ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) ACT 1999

Act No. 4 of 1999

Proclaimed by [Proclamation No. 7 of 2000] w.e.f 14th February 2000

ARRANGEMENT OF SECTIONS

Section

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An Act

To implement several of the recommendations in the Report of the Presidential Commission on the structure and operation of the Judicial System and legal Professions of Mauritius aimed at ensuring the prompt and economical disposal of the business of the Courts and the easier access of litigants to the Courts

1. Short title

This Act may be cited as the Administration of Justice (Miscellaneous Provisions) Act 1999.

2. Code de Procedure Civile amended

The Code de Procedure Civile is amended by repealing articles 214 to 25 1.

3. Courts Act amended

The Courts Act is amended-

(a) in section 22, by inserting after the words "Chief Registrar" the words "or any officer of the court designated for that purpose by the Chief Justice";

(b) in section 80, by numbering the existing, provision as subsection (1) and by inserting thereafter the following new subsection -

(2) For the purposes of subsection (1), the civil.jurisdiction of the Intermediate Court shall extend to Rodrigues.

(c) in section 81, by adding immediately after subsection the following new subsections-

(3) The Chief Justice may direct that any civil case lodged before the Intermediate Court be tried in Rodrigues.

(4) For the purposes of subsection (3), the Chief Justice may -

(a) direct one or more Magistrates to try the case;

(b) designate a clerk who shall have the same powers and duties in relation to the case as those of the Head Clerk of the Intermediate Court.

(5) Any Magistrate under subsection (4) shall have the same powers and jurisdiction as those conferred on a Magistrate of the Intermediate Court.

(d) by deleting section 85 and replacing it by the following section-

85. Proceedings before Intermediate Court

(1) Subject to subsection (2), the hearing of every case before the Intermediate Court shall take place before one Magistrate.

(2) The President of the Intermediate Court may, either proprio motu or on application in writing made to him by any party to a case stating the reasons for such application, direct that any case shall be heard by 2 or more Magistrates, having regard to the magnitude of the interests at stake or the importance or intricacy of the questions of fact or law involved.

(3) Except where the case is heard before one Magistrate, the decision of the Intermediate Court shall -

(a) where the court is composed of 2 Magistrates, be the unanimous decision of the Magistrates;

(b) where the court is composed of 3 Magistrates, be the unanimous decision or the decision of the majority, of the magistrates.

(4) Where the Intermediate Court is composed of 2 Magistrates and there is a difference of opinion between them, the trial shall be started anew before 3 Magistrates.

(e) in section 86, by deleting subsection (1) and replacing it by the following subsection-

(1) Where a case before the Intermediate Court comes for mention, or has, for any reason, to be adjourned, the proceedings may take place before one Magistrate, who may take and record the plea of an accused party or the pleadings of a party in a civil suit.

(f) by inserting immediately after section 96 the following new section -

96A. Audience before District Court

In any proceedings before a District Court, any of the following persons may address the Court -

(a) any party to the proceedings with the leave of the Court;

(b) any person who is authorised to do so pursuant to the Law Practitioners Act 1984.

(g) by inserting immediately after section 104 the following new section -

104A. Small claims jurisdiction

Notwithstanding any other enactment, a District Court shall have jurisdiction in any civil action, where the sum claimed or matter in dispute does not exceed 25,000 rupees and the case has been lodged under Part IIA of the District and Intermediate Courts (Civil Jurisdiction) Act, to hear and determine the action in accordance with the procedure set out under that Part.

(h) in section 128(2), by deleting the words " 100 rupees" and replacing them by the words "2000 rupees",

(i) in section 179(1), by deleting, the words " 100 rupees" and replacing them by the words "2000 rupees",

(j) in section 181, by deleting subsection (2) and replacing it by the following subsection -

(2) In all proceedings before any court or before any person authorised by law or by consent of parties to hear, receive and examine evidence, a certificate under the hand of -

(a) any officer; or

(b) in the case of a medical certificate, the officer in charge of the hospital where the examination of the person to whom the certificate relates was carried out,

shall be sufficient evidence of the fact therein stated without proof of the handwriting of such officer unless the court or such person authorised as aforesaid decides that the attendance of the officer is necessary.

(k) by inserting immediately after section 188,thefollowingnew sections-

188A. Admissibility of sound recording

(1) Subject to subsection (2), the sound recording of any evidence given by any person charged with an offence shall be admissible in evidence in any criminal proceedings where it is given to an investigating officer in the course of an investigation of an offence.

(2) In the case of evidence of an admission, the sound recording of any evidence shall be admissible where -

(a) the recording is made in the course of official questioning in accordance with the requirements set out in the third Schedule; and

(b) the admission is made by a person who is reasonably suspected by an investigating officer as having committed an offence.

(3) The President may, by Order, specify the offences in relation to which the sound recording of evidence of an admission by an accused party shall be a condition precedent to the admissibility of such admission in evidence.

(4) In this section -

"sound recording" includes recording of visual images or sound;

"investigating officer" means a police officer or any public officer whose function or duties includes functions or duties in respect of prevention or investigation of offences.

(5) The common law rule against hearsay shall not prevent the admissibility or use of a sound recording as evidence under this section and the sound recording shall be admissible in evidence at any trial to the same extent and in the same manner as documentary evidence would be admissible.

188B. Admissibility of written statements

(1) In any criminal proceedings, a written statement by a person shall, be admissible as evidence to the like extent as oral evidence where-

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he could be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their Counsel, within 7 days from the service of the copy of the statement, serves a notice on the party proposing to tender it in evidence objecting to the statement being so tendered.

(2) Notwithstanding subsection (1), if the parties agree before or during the hearing that the statement shall be tendered in evidence, the conditions set out in subsection (1)(c) and (d) shall not apply.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section -

(a) where the statement is made by a person under the age of 21, the age of the person shall be stated;

(b) where it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) where it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (1)(c),shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding subsection (1) –

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; or

(b) the Court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the Court and give evidence.

(5) An application to a Court may be made under subsection

(4)(b) before the hearing and, on any such application, the powers of the Court shall be exercisable -

(a) in the case of a District Court, by the Magistrate of the District Court;

(b) in the case of the Intermediate Court, by the President of the Intermediate Court;

(c) in the case of the Industrial Court, by the President of the Industrial Court;

(d) in the case of the Supreme Court, by any Judge of the Supreme Court.

(6) The statement admitted in evidence under this section shall, be read aloud at the hearing unless the Court directs that only part of the statement shall be so read and, where the Court so directs, an account shall be given orally of the part of the statement that is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(8) A document required by this section to be served on any person may be served -

(a) by delivering it to him or to his Counsel;

(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his Counsel and leaving it at his office;

(c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his Counsel at his office; or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body corporate at that office.

(l) by adding immediately after section 197B the following new section -

197C. Enquiry as to genuineness of deed

Subject to article 1319 of the Code Napoleon, any action as to the genuineness of any deed, whether authentic or under private signatures, shall be entered by way of plaint with summons before the Supreme Court.

(m) by adding the First Schedule to this Act as the Third Schedule.

4. Criminal Procedure Act amended

The Criminal Procedure Act is amended in section 3, by numbering the existing provision as subsection (1) and inserting thereafter the following new subsections-

(2) Notwithstanding subsection (1), the Director of Public Prosecutions may, instead of prosecuting an offender, direct the Police or any other person prosecuting an offender under his directions to administer a warning to the offender where he reasonably considers-

(a) the offence to be a minor one and that such warning would satisfy the ends of justice;
(b) the offender has not previously committed any similar offence; and
(c) the offender did not seriously dispute his guilt when confronted with or made aware of the offence.

5. District and Intermediate Courts (Civil Jurisdiction) Act amended

The District and Intermediate Courts (Civil Jurisdiction) Act is amended-

(a) by repealing section 6 and replacing it by the following section -

6. Service by Post

(1) The clerk shall cause any summons or other process which is required to be served to be sent by registered post with advice of delivery to the address of the person to be summoned.

(2) The summons shall be posted in an envelope on which shall appear a notice that, in case the envelope is not delivered at the given address, it shall be returned to the clerk whose address shall be designated on the envelope.

(3) The clerk responsible for the service shall cause a certificate stating the date and place of posting of the summons or other process together with the advice of delivery to be filed not less than 7 days before the returnable date.

(b) by repealing section 7 and replacing it by the following section-

7. Service by usher

(1) Where any summons or other process sent by registered post under section 6 is returned undelivered, it shall be served by the usher of the Court in the district where the person to be suummoned resides.

(2) The usher shall, within 24 hours of service, send his return of the service or notification of the summons or other process to the clerk of the Court who shall sign or initial on the original.

(3) Any usher who fails to make his return within the time specified in subsection (2), shall be liable to a fine not exceeding 50 rupees to be imposed summarily by the Court.

(c) in section 8(2), by deleting subsection (c);

(d) in section 9, by deleting the words "in which the demand does not exceed 100 rupees";

(e) by repealing section 1O;

(f) by replacing section 16 and replacing it by the following section-

(1) Where on the day so fixed in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant does not appear, or does not sufficiently excuse his absence, the Court upon the proof of the service of the summons, may give judgment in terms of the plaint or, where the cause includes a claim for substantial damages, proceed to the hearing of the witnesses and trial of the cause on the part of the plaintiff only, and in either case, the judgment shall, subject to subsection (2), be as valid as if both parties had attended

(2) In any case in which judgment has been so given in the absence of the defendant the Court may, at the same or subsequent sitting and on proof that he did not receive service of the plaint with summons or on other sufficient cause shown, set aside the judgment and order a new trial of the cause of action upon such terms, including the payment of costs or the giving of security for debt or costs, as the Court may determine.

(g) by inserting immediately after section 20 the following new Part-

PART II A - SMALL CLAIMS PROCEDURE

21. Lodging claims

(1) Proceedings under this Part shall be commenced by lodging a claim with the clerk of the District Court in the district where the defendant resides.

(2) A claim shall be in writing in the form set out in the First Schedule and shall be signed by the claimant.

(3) A claim may be made orally to the clerk who shall cause it to be reduced in writing.

(4) Where a claim has been reduced in writing under subsection (3), the clerk shall read over and explain to the claimant the contents of the form and, where the claimant confirms the correctness of the claim, the claimant shall sign the form in the presence of the clerk and a copy shall be given to him.

21A. Contents of a claim

(1) A form referred to in section 21 shall contain –

(a) the name and address of the claimant;

(b) the name and address of the defendant;

(c) the amount or the estimated amount of the claim;

(d) such other particulars of the claim as are reasonably sufficient to inform the defendant of the ground of the claim and the manner in which the amount claimed by the claimant has been calculated;

(e) the time limit specified in section 21E within which the defendant shall reply to the claim;

(f) a request for the defendant to make a declaration as to-

(1) whether the claim is accepted in full;

(2) whether the claim is disputed in full, with a brief account of the reasons for such dispute;

(iii) whether the claim is disputed in part, with a statement as to the part of the claim that is disputed and the reasons for such dispute;

(iv) the manner in which the defendant proposes to pay the undisputed amount in case of an admission in whole or in part of the claim.

21B. Jurisdiction

(1) Where a claim is for an amount of more than 25,000 rupees, a claimant may abandon the excess, and the Court shall have jurisdiction to hear and determine the claim.

(2) No claim under Part IIA shall be brought before a Court-

(a) where the proceedings relating to the subject matter of that claim have been already determined by that Court or any other Court

(b) where at the commencement of this Act, proceedings in relation to a claim pending before that Court or any other Court;

(c) after the expiry of one year from the date on which the cause of action arose.

21C. Claim not to be divided

No claim shall be split or divided and pursued in separate proceedings before a Court under this Part for the sole purpose of bringing the sum claimed in each Of such proceedings within the jurisdiction of the Court

21D. Exclusion and transfer of proceedings

(1) Where a Court is of the opinion that a claim lodged with it under section 21 is beyond its jurisdiction under this Part, it shall discontinue any proceedings already started and advise the claimant accordingly.

(2) A discontinuation of proceedings under subsection (1) shall not debar the claimant from instituting fresh proceedings according to law.

21E. Settlement through Court

(1) Where a claim has been communicated to the defendant in accordance with section 21H, the defendant shall, within 14 days of the date of the communication, lodge with the clerk his reply in the form specified in the First Schedule.

(2) Where the defendant admits the claim in full, the Magistrate may give judgment against the defendant in the sum claimed and may award costs, and the clerk shall inform the claimant and the defendant accordingly.

(3) Where the defendant-

(a) fails to reply to the claim within the time-limit specified in subsection (1);

(b) disputes the claim in full or in part; or

(c) makes a counterclaim,

the Court shall, before hearing the claim, convene the parties to the dispute in Chambers, on a date to be fixed by the Court, for consultation with a view to effecting a settlement acceptable to all the parties.

(4) The date to be fixed under subsection (3) shall be not later than one month from the date on which the reply was received or should have been received under subsection (1).

(5) Where a settlement is reached between the parties, the Court may make such order as it thinks fit to give effect to the settlement reached by the parties.

(6) An order made under subsection (5) shall have effect as a judgment of the Court for the purposes of section 22.

21F. Hearing of the claim

(1) Subject to section 2lH,where it appears to the Court that a settlement under section 2lE(3)will not be possible within a reasonable time, it shall fix a date for hearing the claim and give notice of the hearing in the form specified in the Second Schedule to -

(a) the claimant;

(b) the defendant; and

(c) every person who appears from the claim form to have a sufficient interest in the claim.

(2) The clerk shall, at the request of a claimant or defendant, summon any person to appear before a Court, where the presence of such a person is necessary to enable the Court to determine the questions in dispute in the claim.

21G. Claim involving substantial question of law

(1) Where the Court finds that-

(a) the dispute involves a question of law of substantial importance;

(b) the claim is unsuitable for summary determination by reason of the counter claim made by the defendant, or for any other reason,

the Court shall, unless the claimant elects to discontinue his claim, proceed to hear the claim according to the procedure specified in Part II.

(2) Where a claimant elects to discontinue his claim, the Magistrate shall not make any order as to costs.

21H. Service

Service of a copy of a claim, notice of hearing, summons, document or process that is to be served on any person in any proceedings under this Part shall be served by the clerk in the same manner as specified in sections 6 and 7.

21I. Proceedings of the Court

(1) A Court shall regulate its own procedure and, in so doing, shall endeavour to avoid formality in its proceedings.

(2) A Court may, of its own motion or at the request of any party, summon any witness and require the production of any record, book, deed, writing or other document which is relevant in any proceedings relating to a claim.

(3) A Court shall deal with any matter which it may consider relevant to a claim, whether or not it has been raised by a party.

21J. Appearance before Court

(1) Subject to subsection (2), any party to the proceedings before a Court may present his own case.

(2) A party to any proceedings before a Court may be represented by counsel or attorney or by a duly authorised representative.

(3) Subject to section 161A of the Courts Act, all proceedings before a Court shall be held in public.

21K. Claims may be heard together

(1) Where 2 or more claims are filed and it appears to a Court that -

(a) a common question of fact or law arises in both or all of them;

(b) the claim arose out of the same cause of action; or

(c) it would be in the interest of justice,

the Court may order that such claims be heard at the same time.

(2) The power conferred by this section may be exercised by a Court notwithstanding that the hearing of one or more of the claims has begun.

21L. Judgment in default of appearance

(1) Where a defendant fails to appear at the hearing personally or is not represented by counsel or attorney or by a duly authorised representative, the claimant may move the Court for judgment in his favour.

(2) The Court shall not deliver judgment against a defendant under this section unless it is satisfied that a copy of the claim and the notice of hearing have been communicated to the defendant under section 21H.

21M. Determination of claims

(1) A Court shall determine a claim and pronounce such judgment as it thinks fit as soon as possible after the conclusion of a hearing.

(2) A Court may, at any time, dismiss a claim which it considers to be frivolous or vexatious on such terms as to costs as it thinks fit.

(3) The Court may make such ancillary orders as may be necessary to give effect to any order made by it under this section.

(4) Any judgment of a Court may include interest at such rate not exceeding the legal rate as may be fixed by the Court on the whole or any part of the sum claimed for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

21N. Rules

The Chief Justice may make such rules as he thinks fit for the purposes of this Act.

21O. Enforcement of judgment of Court

A judgment of the Court may be enforced in the manner specified in Part III.

21P. Appeal

(1) A party to proceedings before a Court may appeal to the Supreme Court against any final judgment or order made by the Court under this Part.

(2) An appeal under this Part shall be made in accordance with Part IV.

21Q. Interpretation

In this Part -

“claim” means a small claim under section 21 but does not include any claim -

(a) under section 111 of the Courts Act;

(b) in respect of which the Industrial Court has exclusive jurisdiction.

“claimant" means a person who lodges a claim under section 21;

"Court” means a District Court;

"defendant” means any person against whom a claim is lodged and includes any person who becomes a party to the proceedings as defendant.

(h) by adding the Second and Third Schedules to this Act as the First and Second Schedules.

6. District and Intermediate Courts (Criminal Jurisdiction) Act amended

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended-

(a) in section 55, by deleting the words "with one or more sureties" and replacing them by the words "with or without sureties";
(b) in section 67B, by deleting the words "and with such sureties" and replacing them by the words with or without sureties";
(c) by inserting immediately after section 69A, the following new section-

69B. Sentence on timely guilty plea

The District Court or the Intermediate Court may mitigate the sentence on an accused party who appears before it and makes, in the opinion of the court, a timely plea of guilty to the offence with which he stands charged.

(d) in section 71, by deleting subsection (1) and replacing it by the following subsection-

(1) Where the trial of the case cannot be considered in one day, the Court may adjourn the case to the next day or a subsequent day.

(e) by deleting section 74 and replacing it by the following section -

74. Minutes and evidence to be recorded

(1) Minutes of proceedings of a case and the evidence on both sides may be recorded by tape or other technological means available in the Court.

(2) Where the facilities specified in subsection (1) are not available in a Court, the Magistrate shall take down in writing the minutes of proceedings and the evidence on both sides

(f) in section 75-

(i) by deleting subsection(1)and replacing it by the following subsection-

(1) Subject to subsection (2),the District Court or the Intermediate Court may make such order as it thinks fit and reasonable regarding the costs-

(a) to be paid by a party convicted of an offence;

(b) by the prosecution upon the dismissal of an information where the Court is satisfied that on the facts of the case no prosecution should have been brought against the party charged.

(ii) in subsection(2)(c),by deleting the words “any convicted party" and replacing them by the words "any party".

(g) by inserting immediately after section 75 the following new section -

75A. Wasted costs

(1) Without prejudice to section 75, a Magistrate may disallow, or order the legal or other representative of the prosecution or defence concerned to personally meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court made by the Judges of the Supreme Court.

(1) In this section –

"legal or other representative",.in relation to a party .to proceedings, means any person exercising a right of audience or a right to conduct litigation on his behalf;

“ wasted costs" means any costs incurred by a party as a result of any decision, act or on omission on the part of any legal or other representative

in the conduct of the case which, in the opinion of the Court, was unnecessary, avoidable or was otherwise prejudicial to that party.

77A. Conviction for other cases of similar nature

(1) Subject to subsection (2), where any party is convicted of an offence before the District Court or the Intermediate Court, he may request the Court before which he is convicted to convict and sentence him in respect of any other offence of a similar nature which may be pending against him before that Court or any other Court and which is triable by that Court.

(2) Notwithstanding-

(a) section 114 of the Courts Act; and

(b) section 72 of this Act,

a District Court may, in respect of any party convicted under subsection (1), impose upon that party an aggregate period of imprisonment not exceeding 8 years.

7. Registration Duty Act amended

The Registration Duty Act is amended –

(a) in section 14 -

(i) in subsection (1)(a), by adding after the words "the original" the words "or a certified copy of the original signed by an officer";

(ii) in subsection (1)(b), by adding after the words "the original" the words "or a certified copy of the original signed by an officer";

(iii) in subsection (4)(b), by adding after the words "the original" the words "or a certified copy of the original signed by an officer".

(b) in section 38, by deleting paragraph (d), the semi-colon and the word "or" at the end of paragraph (c) being deleted and replaced by a full stop.

(c) in the Seventh Schedule, in item 11, by deleting the words "where the matter at issue is worth less than 60 rupees; or the claim is made of, several items of less than 60 rupees each."

8. Road Traffic Act amended

The Road Traffic Act is amended in section 192, by deleting the words "at the District Court specified in the notice" and replacing them by the words "in the prescribed manner at any District Court".

9. Sale of Immovable Property Act amended

The Sale of Immovable Property Act is amended -

(a) in section 121, by deleting the words "no other formality shall be required" and replacing them by the words "a copy of the renunciation shall be transcribed with the Conservator of Mortgages";

(b) in section 169 in subsection (1), by adding immediately after the words "Conservator of Mortgages" the words "or, notwithstanding Article 2201 of the Code Napoleon, a notary designated by the Master and Registrar";

(c) by repealing section 170 and replacing it by the following section-

170. Certificate transmitted to Master and Registrar

The Conservator of Mortgages or, notwithstanding Article 2201 of the Code Napoleon, the notary designated under section 169 shall ex officio transmit, within 180 days of the application under section 169, the certificate to the Master and Registrar, and the costs of the certificate shall be paid to the Master and Registrar by the party who has the carriage of the proceedings.

10. Transcription and Mortgage Act amended

The Transcription and Mortgage Act is amended -

(a) in section 3, by adding immediately after paragraph (j) the following new paragraphs, the full stop at the end of paragraph being replaced by a semi-colon accordingly-

(k) every renunciation of a heir to his rights in a succession under article 784 of the Code Napoleon made before the Master and Registrar;

(l) every retraction of renunciation under article 790 of the Code Napoleon.

(b) by adding immediately after section 48B, the following new section-

49. Transcription of deed of renunciation and retraction

(1) The transcription of a deed of renunciation or retraction, shall be effected within 7 days of the renunciation or retraction, by filing in the Mortgage Office, 2 certified copies of the renunciation or retraction.

(2) (a) One of the certified copies filed under subsection (1) shall be returned to the person who filed it after the Conservator has endorsed on it a memorial to the effect that a certified copy has been transcribed.

(b) The other certified copy shall be kept in the Mortgage Office.

(3) The certified copy kept in the Mortgage Office under subsection (2)(b) shall -

(a) satisfy the requirements of section 48 (3)(a), (b) and (d) and (5);

(b) contain the certificate of registration of the other certified copy reproduced on it.

(4) The Conservator may reject any copy which does not satisfy any of the requirements of subsection (3).

11. Commencement

Proclaimed by [Proclamation No. 7 of 2000] w.e.f 14th February 2000

FIRST SCHEDULE
(section 3 (m))

THIRD SCHEDULE
(section 188A)

Sound recording of evidence

1. Sound recording of evidence shall be carried out in such manner as to instill confidence in its reliability as an important and accurate record of the interview.

2. When the suspect is brought in the interview room the recording officer shall without delay but in the sight of the suspect load the tape recorder with clean tape and set it to record.

3. The tape must be unwrapped or otherwise opened in the presence of the suspect and each tape must bear an identification number.

4. The recording officer shall then formally tell the suspect the following in relation to the sound recording -
   (a) that the interview is being sound recorded, specifying the identification number of the tape;
   (b) his name and rank and the name and rank of any other persons (including legal representatives) present;
   (c) the name of the suspect;
   (d) the date, time of commencement and place of the interview.

5. The officer shall then caution the suspect in the following terms -

   “You are not obliged to say anything unless you wish to do so but whatever you say will be recorded and may be used as evidence in court against you."

6. The officer shall remind the suspect of his right to legal representation.

7. The officer shall then tell the suspect in ordinary language-
   (a) what offence he is investigating;
   (b) what fact he is asking the suspect to account for;

(c) that he believes this fact may be due to the suspect's taking part in the commission of the offence in question;

(d) that a record is being made of the interview and may be given in evidence if he is brought to trial.

8. (1) If the suspect raises any objection to the interview being tape recorded either at the outset or during the interview or during a break in the interview, the officer shall explain the fact that the interview is being tape recorded and that the suspect's objections shall be recorded on tape.

(2)(a) When any objection has been recorded on tape or the suspect has refused to have his objection recorded, the officer may turn off the recorder.

(b) In this eventuality he shall say that he is turning off the recorder and give his reasons for doing so and then turn it off.

(3) The officer shall then make a written record of the interview.

(4) If, however, the officer reasonably considers that he may proceed to put questions to the suspect with the tape recorder still on, he may do so.

9. If the suspect indicates that he wishes to tell the police officer about matters not directly connected with the offence of which he is suspected and that he is unwilling for these matters to be recorded on tape, he shall be given the opportunity to tell the police about these matters after the conclusion of the formal interview.

10.(1) When the recorder indicates that the tapes have only a short time left to run, the officer shall tell the suspect that the tapes are coming to an end and round off that part of the interview.

(2) If the officer wishes to continue the interview but no second set of tapes is readily available, he shall obtain a set.

(3) The suspect shall not be left unattended in the interview room.

(4) The officer will remove the tapes from the recorder and insert the new tapes which shall be unwrapped or otherwise opened in the suspect's presence.

(5)(a) The recorder shall then be set to record on the new tapes.

(b) Care must be taken, particularly when a number of sets of tapes have been used, to ensure that there is no confusion between the tapes.

(c) This may be done by marking the tapes with an identification number immediately after they are removed from the recorder.

11.(1) When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded on tape.

(2) When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution

and of his right to legal advice. If there is any doubt the caution must be given again in full when the interview resumes.

12.(1) If there is a failure of equipment which can be rectified quickly, for example by inserting new tapes, the appropriate procedures set out in paragraph 10 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview resumes.

(2) If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder or any other recorder in another interview room is readily available, the interview may continue without being recorded. In such circumstances, the interview may be proceeded with in writing.

13. The whole of each interview shall be recorded at the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

14.(1) One tape, referred to herein as the master tape, wi11 be sealed before it leaves the presence of the suspect.

(2) A second tape will be used as a working copy. The master tape is either one of the two tapes used in a twin deck machine or the only tape used in a single deck machine.

(3) The working copy is either the second tape used in a twin deck machine or copy of the master tape made by a single deck machine.

15.(1) At the interview, including the taking and reading back of any written statement, the time shall be recorded and the recorder switched off.

(2) The master tape shall be sealed with a master tape label and treated as an exhibit.

(3) The officer shall sign the label and ask the suspect and any third party present to sign it also.

(4) If the suspect or third party refuses to sign the label, another appropriate officer shall be called into the interview room and asked to sign it.

16. The officer shall make a note in writing of the fact that the interview has taken place and has been recorded on tape, its time, duration and date and the identification number of the master tape.

17.(1) The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master tapes to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes.

(2) (a) A police officer has no authority to break the seal on a master tape which is required for criminal proceedings.

(b) If it is necessary to gain access to the master tape, the police officer shall arrange for its seal to be broken in the presence of the suspect and his legal adviser.

(c) The suspect or his legal adviser shall be informed and given a reasonable opportunity to be present.

(d) If the suspect or his legal representative is present the suspect shall be invited to reseal and sign the master tape.

(e) If he refuses or is absent this shall be done by the police officer in the presence of another officer not below the rank of Superintendent of Police.

(3) In all other cases, the master tape shall be kept securely under lock and key under the responsibility of an officer designated for that purpose until it is removed for production in Court.

SECOND SCHEDULE
(section 5 (h))

FIRST SCHEDULE
(section 2 1)

IN THE DISTRICT COURT OF

SMALLCLAIMSFORM

Case Number:

1 Name of claimant:

Address of claimant

Telephone No :

2. Address for service:

and payment (if not as above)

Ref/Tel no:

3. Name of defendant:

Address of defendant:

4 Amount claimed:

Brief description of type of claim:

Particulars of the claim (showing the grounds on which the claim is based and how it has been calculated):

.....
.....
.....

YOU MAY REPLY TO THIS CLAIM BY FILING THE ATTACHED FORM AND LODGING YOUR REPLY WITHIN 14 DAYS WITH THE CLERK OF THE DISTRICT COURT OF

Address
.....
...

Date: Signature of claimant:

REPLY FORM
(section 21E)

Declaration by defendant

(To be filled by defendant and communicated to the clerk of the District Court of
.....

I hereby declare that -

*(a) I accept the claim in full. I shall effect payment as follows-
.....
.....

*(b) The claim is disputed in full. The grounds for disputing the claim are as follows-
.....
.....

*(c) The claim is disputed in part. The part of the claim which is disputed and the grounds for such dispute are as follows -

.....
.....

*(d) I admit part of the claim as follows-

(please state how you propose to pay the undisputed amount)
.....
.....

Signature of defendant:

Date: .....

*Delete as appropriate

THIRD SCHEDULE
(section 5(h))

Case Number:

SECOND SCHEDULE
(section 21F)

IN THE DISTRICT COURT OF

SMALL CLAIMS
Notice of Hearing

Claimant: ..... Case No : ....

Date:

Defendant:

To the Claimant and Defendant

Details of Hearing .....

This case is hereby fixed for hearing on merits.

The hearing will take place at ..... on ..... at ..... o'clock.

If you do not attend, the Magistrate may make decisions in your absence and award costs.

Magistrate Directions (What should you do)

(a) Not less than 14 days before the hearing, you must send the other party a copy of all the documents you have which you are going to use in connection with your case; and
(b) Not less than 8 days before the hearing, you must send to the Court and to the other party-
    (i) a copy of any report or document you are going to use in connection with your case; and
    (ii) the name(s) and address(es) of any witness(es) you intend to call.

Signature of Clerk of the Court:

Date: