolvency or change of status or of capacity, of a party to a cause or matter, the court may order that any necessary party be added or that any person be entitled to represent the party who has died or become bankrupt or insolvent, or being the successor in interest of any such party, be substituted for such party.

Substitution of
name on
record; applica-
tion by repre-
sentative of
deceased party
Application by
plaintiff or
defendant

86. Any person claiming to be the representative of a deceased plaintiff or of a deceased defendant may apply to the court to substitute his name on the record for that of the deceased plaintiff, or the deceased defendant, as the case may be.

87. Any plaintiff or defendant may apply to the court to substitute any person alleged to be the representative of a deceased defendant or of a deceased plaintiff for the deceased defendant or the deceased plaintiff, as the case may be.

Procedure
where party is
added or sub-
stituted

88. If the court orders any party to be added or any person to be substituted under rule 85, 86 or 87, the cause or matter shall proceed in the same manner as if such person or parties had been parties at the commencement of the cause or matter.

Summons to
compel a party
to proceed

89. When the plaintiff or defendant in a cause or matter dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant or the person against whom the cause or matter may be continued may apply by summons to compel the plaintiff or the person entitled to proceed, to proceed within such

time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant or, as the case may be, for the person against whom the cause or matter might have been continued.

Discontinuance

90. The plaintiff may, at any time before the statement or defence has been filed, or after it has been filed, before taking other proceeding in that suit (save any interlocutory application), by notice in writing to the clerk, wholly discontinue his suit against all or any of the defendants or withdraw any part of his claim and thereupon he shall pay such defendant's costs of the suit, or if the suit be not wholly discontinued, the costs occasioned by the part of the claim so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to discontinue the suit without leave of the court, but the court may at any time before judgment, upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the suit to be discontinued or any part of the claim to be struck out. The court may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence or any part thereof without such leave.

Discon-
tinuance of ac-
tion by
plaintiff or
defendant

91. The clerk shall on receipt of such notice in writing forthwith give notice to the defendant of such discontinuance or withdrawal.

Notice of dis-
continued suit

92. The defendant may recover the costs of a suit which has been discontinued under rule 90 in the same way as if such costs had been granted by a judgment of the court.

Costs of dis-
continued suit

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

Subsequent ac-
tion may be
stayed

Peremption of Suits

94. Sections 186 to 193 of the Code shall apply in any cause or matter in the court.

Sections 186
to 193 of the
Code to apply.
Cap. 213

New Trial

When a new
trial may be
granted

95. A new trial may be granted on the application of either party to the suit

- (a) where fraud or violence has been employed, or documents subsequently discovered to be forged have been made use of by the opposite party;
- (b) when new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit, has since been discovered or become available;
- (c) when it appears to the court to be necessary for the ends of justice.

Application
when to be
made

96. Application for a new trial must be made

- (a) if judgment was given against the defendant in default, within three months from the date when execution of the judgment was effected or from the earliest date on which anything was paid or done in satisfaction of the judgment;
- (b) in all cases, within three months from the date of the judgment.

Forgery, fraud
or new
evidence

97. Where a new trial is applied for on the grounds of forgery, fraud or new evidence, the period of three months mentioned in rule 96 shall only run from the day on which the forgery or fraud shall have been known or the new evidence discovered, provided that, in the last two cases, there is written proof of the day on which such fraud or new evidence shall have been discovered.

Procedure to
obtain new trial

98.(1) Every application for a new trial shall be made in writing to the court. Such application shall set forth shortly the reasons for which such new trial is applied for, and, if the court requires it, it shall be supported by affidavit.

(2) The court may in its discretion refuse the application, but if it is of opinion that the reasons alleged are *prima facie* sufficient to warrant a new trial, it shall issue a summons calling upon the other party to show cause why a new trial should not be granted.

Court may im-
pose terms

99. The court may grant an order for a new trial on such terms, if any, as to costs and finding of security for the amount for which the judgment was given at the first trial, or such other terms as to the court may seem fit.

100. When a new trial is granted, the court shall fix a date for the hearing and the new trial shall proceed in all respects as if it had been a first trial.

Date for new trial

Provided that, if the adverse party does not appear on the return of the summons to show cause why a new trial should not be granted and an order is made granting the application, the court shall summon the adverse party to appear on the date fixed by the court for the new trial.

101. The court may grant a stay of execution pending the hearing of the new trial.

Stay of execution

102. It shall not be competent for the applicant to raise any other issue at the trial except those alleged in his application for such new trial.

What issues may be raised at trial

103. If, at the new trial, judgment be given in favour of the applicant, all sums of money paid under the first judgment shall be returned to the applicant and the parties shall be put back in the same position as if there had been no first trial, unless the court orders otherwise.

Effect of judgment for the applicant

104. Whenever an application for a new trial shall have been made and refused, or whenever a trial has been granted and adjudicated upon, it shall not be lawful for the same party to apply again for a new trial of the same suit or a new trial of such new trial.

No new trial of a new trial

105. If, on appeal, a new trial be ordered by the Supreme Court, either party may file with the clerk the original judgment or order of the Supreme Court, or a copy of the formal judgment or order certified to be correct by the Registrar of the Supreme Court, and within one month after filing such judgment or order, such party shall apply to the court to fix a date for hearing of such new trial and a summons shall be issued to the adverse party to appear on the date fixed for the new trial and the trial shall then proceed in all respects as if it had been a first trial, subject however to any order made by the Supreme Court.

Procedure where new trial is ordered by the Supreme Court

Legal Aid

106. Any person may on application to the court and in the courts entire discretion, be admitted to sue or defend as a pauper if the court is satisfied —

Legal aid

- (a) that he is not worth Rs.500, his wearing apparel and the subject matter of the suit or other proceeding before the court excepted; and
- (b) that he has reasonable grounds for suing or of defence; and
- (c) that having regard to the complexity of the case or to exceptional circumstances, it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his case.

Court may inquire before deciding application

107. The court may examine the applicant on oath or take such other evidence or make such inquiry as may be requisite to enable it to decide on the application.

Assignment of advocate

108. Where any person is admitted to sue or defend as a pauper, the court may assign an advocate to assist the person so admitted and an advocate so assigned shall not be at liberty to refuse his assistance unless he satisfies the court that he has some good reason for refusing. The court shall have the same discretionary powers to assign an advocate to assist a person who has been admitted to sue or defend as a pauper in the preparation of an appeal from any decision or order of the court.

Remuneration of advocate

109. Where an advocate has been assigned to any person under the provisions of the last preceding rule, the remuneration of such advocate for the services for which he had been so assigned shall be of such amount and according to such scale as may be prescribed by rules of court.

Fees of court

110. Where a person is admitted to sue or defend as a pauper he shall not be liable to pay any fees of court.

Recovery of fees and remuneration

111. If the court orders any costs to be paid to any person admitted to sue or defend as a pauper all the fees which would have been paid by such person if he had not been admitted to sue or defend as a pauper and the remuneration paid or payable to the advocate if one has been assigned to such person, shall be deducted from the amount of the costs so ordered to be paid and shall be paid to the clerk for the benefit of the Republic and may be recovered by the Attorney General in the same manner as if the order for costs had been made in favour of the Republic. Such costs may be taxed as in other cases.

112. No process shall be served, and no application shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his advocate, unless it is signed by his advocate, if any advocate has been assigned to him.

Advocate to
sign process

113. No advocate shall be bound in any suit brought by or against paupers to make any disbursement of his own moneys.

Disbursements

Of Furnishing of Security

114. The court may, on the application of the defendant, require the plaintiff to give security for costs in all cases in which under the Civil Code such security may be required and also when the plaintiff is known to be insolvent.

When security
may be re-
quired

115. Whenever a party to a suit shall have been ordered to furnish security, the court shall, by the same order, fix the time within which such security shall be furnished by such party and accepted or objected to by the other party.

Time within
which security
is to be fur-
nished

116. The party to a suit ordered to give security shall give notice to the other party or his advocate, of the persons intended to stand as sureties. Such notice shall state the names of the persons suggested as well as the means of such persons.

Notice of
sureties offered

117. If the surety is objected to, the matter shall be summarily dealt with by the court.

Objections

Provisional Seizure and Attachment

118.(1) At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or movable property due to or belonging to the defendant in the suit which is in hands of any third party.

Sections 280
to 287 of the
Code shall
apply.
S.I. 64/1986

(2) The provisions of sections 280 to 287 of the Code shall, mutatis mutandis, apply to an application made to the court under sub-rule (1).

Cap. 213

Forms

119. The forms set out in Schedule C of the Code shall be used with the necessary adaptations, modifications and exceptions for the respective purposes therein mentioned, in any cause or matter in the court.

Forms,
Cap. 213

MAGISTRATES' COURT (RECOVERY OF GOVERNMENT DEBTS) (SUMMARY PROCEDURE) RULES

S.L. 109/1968

[1st December, 1968]

ARRANGEMENT OF RULES

RULES

1. Short title.
2. Interpretation.
3. Debt not to exceed Rs. 2,000.
4. Procedure by complaint.
5. Issue of Summons.
6. Service.
7. Costs.
8. Procedure on hearing.
9. Evidence.
10. Civil Procedure Rules not to apply.
11. Suit may be brought under Civil Procedure Rules.

Short title

1. These rules may be cited as the Magistrates' Court (Recovery of Government Debts) (Summary Procedure) Rules.

Interpretation

2. In these rules unless the context otherwise requires —

"authorised officer" means the Attorney General, and the head of a Government department;

"clerk" has the same meaning as in Part III of the Courts Act;

"debt" includes dues, fees and taxes;

"Schedule" means a schedule to these rules;

"the court" means the Magistrates' Court;

"the Government" means the Government of Seychelles.

Debt not to exceed Rs. 2,000

3. Whenever any debt not exceeding Rs. 2,000 is due to the Government the person liable for the payment of such debt may be sued in the court for non-payment thereof at the instance of an authorised officer in accordance with the provisions of these rules.

Procedure by complaint

4. All claims for non-payment of debts under these rules shall be entered by complaint as nearly as may be as in Form A of the first schedule.

4. Upon such complaint being filed the clerk shall issue a summons to the person proceeded against as nearly as may be as in Form B of the first schedule.

Issue of summons

5. Such summons shall be served by a process server of the Supreme Court or by a member of the police force in the same manner as a summons to answer a plaint is served under the Seychelles Code of Civil Procedure.

Service

Cap. 213

7. All proceedings under these rules shall be free of stamp and registration duty but when the person proceeded against is ordered to pay costs, such costs shall be taxed on the scale set out in the second schedule.

Costs

8.(1) On the day fixed in the summons the court, after ascertaining that service of the summons has been duly made and the amount of the debt remains unpaid, either in whole or in part, shall, unless it is satisfied that the person proceeded against is not liable for or does not owe the debt claimed, or any part thereof, order such person to pay the amount owed together with the costs of the proceedings, or may make such order as to it may seem just.

Procedure on hearing

(2) If the person proceeded against disputes his liability to pay the debt or any part thereof —

(a) rule 50 of the Magistrates' Court (Civil Procedure) Rules shall apply *mutatis mutandis*, and

Cap. 52
Sub. Leg.

(b) the court may, if it thinks fit, proceed in accordance with the Magistrates' Court (Civil Procedure) Rules in so far as those rules relate to the hearing of disputed claims.

Cap. 52
Sub. Leg.

9. In proceedings under these rules the court shall have power to summon witnesses, and to call for the production of books and documents and to examine witnesses and parties concerned on oath and section 36 of the Courts Act shall apply.

Evidence

10. Subject as otherwise provided, the Magistrates' Court (Civil Procedure) Rules shall not apply to proceedings under these rules.

Civil Procedure Rules not to apply.
Cap. 52
Sub. Leg.

11. Any claim for a debt due to the Government and enforceable under these rules, may be enforced by suit under the Magistrates' Court (Civil Procedure) Rules.

Suit may be brought under Civil Procedure Rules.
Cap. 52
Sub. Leg.

FIRST SCHEDULE

FORM A
in the Magistrates' Court

Complaint is made against the persons whose names are hereinafter set forth that they owe the Government of Seychelles the debts as set out against their name.

Name of debtors	Address	Amount of debt	Debt when due

Wherefore the undersigned prays that the said persons be summoned to appear before the Magistrates' Court at to answer the aforesaid complaint.

Dated this day of 19

FORM B

In the Magistrates' Court

To of

Whereas complaint has been made by the of the Department that you have failed to pay a debt amounting to Rupees in relation to *(state nature of debt as described in the complaint)*.

You are hereby summoned to appear before Magistrates' Court at on the day of 19 at o'clock in the forenoon to answer the said complaint.

Should you fail to appear the court may, in your absence, proceed with the case and make an order against you for the payment of the debt claimed.

Dated this day of 19

Clerk of the Magistrates' Court

SECOND SCHEDULE

FEES OF COURT

	When claim does not exceed Rs. 500	When claim exceeds Rs. 500
	Rs.	Rs.
1. Entering complaint before the court.	5	10
2. Issuing summons to appear	1	3
3. Issuing summons to witness (each witness)	1	1
4. Process servers fee for serving any summons		
(a) within two miles of the court house	2	2
(b) above two miles for every extra mile to be charged one way only:	1	1
Provided that for service in Praslin and La Digue of a summons issued in Mahe, and fvice versa, a fixed fee of Rupees 25 will be payable.		
5. Hearing fee	3	5