



REPUBLIC OF NAURU

Civil Procedure Act 1972

As in force from 15 April 2011

This compilation comprises Act No. 4 of 1972 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 18 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Civil Procedure Act 1972

An Act to make provision for the practice and procedure to be followed in the Courts in civil causes and matters

PART I — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Civil Procedure Act 1972* and shall come into force on a date to be notified by the Minister in the Gazette.¹

2 Interpretation

In this Act, unless the context otherwise requires:

‘Clerk’ means the Clerk of the District Court appointed under section 15 of the *Courts Act 1972*;

‘Court’ does not include the Family Court;

‘decree’ means the formal expression of a judgment under the seal of the Court by which the judgment was pronounced or entered;

‘decree-holder’ means any person for whom judgment has been pronounced or entered or an order capable of execution has been made, whether or not a decree has been sealed, and includes the assignee of a decree;

‘foreign court’ means a court outside Nauru;

‘foreign judgment’ means the judgment of a foreign court;

¹ The Minister notified 27 November 1972 as the date of commencement of the principal Act (GN No. 322/1972).

'garnishee' means a person whose debt due to a judgment-debtor is attached by a Court;

'judgment-debtor' means any person against whom judgment has been pronounced or entered or an order capable of execution has been made;

'legal representative' includes a barrister and solicitor and a pleader;

'Registrar' means the Registrar of the Supreme Court appointed under section 6 of the *Courts Act 1972*;

'share in a corporation' includes stock, debenture stock, debentures and bonds;

'suit' means an original civil proceeding commenced in any manner prescribed and includes both a cause and a matter.

PART II — PREVENTION OF REPETITIVE LITIGATION

3 Stay of suit

- (1) No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court having jurisdiction in Nauru to grant the relief claimed, or before a court of another country on appeal from the decision of a Court in Nauru:

Provided that, where all the parties consent thereto, a Court may proceed with the trial of such a suit and the proceedings in the previously instituted suit shall be stayed.

- (2) The pendency of a suit in a foreign court, other than on appeal from the decision of a Court in Nauru, shall not preclude a Court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

4 Res judicata

- (1) No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under

the same title, in a Court competent to try that subsequent suit or the suit in which that issue has been subsequently raised, and has been heard and finally decided by such Court:

Provided that the matter in issue must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

- (2) In this section the expression '**former suit**' shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
- (3) For the purposes of this section, the competence of a Court shall be determined irrespective of any provision as to right of appeal from the decision of that Court.
- (4) Any matter which could properly have been made a ground of support for, or of defence against, any claim, counter-claim or set-off pleaded in any former suit shall for the purposes of this section be deemed to have been a matter directly and substantially in issue in that suit.
- (5) Any relief which has been claimed in a suit and is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.
- (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons, interested in that right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

5 Bar to further suit

Where a plaintiff is precluded by rules of court from instituting a further suit in respect of any particular cause of action, he shall be barred from instituting a suit in respect of that cause of action.

6 Prevention of vexatious suits

- (1) Where any person has frequently and without any reasonable ground commenced suits in any Court, a judge may, upon the application of the Secretary for Justice or the Registrar, order that no suit shall, during such period as may be specified in the order, be commenced by that person without the leave of a judge.

- (2) No order shall be made under this section unless the person to whom the order relates has been given an opportunity to be heard in the matter.

7 When foreign judgment not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except:

- (a) where it has been pronounced by, or entered in, a court without competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of the Republic in cases in which that law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud; or
- (f) where it sustains a claim founded on a breach of any law in force in Nauru.

8 Presumption as to foreign judgments

The production of any document purporting to be a certified copy of a foreign judgment shall be received by any Court as evidence of the truth of all matters therein, unless there is reason to believe that it is not a true copy of such judgment.

PART III — COMMENCEMENT OF SUIT

9 Suits within the jurisdiction of the District Court to be commenced therein

Every suit which the District Court has jurisdiction to try shall be commenced in the District Court:

Provided that a Judge may upon application by an originating summons, for any special reason, give leave for a suit to be

commenced in the Supreme Court notwithstanding that the District Court has jurisdiction to try it;

And provided further that no appeal shall lie against the decision of a judge upon an application made under this section.

10 Institution of suits

Every suit shall be commenced in such manner as may be prescribed by rules of court.

PART IV — PROCEDURE IN SUITS AND DISCOVERY

11 Service on defendant

Where a suit has been duly instituted the defendant shall, subject to the provisions of section 14 of this Act, be served in the manner prescribed with a writ of summons requiring him to enter an appearance and answer the claim.

12 Power to order discovery and the like

Subject to such conditions and limitations as may be prescribed, any Court may, at any time, either of its own motion or on the application of any party to proceedings therein:

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence; and
- (b) order any fact to be proved by affidavit.

13 Claim may be dismissed if no step taken in proceedings for one year

- (1) Where no step has been taken in any suit in any Court for a period of one year or more, no party thereto may take any further step therein without the leave of that Court and, upon the application of any party, the claim, and the counterclaim if any, may be dismissed by that Court:

Provided that the dismissal of a claim or a counterclaim under the provisions of this subsection shall not, of itself, be a bar to

the institution of new proceedings in respect of that claim or counterclaim.

- (2) Where no step has been taken in any suit in any Court for six years or more, the Court may, on application by any party or of its own motion and without giving notice to any party, dismiss the claim, and the counterclaim if any, therein, and thereafter no further suit may be commenced in any Court in respect of either that claim or that counterclaim.

14 Procedure in certain petty cases

- (1) Where the claim is for liquidated damages not exceeding \$100 and the defendant is a natural person normally resident in Nauru, the plaintiff may commence his suit by obtaining the issue of a summons requiring the defendant to attend the District Court at the time and place specified therein and, where such summons is issued, the provisions of sections 10 and 11 of this Act shall not apply.
- (2) Where in a suit which could have been commenced under the provisions of the last preceding subsection the plaintiff causes the defendant to be served with a summons to enter an appearance, he shall, if he succeeds in the suit, not be entitled to recover costs greater than the costs which he would have recovered if he had commenced the suit by a summons to attend and, if he is unsuccessful, the defendant shall be entitled to recover from him the amount by which his costs exceed the costs which he would have had to incur if he had been served with a summons to attend:

Provided that the Court may, if it is satisfied that the plaintiff had good reason for causing the defendant to be served with the summons to enter an appearance, order that the provisions of this subsection shall not apply.

PART V — TRIAL

15 Power to call in assessors

- (1) Civil suits in the Supreme Court shall be tried by a judge alone.
- (2) Any Court may, in any cause or matter pending before it in which questions may arise as to the customs of the Nauruans or of any other people, summon to its assistance one or more competent assessors and such assessors shall attend and assist accordingly.

- (3) In any Admiralty cause of salvage, towage or collision, the Supreme Court may summon to its assistance, in such manner as it may direct or as may be prescribed, one or more competent assessors and such assessors shall attend and assist accordingly.
- (4) Every assessor shall be summoned in such manner as the Court issued the summons may direct and shall receive such fees for his attendance as may be prescribed.

16 Power to promote reconciliation

Where a civil suit is pending in any Court:

- (a) a judge or the Registrar, if it is pending in the Supreme Court; and
- (b) a magistrate, if it is pending in the District Court,

may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

PART VI — JUDGMENT

17 Judgment and decree

- (1) A Court, after hearing a suit, shall pronounce judgment therein.
- (2) It shall not be necessary for a Court to hear the suit before judgment is pronounced or entered:
 - (a) where the plaint is drawn claiming a liquidated demand, and there is filed in support thereof an affidavit by the plaintiff, or, where the plaintiff is a corporation or does not personally know the facts, by a person who states therein that he knows the facts, that the plaintiff is entitled to recover from the defendant the amount claimed in the suit, and either:
 - (i) the defendant has not entered such appearance therein as may be prescribed and has not attended before an officer of the Court in accordance with the rules of court and verbally stated his defence or, where the proceedings have been commenced by a summons issued under section 14 of this Act, has not attended the District Court, in person or by a

legal representative, at the time and place stated in the summons;

- (ii) the defendant, having entered an appearance, has failed to file his defence within the time prescribed; or
 - (iii) in respect of a counterclaim in a suit commenced by a summons to enter an appearance, the plaintiff has not filed a defence within the time prescribed or attended before an officer of the Court in accordance with rules of court and verbally stated his defence; or
- (b) where all the parties thereto or their legal representatives give their consent, either orally in court or in writing, to judgment being entered therein.
- (3) A decree may issue upon any judgment of any Court but it shall not be necessary for a formal decree to be drawn up and sealed; in any suit where no formal decree has been drawn up and sealed, for the purposes of appeals and execution the judgment shall have the force and effect of a decree and in every such case every person in whose favour judgment has been pronounced or entered shall be deemed to be a decree-holder.

18 Reasoned judgment to be given on disputed issues

- (1) Where upon the hearing of any suit any issue is in dispute, the Court shall give a reasoned judgment determining that issue.
- (2) Every judgment given under the provisions of this section shall:
 - (a) be pronounced, or the substance of it explained, in open court;
 - (b) be in writing in the language of the Court;
 - (c) contain the point, or points, for determination, the decision thereon and the reasons for the decision;
 - (d) be signed by the judge, magistrate or magistrates, as the case may be; and
 - (e) be dated with the date on which it is pronounced:

Provided that, where any suit, or proceedings therein, has, in accordance with the provisions of any law or of rules of court,

been heard in chambers, the judgment may be pronounced, or the substance of it explained, in chambers.

- (3) Every judgment shall be pronounced immediately after the termination of the hearing or at some subsequent time of which reasonable notice shall be given to the parties and their legal representatives, if any.
- (4) Notwithstanding the other provisions of this section, it shall be lawful for any judgment of any Court or of any judge or magistrate to be delivered by the effect thereof being pronounced, provided that the full terms of that judgment have been reduced to writing and that a copy thereof is made available free of charge to the parties or their legal representatives.
- (5) A judgment of the Supreme Court or of a judge may, if the Court or judge so directs in writing, be delivered by the Registrar in the absence of the judge.

19 Interest

- (1) Where, and in so far as, the judgment of any Court is for the payment of money, the Court may, in the judgment, order interest at such rate as the Court thinks reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the judgment, in addition, if the Court thinks fit, to any interest adjudged on that principal sum or any period prior to the institution of the suit, with further interest at such rate as the Court thinks reasonable on the aggregate sum so adjudged from the date of the judgment to the date of payment or to such earlier date as the Court thinks fit.
- (2) Where a judgment is silent with respect to the payment of further interest on the aggregate sum referred to in the last preceding subsection from the date of the judgment to the date of payment or other earlier date, the Court shall be deemed to have ordered interest at the rate of 8 per cent per annum.

PART VII – COSTS

20 Costs

- (1) Subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, the costs of and incidental to any suit instituted in any Court shall be in the discretion of that Court and the Court, or a judge or

magistrate thereof, shall have full power to determine by whom and out of what property and what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of its powers under this section:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or judge shall for good reason otherwise order.

- (2) The Court, judge or magistrate ordering the payment of costs may order in addition the payment of interest on those costs at such rate as it, or he, thinks reasonable and that interest shall be added to the costs and shall be recoverable as such.

PART VIII — ENFORCEMENT OF JUDGMENTS

21 No enforcement within forty-eight hours of judgment

- (1) Except by leave of:
 - (a) in an action in the Supreme Court, the Supreme Court, a judge or, if no judge is present in Nauru, the Registrar; or
 - (b) in an action in the District Court, the District Court or the resident magistrate,

no proceedings for the enforcement of a judgment or order shall be commenced in any Court until after the expiry of forty-eight hours from the time of the entering or pronouncing of the judgment or the making of the order.

- (2) Two or more proceedings for the enforcement of a judgment or order may be taken concurrently but the judgment-creditor shall not be entitled to recover a greater sum in total than the amount owing under the judgment or order and the costs and fees of any proceedings for enforcement.

22 Stay of enforcement

Where a judgment or order is one which can be appealed against, a stay of any proceedings for the execution of that judgment or order until after the time allowed for filing a petition of appeal has expired may be ordered:

- (a) where the judgment or order is that of the Supreme Court, by the Supreme Court a judge or, if no judge is present in Nauru, the Registrar; or
- (b) where the judgment or order is that of the District Court, by the District Court or a magistrate.

23 Enforcement of judgments more than six years old

- (1) No judgment or order of any Court more than six years old shall be enforced without the leave of that Court, or of a judge or magistrate thereof, unless some payment has been made into court by or on behalf of the party liable therefor within the twelve months immediately before the issue of the proceedings for enforcement.
- (2) The Court may, if it thinks fit, grant such leave on an *ex parte* application.

24 Enforcement of order for payment by instalments

Where the Court has made an order for the payment of any sum of money by instalments, proceedings for the enforcement of the order shall not be taken or issued until after default in the payment of some instalment according to the order; but, on any default proceedings, or successive proceedings, may be taken or process issued for the whole of that sum of money and costs then remaining unpaid unless the Court on the application of the party liable otherwise orders.

25 Proceedings on cross-judgments

- (1) Where there are cross-judgments between the parties only for the payment of money, proceedings for enforcement of such payment may be taken out only by the party who has obtained judgment for the larger sum, and then only for so much as remains after deducting the smaller sum. Satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum. If both sums are equal, satisfaction shall be entered upon both.

- (2) Where there are cross-judgments between the parties otherwise than solely for the payment of money, proceedings for the enforcement of any judgment may be taken only:
- (a) where the judgment is of the Supreme Court, with the leave of the Supreme Court or a judge, or, if there is no judge present in Nauru, of the Registrar; and
 - (b) where the judgment is of the District Court, with the leave of the District Court or a magistrate.

26 Power to stay proceedings for enforcement

If at any time it appears to the satisfaction of a judge or a magistrate exercising jurisdiction in the Court in which proceedings have been taken or process issued for the enforcement of any judgment or order that any party to the proceedings is unable from any cause to pay any sum recoverable against him, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, or any instalment thereof, the judge or magistrate may, in his discretion, stay the proceedings for such time and on such terms as he may think fit, and so from time to time until it appears that the cause or inability has ceased.

PART IX — ENFORCEMENT: GENERAL POWERS OF THE COURTS

27 Application to orders

The provisions of this Act relating to the enforcement of judgments shall, so far as they are applicable, be deemed to apply to the enforcement of orders.

28 Powers of courts to enforce judgments

Subject to such conditions and limitations as may be prescribed, any Court may on the application of the decree-holder, order enforcement of any of its judgments:

- (a) by delivery of any property specifically decreed;
- (b) by attachment or seizure and sale, or by sale without seizure or attachment, of any property;
- (c) by attachment of debts;

- (d) by arrest and detention in prison of any person;
- (e) by appointing a receiver; or
- (f) in such other manner as the nature of the relief granted may require.

29 Transferees

Every transferee of a decree shall hold it subject to the equities, if any, which the judgment-debtor might have enforced against the original decree-holder.

30 Personal representative

- (1) Where a judgment-debtor dies before the judgment has been fully satisfied, the decree-holder may apply to the Court which passed it to enforce it against the personal representative of the deceased or against any person who has intermeddled with his estate.
- (2) Where a Court orders under the provisions of this section that the judgment be enforced against the personal representative, or against any person who has intermeddled with the estate, of a deceased judgment-debtor he shall be liable only to the extent of the property of the deceased which has come into his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court ordering the enforcement of the judgment may, of its own motion or on the application of the decree-holder, compel the personal representative or the person who has intermeddled to produce such accounts as it thinks fit.

31 Enforcement of judgment against personal representative

- (1) Where a judgment is given against a party as the personal representative of a deceased person and the judgment is for the payment of money out of the property of the deceased, it may be enforced by the seizure and sale of any such property.
- (2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the judgment may be enforced against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

PART X — ARREST AND DETENTION

32 Arrest and detention

- (1) Where any decree-holder applies for an order for his judgment to be enforced by the arrest and detention of the judgment-debtor, there shall be issued out of the Court and served personally on the judgment-debtor a summons requiring him to attend and be examined upon oath as to his property and the means which he has, or has had, of satisfying and discharging the judgment and as to any intention which he may have of leaving Nauru before satisfying and discharging the judgment:

Provided that, where the decree holder by evidence on oath satisfies:

- (a) in respect of a judgment of the Supreme Court, a judge or, if no judge is present in Nauru, the Registrar, and
- (b) in respect of a judgment of the District Court, the resident magistrate;

that the judgment-debtor is about to leave Nauru and that the enforcement of the judgment is likely to be frustrated thereby, the judge, Registrar or resident magistrate, as the case may be, may, whether or not a summons has been issued, issue a warrant for the judgment-debtor to be arrested and brought before the Court to be examined under this section.

- (2) If any judgment debtor:
- (a) fails to attend as required by a summons issued and served under the provisions of the preceding subsection and does not allege a sufficient excuse for not attending; or
 - (b) having attended or been brought before the Court:
 - (i) refuses to be sworn; or
 - (ii) refuses to answer any question properly asked of him,

the Court may, if it thinks fit, regard failure or refusal as evidence that he has, or has had since the judgment was obtained against him, sufficient means to satisfy and discharge the judgment or intends to leave Nauru before satisfying and discharging it.

- (3) The Court shall not make an order for the judgment to be enforced by the arrest and detention of the judgment-debtor unless, after giving him an opportunity to be heard, it is satisfied by evidence that:
- (a) he has then, or has had since the judgment was obtained against him, sufficient means to satisfy and discharge the judgment, or any instalment of the judgment-debt where an order for payment by instalments has been made, and refuses or neglects, or has refused or neglected, to satisfy and discharge it;
 - (b) he is about to leave Nauru without satisfying and discharging the judgment and the enforcement of the judgment is likely to be frustrated if he does so;
 - (c) he obtained credit or contracted under false pretences, by means of fraud or by breach of trust the liability in respect of which the judgment has been given against him; or
 - (d) he has, whether before or after the judgment was obtained against him, made, or caused to be made, any gift, delivery or transfer of any property, or has charged, removed or concealed any property, with intent to defraud his creditors or any of them.
- (4) Notwithstanding that the Court is satisfied of any of the matters referred to in the last preceding subsection, it shall not order the enforcement of the judgment by the arrest and detention of the judgment-debtor unless it considers that the judgment cannot reasonably be enforced in any other way.
- (5) A judgment-debtor may be arrested at any hour and on any day in execution of an order made under this section, and his detention shall be in the prison:

Provided that for the purpose of making an arrest under this section no dwelling-house shall be entered after sunset and before sunrise:

And provided further that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the officer authorised to make the arrest has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

And provided further that where the judgment in the enforcement of which a judgment-debtor is arrested is for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, the officer shall at once release him.

- (6) A judgment-debtor shall not be discharged from his obligation to satisfy the judgment by reason only of his having been arrested and detained in execution of an order made under this section.

33 Subsistence allowances

- (1) The decree-holder shall pay to the Republic for the subsistence of a judgment-debtor such daily sum as the Minister may fix by notice in the Gazette.
- (2) Any sum paid by a decree-holder under this section shall be added to the judgment debt and be deemed to be part thereof.

34 Detention and release

- (1) Subject to subsection (1A), a judgment-debtor detained in prison in the enforcement of a judgment in a civil suit in any Court may be detained:
- (a) if the decree is for the payment of an amount exceeding \$100 – for a period no longer than 6 months; and
- (b) in any other case – for a period no longer than 6 weeks.
- (1A) The judgement-debtor must be released before the expiration of the period specified in subsection (1):
- (a) if the amount mentioned in the warrant for his or her detention is paid to the Superintendent of the prison; or
- (b) subject to subsection (1B):
- (i) if the judgment against the judgment-debtor is otherwise fully satisfied; or
- (ii) on the written request of the person on whose application the judgment-debtor has been detained or of that person's legal representative; or
- (c) if the person on whose application the judgment-debtor has been detained fails to pay subsistence allowance.

- (1B) The judgment-debtor must not be released under subsection (1A)(b) except:
- (a) if the judgment is that of the Supreme Court – on the order of a judge or the Registrar; and
 - (b) if the judgment is that of the District Court – on the order of a magistrate.
- (2) A judgment-debtor released from detention under this section shall not by reason only of his release be discharged from his debt, but he shall not be liable to be re-arrested under the judgment in the enforcement of which he was detained in prison.

35 Release on ground of illness

- (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.
- (2) Where a judgment-debtor has been arrested, the Court may release him if in its opinion he is not in a fit state of health to be detained in prison.
- (3) Where a judgment-debtor has been committed to prison he may be released therefrom:
- (a) by the Superintendent of the prison on the grounds of the existence of any infectious or contagious disease; or
 - (b) by the committing Court on the ground of his suffering from any serious illness; and, where he is released under paragraph (a) of this subsection, the Superintendent shall notify the Court in writing forthwith.
- (4) A judgment-debtor released under this section may be re-arrested but the period of his detention in prison shall not in the aggregate exceed that prescribed by section 34.

PART XI — ATTACHMENT, SEIZURE AND SALE OF PROPERTY

36 Property liable to attachment or seizure and sale

- (1) The following property is liable to attachment or seizure and sale in the enforcement of a judgment, namely land, houses,

buildings, goods, money, bank notes, currency notes, cheques, bills of exchange, promissory notes, Government securities, bonds or other securities for money, debts due or accruing due,² shares in a company or corporation, and, save as hereinafter mentioned, all other saleable property belonging to the judgment-debtor or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same he held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following shall not be liable to such attachment, seizure or sale, that is to say:

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor and of his wife and children;
- (b) the tools of artisans;
- (c) books of accounts;
- (d) a mere right to sue for damages;
- (e) any right of personal service;
- (f) stipends and gratuities allowed to pensioners of the Government;
- (h) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (i) a right of future maintenance;
- (j) any fund or allowance declared by law to be exempt from attachment, seizure or sale in execution of a decree;
- (k) land held by the judgment-debtor in fee simple or any building thereon.

The items mentioned in paragraphs (f) and (j) are exempt from attachment and sale before and after they are actually payable.

- (2) Section 3 of the *Lands Act 1976* shall apply to sales of land in execution of decrees of the Courts.

² See also the *Attachment of Earnings and Phosphate Royalties Act 1973*.

37 Seizure of property in a dwelling-house

- (1) No person in executing any process under this Act directing or authorizing attachment or seizure of property shall enter any dwelling-house after sunset and before sunrise.
- (2) No outer door of a dwelling-house shall be broken down unless such dwelling-house is in the occupancy of the judgment debtor and he refuses or in any way prevents access thereto; but when the person executing any such process has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any such property to be.

38 Property attached or seized in execution of judgments of two courts

Where property is under attachment or seizure in the enforcement of judgments of more Courts than one the Court which shall determine any claim thereto and any objection to the attachment or seizure thereof shall be the Supreme Court.

39 Private alienation of property after attachment or seizure to be void

Where an attachment or seizure has been made, and private transfer or delivery of the property attached or seized or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment or seizure, shall be void as against all claims enforceable under the attachment or seizure.

40 Purchaser's title to land

Where land, or buildings thereon or an interest therein, is sold in execution of a decree and the sale has been completed, the property shall be deemed to have vested in the purchaser from the time when it was sold and not from the time when the sale has been completed.

PART XII — DISTRIBUTION OF ASSETS

41 Proceeds of execution to be paid into court

- (1) Where property attached or seized has been sold by the Director of Police or any other person executing the process of any Court, the proceeds of the sale shall be paid into that Court.

- (2) Where the salary or wages of, or a debt due to, any judgment-debtor has been attached, the employer or the garnishee, as the case may be, shall pay the proceeds of the execution directly into the Court which issued the process.

42 Distribution of assets

- (1) Where as the result of the execution of process of any Court, assets are held by any Court and more persons than one who have before the receipt of such assets by that Court lodged applications in the registry of that Court for enforcement by the attachment or seizure and sale of the property of that judgment-debtor in respect of judgments for the payment of money have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be distributed amongst such decree-holders in accordance with the priorities of the lodging of their several applications.
- (2) Every application for enforcement of a judgment shall, at the time of lodgement, be endorsed by the Registrar or the Clerk, as the case may be, with a note of the day upon which and the hour at which the lodgement has been effected.
- (3) Nothing in this section shall affect any right of the Republic.

43 Distribution where judgments of two courts are executed

Where the Director of Police, having received a writ of attachment or of seizure and sale of any property from any Court, receives a similar writ in respect of the same property from another Court, he shall notify the Registrar of the Supreme Court and the Clerk of the District Court of this fact and the one of them out of whose Court the first writ was not issued shall send to the other of them details of all applications in his Court for the enforcement of any judgment by similar process against that property and the provisions of the last preceding section shall then apply as though all such applications for execution had been received in the Court out of which the first writ was issued.

PART XIII — COMMISSIONS

44 Power of courts to issue commissions

Subject to such conditions and limitations as may be prescribed, and Court may issue a commission:

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

45 Commission to a magistrate

- (1) A commission for the examination of any person may be issued to any magistrate by the Supreme Court or a judge, or, if there is no judge present in Nauru, the Registrar.
- (2) Every magistrate receiving a commission for the examination of any person under the last preceding subsection shall examine him pursuant thereto and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Supreme Court.

46 Letter of request

In lieu of issuing a commission the Supreme Court, a judge or, if there is no judge present in Nauru, the Registrar may issue a letter of request to examine a witness residing at any place not within Nauru.

47 Commissions issued by foreign courts

Commissions and letters of request issued by foreign courts for the examination of persons in Nauru shall be executed and returned in such manner as may be from time to time authorised by the Supreme Court, a judge or, if there is no judge present in Nauru, the Registrar.

PART XIV — SUITS BY ALIENS AND BY OR AGAINST STATE

48 When aliens may sue

- (1) Alien enemies residing in Nauru with the permission of the Cabinet, and alien friends, may sue in the Courts of the Republic as if they were citizens of the Republic.
- (2) No alien enemy residing in Nauru without permission of the Cabinet or residing in a foreign country shall sue in any of the Courts.
- (3) Every person residing in a foreign country the government of which is at war with the Republic, and carrying on business in that country without a licence in that behalf under the hand of the President, shall for the purpose of sub-section (2) of this section be deemed to be an alien enemy residing in a foreign country.

49 When a foreign state may sue

- (1) Subject to any provisions of the law limiting its rights to do so, a foreign state may sue in any Court of Nauru, if that state has been accorded general recognition by the Republic and if the object of that suit is to enforce a private right vested in the head of that state or in any officer of that state in his public capacity.
- (2) Every Court shall take judicial notice of a certificate under the hand of the public officer who is for the time being the public service head of the department responsible for foreign affairs that a foreign state has or has not been recognised by the Republic.

PART XV — INTERPLEADER

50 When interpleader suit may be instituted

Where two or more persons claim adversely to one another the same debt, sum of money or other property from another person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants or, where a suit dealing with the same subject-matter is pending, may intervene by motion on notice in such suit for the purpose of obtaining a decision as to the person to whom

the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can be properly decided no such suit of interpleader shall be instituted.

PART XVI — ARBITRATION AND REFERENCE TO REFEREE

51 Arbitration and reference to referee

All references to arbitration, or to a referee for inquiry and report, by an order in a suit, and all proceedings thereunder, shall be governed in such manner as may be prescribed by rules.

PART XVII — SPECIAL CASE

52 Power to state case for opinion of court

Where, in accordance with rules of court, any persons agree in writing to state a case for the opinion of any Court, then that Court shall try and determine the same in the manner prescribed.

PART XVIII — SUITS RELATING TO PUBLIC MATTERS

53 Public nuisances

- (1) In the case of a public nuisance the Minister, or two or more persons having the consent in writing of the Minister, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.
- (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

54 Public charities

In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Minister, or two or more persons having an interest in the trust and having obtained the consent in writing of the Minister, may institute a suit, whether contentious or not, in the Supreme Court to obtain a decree:

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in trustees;
- (d) directing accounts and enquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

PART XIX — SUPPLEMENTAL PROCEEDINGS

55 Interlocutory orders to prevent defeat of justice

In order to prevent the ends of justice from being defeated any Court in which a suit has been instituted may, if it is so prescribed, do any or all of the following, that is to say:

- (a) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment or seizure of any property;
- (b) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached or seized and sold;

- (c) appoint a receiver of any property and enforce the performance of his duties by attaching or seizing and selling; and
- (d) make such other interlocutory orders as may appear to the Court to be just and obedient.

56 Compensation for arrest, attachment, seizure or injunction on insufficient grounds

- (1) Where in any suit in which an arrest, attachment or seizure has been effected or a temporary injunction granted under the last preceding section or under section 33 of the *Courts Act 1972*:
 - (a) it appears to the Court that that arrest, attachment, seizure or injunction was applied for on insufficient grounds; or
 - (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting it,

the Court may, upon application by the defendant, order the plaintiff to pay such amount as it thinks reasonable in compensation to the defendant for the expense or injury caused to him:

Provided that the District Court shall not award under this section an amount exceeding the limits of its pecuniary jurisdiction.

- (2) An order determining any application for compensation under this section shall bar any suit for compensation in respect of the arrest, attachment, seizure or injunction in respect of which it is made.

PART XX — MISCELLANEOUS AND GENERAL

57 Issue of process

- (1) All writs, summonses, warrants, recognizances and other process of the Supreme Court shall bear the seal of that Court, shall be substantially in the form prescribed and, where the rules prescribe that any shall be signed, it shall be issued or made under the hand of the Registrar.
- (2) All writs, summonses, warrants, recognizances and other process of the District Court shall bear the seal of that Court,

shall be substantially in the form prescribed and shall be issued or made under the hand of a magistrate:

Provided that, where expressly authorised by rules of court, writs of summons and other civil process may be issued or made under the hand of the Clerk.

58 Fees

The Chief Justice may, by rules of court, prescribe the fees to be paid upon the issue of any writ, summons or other process, upon the filing of documents in any Court and in respect of any other matter done by or in any Court in a civil suit.

59 By whom fees payable

All fees payable under the provisions of this Act shall in the first instance be paid by the party applying for the writ, summons or other process or filing the pleading or other document in respect whereof the fees are payable:

Provided that no fees shall be payable in any cause or matter instituted by a public officer when acting in his official capacity or in any case where:

- (a) in the Supreme Court, a judge or the Registrar, or
- (b) in the District Court, a magistrate,

endorses on the record of the cause or matter that the fees of a party should be remitted on the ground of his poverty or for other sufficient reason; and in every such cause or matter such fees shall, in the discretion of the Court, be recoverable from the other party if the decision is given against him.

60 Proof of service by officer of court or police officer

- (1) Where any summons or any other document issued under this Act is served by any office of any Court or by any police officer, the service may be proved either by an endorsement of a copy of the document showing the fact and the time and mode of service or in any other manner prescribed by the rules. Any such endorsement shall be signed by the person who served the summons or document or, if the service was affected by registered letter in accordance with the rules, by an officer of the Court who knows of the service.

- (2) Every officer or police officer who wilfully endorses any false statement on a copy of any summons or document is guilty of an offence and is liable to imprisonment for two years and to a fine of five hundred dollars.

61 Actions on lost instruments

In any suit founded on a promissory note, bill of exchange or other negotiable instrument declared on the affidavit of the plaintiff to be lost. If an indemnity is given by the plaintiff to the satisfaction of the Court against the claims of any other person upon the instrument, the Court may give judgment for him as if the same were produced.

62 Arrest otherwise than in execution of decree

The provisions of subsection (5) of section 32, and of section 33 and section 35 shall apply so far as may be to all persons arrested under this Act or the *Courts Act 1972*.

63 Exemption from arrest under civil process

- (1) No judge, magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in or returning from his Court or tribunal.
- (2) Where any matter is pending before any Court or tribunal jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their legal representatives and their witnesses acting in obedience to a summons shall be exempt from arrest under civil process, other than process issued by that Court or tribunal for contempt of court, while going to or attending that Court or tribunal for the purpose of that matter and while returning from that Court or tribunal.
- (3) Nothing in this section shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment debtor attends to show cause why he should not be committed to prison in execution of a decree.

64 Miscellaneous proceedings

The procedure provided in this Act in regard to suits shall be followed, so far as it may be applicable and except where other provision is made in any other written law, in all proceedings in the Supreme Court or the District Court other than criminal proceedings.

65 Orders and notices to be in writing

All orders or notices served on or given to any person under the provisions of this Act shall be in writing.

66 Application for restitution

- (1) Where, and in so far as, a judgment is varied or reversed, the Court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as well, so far as may be, place the parties in the position they would have occupied but for such decree or such part thereof as has been varied or reversed; and for this purpose the Court may make any orders, including for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.
- (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under this section.

67 Enforcement of liability of surety

Where any person has become liable as surety:

- (a) for the performance of any judgment in a civil suit or any part thereof;
- (b) for the restitution of any property taken in execution of a judgment in a civil suit; or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any civil suit or in any proceeding consequent thereon,

the judgment or order may be executed against him to the extent to which he has rendered himself personally liable in the manner herein provided for the execution of judgments, provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

68 Consent or agreement by person under disability

In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if that person were under no disability and had himself given that consent or made such agreement.

69 Execution of decree before costs are ascertained

Where any Court considers it necessary that a judgment given in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the judgment shall be executed forthwith, except as to so much thereof as relates to the costs, and that, as to so much thereof as related to costs, the judgment may be executed as soon as the amount of the costs shall be ascertained by taxation.

70 Extension of time

Where any period is fixed or granted by any Court or a judge or magistrate thereof or by rules of court of the doing of any act prescribed or allowed by this Act, that Court, or a judge or magistrate thereof, may, in its, or his, discretion from time to time, extend that period.

71 Power to make up deficiency of court fees

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the Court may, in its discretion, at any stage allow the person by whom such fee is payable to pay the whole or part, as the case may be, of that court fee; and upon that payment the document in respect of which that fee is payable shall have the same force and effect as if that fee had been paid in the first instance.

72 Saving of inherent powers of the Courts

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of any Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

73 Execution of instruments by order of Court

Where any person neglects or refuses to comply with a decree or order directing him to execute any contract or other document or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as it may determine, order that the contract or other document shall be executed, or that the negotiable instrument shall be endorsed, by such person as the Court may nominate for that purpose and a contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

74 Amendment of judgments, decrees and orders

Clerical or arithmetical mistakes in any judgment, decree or order, and errors arising therein from any accidental slip or omission, may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

75 General power to amend

A Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a civil suit in that Court; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on that proceeding.

PART XXI — RULES

76 Rules

- (1) The Chief Justice may make rules of court to regulate the practice and procedure of the Supreme Court and the District Court and the forms of proceedings therein both under this Act in relation to the exercise of any jurisdiction, other than jurisdiction in criminal proceedings, conferred by any other written law on the Supreme Court or a judge or the Registrar thereof or on the District Court or a magistrate thereof.
- (2) Without prejudice to the generality of the last preceding subsection, the Chief justice may make rules of court for all or any of the following matters:

- (a) for regulating the pleading, practice and procedure in the Courts in proceedings other than criminal proceedings;
 - (b) for regulating the forms to be used in the Courts and for all matters connected therewith;
 - (c) for regulating the service of summonses, notices and other processes by post or in any other manner and the proof of such service;
 - (d) for regulating the custody and preservation of any property attached or seized in execution of any decree, the fees payable for such custody and preservation, the sale of such property and the disposal of the proceeds of such sale;
 - (e) for providing for the taxation of the fees, costs and disbursements of barristers and solicitors and of pleaders; and
 - (f) generally for regulating any matters relating to the practice and procedure of any Court or to the duties of the officers thereof or the costs of proceedings therein.
- (3) The power to make rules conferred by this section shall include the power to make rules with respect to all or any of the matters dealt with by the Rules of the Supreme Court in England on the thirty-first day of January, 1968.
- (4) Where any provisions in respect of the practice or procedure of any Court in any foreign country are applied to any Court of the Republic by any written law, rules of court may be made by the Chief Justice under this section modifying those provisions to any extent that he may deem necessary for adapting them to the appropriate Court of the Republic, and any provision relating to the payment, transfer or deposit into or in or out of court of any money or property or to the dealing therewith shall, for the purpose of this subsection, be deemed to be provisions relating to practice and procedure.

Notes for Civil Procedure Act 1972

Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Civil Procedure Act 1972</i>	1972/04	16.02.1972	27.11.1972 (GN No. 322/1972)
<i>Attachment of Earnings and Phosphate Royalties Act 1973</i>	1973/20	08.11.1973	31.12.1973 (GN No. 285/1973)
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
om = omitted os = omitted and substituted

Provision affected	How affected
Section 34	Subs. (1) os. by Act 2011/08. Subs. (1A) ad. by Act 2011/08.
Section 36	Subs. (1) am. by Act 1973/20, 2011/08 Subs. (2) am. by Act 2011/08.
Section 42	Subs. (1) am. by Act 2011/08.
Section 49	Subs. (2) am. by Act 2011/08.