



Tonga

**MAGISTRATE'S COURT (CIVIL)  
RULES 2007**





## MAGISTRATE'S COURT (CIVIL) RULES 2007

### Arrangement of Rules

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# MAGISTRATE'S COURT (CIVIL) RULES 2007

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**IN EXERCISE OF THE POWERS** conferred upon him by clause 89 of the Act of Constitution and section 97 of the Magistrate's Court Act, the Chief Justice hereby makes the following Rules —

## PART 1 — PRELIMINARY

### 1 Short title

These Rules may be cited as the Magistrate's Court (Civil) Rules 2007.

### 2 Commencement

These Rules shall come into force on the date they are published in the Gazette.

### 3 Application of rules

- (1) These Rules apply to every action in the Magistrate's Court that —
  - (a) is not a criminal action;
  - (b) is within the jurisdiction of the court; and
  - (c) in respect of which, and to the extent that, no other rules apply.
- (2) If a situation arises that is not covered by —

- (a) the provisions of the Magistrate's Court Act;
- (b) these Rules; or
- (c) any directions that a Magistrate may make concerning the case,

the corresponding rule applicable to or adopted by the Supreme Court shall apply, with any modifications that, in the opinion of the Chief Magistrate, are necessary to make them appropriate to actions in the Magistrate's Court.

#### 4 Interpretation

In these Rules —

“**Act**” means the Magistrate's Court Act (*Cap 11*);

“**civil action**” means a proceeding before the court that is not a criminal proceeding;

“**return date**” means the date endorsed on a summons as the date that the defendant is required to appear.

## PART 2 — COMMENCEMENT OF ACTION

#### 5 Filing of summons

- (1) A civil action is commenced by the filing in the registry of a Magistrate's Court of a summons in Form 2 of the Schedule to the Magistrate's Court Act.
- (2) A summons must be completed correctly and include the information required by section 61 of the Act, namely —
  - (a) the names and address of the plaintiff and defendant;
  - (b) a concise statement of the plaintiff's claim;
  - (c) the date, inserted by the court clerk, on which the defendant is required to appear.
- (3) It is the duty of every court clerk to assist any person wishing to file a summons by providing information about the court's requirements.
- (4) The court clerk shall ensure that after the summons is issued in accordance with section 61(2) of the Act, the return date is noted on the court diary and the Magistrate's diary.
- (5) The plaintiff shall pay the prescribed filing fee before the summons is accepted for filing.

- (6) The court clerk shall open a file for each case, file the court's copies therein and give the person filing the summons a sealed copy.
- (7) If a summons or other document is filed by a Law Practitioner for the plaintiff or another party, the summons or other document shall be endorsed with the Law Practitioner's name and address for service.

## **6 Service**

- (1) If service of a summons or other document cannot be effected in accordance with section 62(1) (a) or (b) or section 62(2) of the Act and the party to be served does not have an address for service at which he may be served, a Magistrate may order —
  - (a) that service may be effected in such other manner as is designed to give notice of the summons or other document to the party; or
  - (b) that service of the summons or other document be dispensed with.
- (2) After a summons has been filed and issued the court clerk shall, unless the plaintiff indicates that he will arrange service, send the service copies of the summons to the Bailiffs or the police for service on the defendant, after the plaintiff pays the prescribed service fees.

## **PART 3 — FIRST APPEARANCE TO SUMMONS**

### **7 Non-appearance of a party**

- (1) If on the return date of a summons the plaintiff or a defendant fails to appear, in person or by Law Practitioner, then in accordance with section 65 of the Act, the court may make any of the following orders —
  - (a) strike out the case;
  - (b) adjourn the case;
  - (c) an order under paragraph (2);
  - (d) such other order as the court considers proper.
- (2) If a defendant fails to appear on the return date of a summons and is proved to have been duly served in time —
  - (a) the court may proceed with the hearing and enter judgment accordingly;
  - (b) if the plaintiff's claim is for an unliquidated amount or for any reason the amount needs to be proved, the court may accept affidavit evidence instead of requiring oral testimony.

- (3) Any order made in the absence of a party may be set aside on application of that party on such terms as the court thinks just.
- (4) An application to set aside an order under paragraph (3) shall be made by summons supported by affidavit(s) filed no later than 10 days after the date on which the order came to the applicant's attention.

## **8 Adjourment to hearing date**

On the date fixed on a summons, if both parties appear, the court shall fix another date for the hearing of the action unless —

- (a) the parties agree on how the case should be disposed of;
- (b) the plaintiff agrees to discontinue the action;
- (c) the defendant was not served within the time specified in section 63 of the Magistrate's Court Act and requires an adjourment to another return date;
- (d) the court is satisfied that the case should be heard that day and that in the circumstances and considering the urgency of the case and any other good reasons the defendant will not be unduly prejudiced by a hearing on that date; or
- (e) the court orders to the contrary.

## **9 Orders that court may make in preparation for a trial**

When ordering that a civil action be set down for trial, or at any appropriate time in an action, the court may make such of the following orders that it considers appropriate —

- (a) that any of the parties do file and serve within such time as is specified —
  - (i) further particulars of claim;
  - (ii) particulars of the defence to the claim;
  - (iii) particulars of the reply to a defence or counter-claim;
  - (iv) lists of documents or authorities to be relied on, and copies for the court and each party;
- (b) that the parties and their representatives meet in an attempt to settle the dispute between them or to resolve or agree on any issues relevant to the case;
- (c) that the case be adjourned to another return date to allow the court to supervise compliance with directions or otherwise.

**10 Temporary orders**

Application for a temporary order under section 8(m) of the Act shall be made by summons supported by affidavit(s) stating the relevant facts that support the making of such a temporary order.

**11 Application for court order**

An application for a court order shall be filed with the clerk of the court together with supporting affidavit(s) and the prescribed fees.

**12 Judgments and Orders**

A copy of every judgment entered in the absence of the defendant shall be served by the party who obtained it upon the judgment debtor, within 10 days of the judgment being issued.

**PART 4 — TRIAL****13 Trial**

The procedure to be followed at a hearing of a civil action shall be as specified in section 66 of the Act.

Made by the Chief Justice the 9th day of May 2007.

**ANTHONY D FORD**

*Chief Justice*