

Statutory Instrument No. 79 of 1971

SUBORDINATE COURTS PROCLAMATION (CAP. 5.)

**RULES OF THE SUBORDINATE COURTS, 1970
(FURTHER AMENDMENT) RULES, 1971**

(Published on the 2nd July, 1971)

In the exercise of the powers vested in me by section 93 of the Subordinate Courts Proclamation, I, John Richard Dendy Young, Chief Justice, hereby make the following rules:

1. These rules may be cited as the Rules of the Subordinate Courts, 1970 (Further Amendment) Rules, 1971.

2. Rule 4 of Order X is hereby repealed and the following rule substituted: —

“4. (1) When the defendant has failed to enter appearance to defend or, having entered appearance, has failed to deliver a plea within the period specified in a notice delivered to him in terms of rule 3 of this Order, and the plaintiff has in either case requested the grant of judgment, or when the defendant has consented to judgment, the clerk of the court shall place the request for judgment or the consent to judgment before a judicial officer who may, subject to the provisions of sub-rules (2), (3), (4), (5) and (6) of this rule, summarily grant judgment in terms of the Plaintiff's request or of the defendant's consent, as the case may be.

(2) If it appears to the judicial officer that the defendant intends to defend the action but that his entry of appearance is defective in respect that the notice thereof:

- (a) has not been properly delivered; or
- (b) has not been properly signed; or
- (c) it has not set out the postal address of the person signing it or an address for service as prescribed in rule 2 of Order IX;
- (d) exhibits any two or more of such defects or any other defect of form;

he shall not grant judgment against the defendant unless the plaintiff has delivered written notice to the defendant that request for judgment in default of due entry of appearance is being made and the defendant has not within 72 hours of the receipt by him of such notice delivered a notice of entry of appearance in due form. Such notice shall clearly set out in what respects the defendant's entry of appearance is alleged to be defective.

(3) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless with the return of service by the messenger there has been filed the acknowledgment mentioned in rule 10 of Order VI.

(4) In a request for judgment on a claim for damages under this rule, the request shall be dealt with by the court and the plaintiff shall furnish to the court evidence either oral or by affidavit of the nature and extent of the damages suffered by him. The court shall thereupon assess the amount recoverable by the plaintiff as damages and shall enter judgment therefor.

(5) If the action be on a liquid document the plaintiff shall before entry of judgment file of record the original of such document duly stamped, or an affidavit setting out reasons to the satisfaction of the judicial officer why such original cannot or should not be filed.

(6) A judicial officer may order that any consent to or request for judgment be heard in open court and the court may thereupon:

- (a) if a default judgment be sought, call upon the plaintiff to produce such evidence either written or oral in support of his claim as it may deem necessary;
- (b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;
- (c) enter judgment in terms of plaintiff's request or for as much of the claim as has been established to its satisfaction;
- (d) enter judgment in terms of defendant's consent;
- (e) refuse judgment; or
- (f) make such other order as may be just.

(7) When one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea, judgment may be entered against the defendant or defendants who have consented to judgment or are in default and the plaintiff may proceed on such judgment without prejudice to his right to continue the action against another defendant or other defendants.

(8) Particulars of all judgments granted under this rule shall be recorded in the Civil Record Book."

3. Sub-rule (2) of rule 3 of Order XII is hereby repealed and the following sub-rule substituted —

"(2) Money paid into court in terms of this rule shall be paid into a deposit account with the Government in such manner as the Accountant-General may from time to time direct."

4. Rule 46 (a) of Order XXV is hereby amended by the repeal of the words at the end thereof "Money paid into court in terms of this rule shall forthwith be paid into revenue in such manner as the Accountant-General may from time to time direct," and the substitution of the following words —

“Money paid into court in terms of this rule shall be paid into a deposit account with the Government in such manner as the Accountant-General may from time to time direct.”.

**J.R. DENDY YOUNG,
Chief Justice.**

**LOBATSE.
18th June, 1971. .
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