

PART A

ISLAND COURT (CIVIL PROCEDURE)

RULES

2005

ISLAND COURTS (CIVIL PROCEDURE) RULES
2005

TABLE OF CONTENTS

	<u>Page</u>
<u>Interpretation</u>	2
<u>Rule 1</u> - Starting of Civil Claim	2
<u>Rule 2</u> - Acceptance of claim, defence, counterclaim or set-off to claim	3
<u>Rule 3</u> - Discontinuance of claim, defence, counter-claim or set-off	4
<u>Rule 4</u> - Non-attendance at hearing	5
<u>Rule 5</u> - Summons to witness	6
<u>Rule 6</u> - Conduct of hearing	7
<u>Rule 7</u> - Judgment of Court	10
<u>Rule 8</u> - Notification of right of appeal	11
<u>Rule 9</u> - Enforcement of Judgment of Court	11
<u>Rule 10</u> - Forms	11
<u>Rule 11</u> - Fees	11
Schedule 1	12
Schedule 2	16

Interpretation

In these rules, unless the context indicates otherwise:

“**Act**” means the Island Courts Act, Cap. 167;

“**Case**” includes any action, suit or other original proceeding between a claimant and a defendant;

“**counter-claim**” means claim made by defendant against claimant;

“**party**” means any person who is a claimant or defendant in a civil claim;

“**set-off**” means a sum which is owing by the claimant to the defendant and is to be deducted from the sum claimed by the claimant against the defendant.

Rule 1 - Starting of Civil Claim

(1) Filing of statement of claim

Every civil claim must be started by the person making the claim (called the claimant) filing a written statement of claim which is signed by the claimant at an office of an Island Court.

The claim must be a claim which is stated by the warrant of jurisdiction of that Island Court to be within the jurisdiction of that Court to hear and determine.

The claimant must also provide to the office sufficient numbers of copies of the statement of claim for service on each person against whom the claim is made (called the defendant).

(2) Place of filing

A statement of claim must be filed at the office of the Island Court within whose jurisdiction the defendant ordinarily resides or carries on business, or, within which the cause of action arose, or, in the case of a claim about ownership or boundary of customary land, within whose jurisdiction the land is situated.

(3) Contents of statement of claim

The statement of claim must state the name, occupation and address of the claimant and of the defendant, and also the grounds or basis of the claim. If the claim relates to ownership or the boundary of customary land the statement of claim shall contain a description of the boundaries and also contain a sketch map of the land.

(4) Date of hearing If the clerk of the office is satisfied that the statement of claim is in accordance with the preceding paragraphs of this rule, the clerk shall register the statement of claim in the record books of the court, and shall enter the claim in the list for hearing on a certain day, which shall be not earlier than 30 days after the date of filing.

(5) Summons to defendant The clerk shall prepare a summons addressed to the defendant which shall state the date of hearing and attach to it a copy of the statement of claim.

A summons with a copy of the statement of claim shall be prepared for service on each defendant.

(6) Service of summons on defendant The clerk must ensure that the summons and copy of the statement of claim are served on each defendant named in the statement of claim as soon as possible after the filing of the statement of claim, and the time and place of service must be recorded by the clerk in writing on the summons.

(7) Publicity in land claims

Where the subject matter of a claim is land, the clerk shall ensure that notice of the statement of claim is given and posted to members of the public in the area where the land is situated.

Rule 2 - Admission of claim, defence, counterclaim or set-off to claim

(1) Admission of claim

If the defendant admits the claim set out in the statement of claim the defendant must, at least 7 days before the date of hearing of the claim, file at the office of the Island Court where the statement of claim was filed, a statement of acceptance of the claim. This statement of acceptance must be in writing and signed by the defendant.

If there is more than one defendant who accepts the claim, each defendant must file a separate statement of acceptance.

(2) Service of the statement of acceptance of claim

A copy of each statement of acceptance of the claim must be served on the claimant not less than 5 days before the date of hearing of the claim.

(3) Statement of defence

If a defendant does not admit the claim set out in the statement of claim, the defendant must, at least 7 days before the date of the hearing of the claim, file in the office of the Island Court where the statement of claim was filed a statement of defence to the claim. The statement of defence must be in writing and signed by the defendant, and must set out the grounds or basis upon which the defendant bases his defence to the claim.

If there is more than one defendant who does not accept the claim, each defendant must file a separate statement of defence.

(4) Service of the statement of defence

A copy of each statement of defence must be served on the claimant not less than 5 days before the date of hearing of the claim.

(5) Statement of counter-claim

If a defendant has a claim against the claimant which the defendant wishes to have heard at the same time as the claim of the claimant the defendant must, not less than 7 days before the date, time and place of hearing of the claim, file a statement of counter-claim in the office of the Island Court. The statement of counter-claim must be in writing, signed by the defendant, and set out the amount of the counter-claim and the grounds or basis of the counter-claim.

If there is more than one defendant who has a claim against the claimant, each defendant must file a separate statement of counter-claim.

(6) Service of the statement of counter-claim

A copy of each statement of counter-claim must be served on the claimant not less than 5 days before the date of hearing of the claim.

(7) Statement of set-off

If the defendant considers that the claimant owes the defendant a sum of money which should be deducted from the amount which is claimed by the claimant from the defendant, the defendant must, not less than 7 days before the date of the hearing, file a statement of set-off in the office of the Island Court. The statement of set-off must be in writing, signed by the defendant, and set out the amount of the set-off and the grounds or basis of the set-off claimed by the defendant.

If there is more than one defendant who has a set-off against the claimant, each defendant must file a separate statement of set-off.

(8) Service of the statement of set-off

A copy of each statement of set-off must be served on the claimant not less than 5 days before the date of hearing of the claim.

(9) Method of service

Service must normally be done by personal delivery to the person to be served, but where that is not possible, the court may permit some other form of service, eg delivery to a family member or public notice, to be adopted.

Rule 3 - Discontinuance of Claim, Defence, Counter-claim and Set-off

(1) Discontinuance of claim

The claimant may at any time, before or on the day of the hearing of the claim, apply to the court to discontinue the claim with the permission of the court.

(2) Discontinuance of counter-claim and set-off

A defendant may at any time, before or on the day of the hearing of the claim, apply to the court to discontinue a defence, counter-claim and set-off, with the permission of the court.

(3) Permission of the court

A court will grant permission for the discontinuance of a claim, defence, counter-claim or set-off, but may require the discontinuing party to pay any expenses incurred by the other party as a result of making such claim, defence, counter-claim or set-off.

Rule 4 - Non-Attendance at hearing

(1) Non-attendance of claimant

If the claimant does not appear at the time for the hearing of the claim, the court shall, unless it considers that there is some good reason for the claimant's non-attendance:

- (a) strike out the statement of claim,
- (b) make an order for the claimant to pay the expenses of attendance of the defendant and witnesses for the defendant or the claimant,
- (c) determine in the absence of the claimant any counter-claim or set-off filed by the defendant.
- (d) determine in the absence of the defendant the claim of the claimant

(2) Non-attendance of defendant

If a defendant does not appear at the time for the hearing of the claim, the court shall, provided it is satisfied that the statement of claim has been served on the defendant and that there is no good reason for the defendant's non-attendance:

- (a) strike out the statement of defence,
- (b) make an order for the defendant to pay the expenses of attendance of the claimant and witnesses of the claimant and defendant,
- (c) strike out any counter-claim or set-off filed by the defendant.
- (d) determine in the absence of the defendant the claim of the claimant.

(3) Non-appearance of both parties

If both the claimant and the defendant do not appear at the time for the hearing of the claim, the court shall, unless it considers that there is some good reason for their non-attendance, strike out the statement of claim and statement of defence, and also any statement of counter-claim or set-off filed by the defendant.

(4) Non-service of defendant or good reason for non-attendance of party

If the court is satisfied that a defendant has not been served with the summons and statement of claim, or that there is some good reason for the non-appearance of the claimant or defendant, the court shall adjourn the hearing of the claim and set a new date and time of hearing.

(5) Setting aside of orders made on non-appearance of claimant or defendant

The court may set aside any order made by it because of the non-appearance of a party, upon payment of expenses by the non-appearing party caused by the non-appearance to the other party, to witnesses.

Rule 5 - Summons to witness

- (1) On the application of a party, the clerk may issue a summons to order a person to attend a hearing of the court on a date, time and place specified in the summons as a witness.
- (2) The summons may require the witness to bring with him or her any article or document that is relevant to the hearing.

Rule 6 - Conduct of hearing

(1) Entry of justices

When the justices are ready to enter the court room, the clerk shall call for all persons present in the court room to stand up and remain standing until the justices are seated.

(2) Name of case to be read

The chairperson of the court shall request the clerk to read aloud the names of the parties in each case in the order in which it appears in the list of cases for hearing for that day.

(3) Interest of justice

(a) Declaration of interest by justice

If, at any stage of the proceedings, a justice realises that he or she is related to any of the parties or has any interest in the subject matter of the claim, that justice must inform the other justices who must then inform the parties and ask the parties whether they wish the justice to withdraw from the hearing. If one or more of the parties objects to the justice hearing the case, that justice must withdraw, and the hearing adjourned to a new date and time.

If the parties have no objection to the justice hearing the case, the case may proceed.

(b) Objection by party

If a party considers that a justice is related to any of the parties or has an interest in the subject matter of the claim, that party may object to the court about the participation of that justice. If the other justices consider that the objection is well founded, the clerk shall adjourn the hearing to be heard by a different panel of justices.

If the justices consider that the objection is not well founded, the court shall continue with the hearing.

(c) Recording of declaration or objection relating to the interest of a justice

The clerk must record any declaration of interest made by a justice, or objection made by a party to the interest of a justice, and the result of that declaration or objection.

(4) Defendant to be asked whether the claim is admitted

The clerk shall read the statement of claim and ask the defendant whether the defendant understands the statement of claim, and whether the defendant

admits the truth of the statement of claim or denies the truth of the statement of claim.

The clerk shall record in writing the answer of the defendant.

(5) When the defendant admits the claim

If the defendant admits the statement of claim, the chairperson shall request the claimant to give a short summary of facts to the court. And the court enter judgment for the claimant.

(6) When the defendant does not answer, or denies the claim or summary of facts

If the defendant does not answer or denies the truth of the statement of claim or the summary of facts made by the claimant:

(a) Exclusion of witnesses

The chairperson shall request the clerk to ensure that all witnesses relating to that case, other than the parties, leave the courtroom and wait outside until called to give evidence.

(b) Evidence for the claimant

The chairperson shall then ask the claimant to provide evidence in support of the claim. After the claimant has given evidence he or she may be questioned by the defendant and the justices. The claimant may then call witnesses in support of the evidence of the claimant, and each witness may be questioned by the defendant and the justices.

(c) Evidence for the defendant

After the witnesses for the claimant have completed giving evidence, the defendant may give evidence against the claim, and then may be questioned by the claimant and the justices. The defendant may call witnesses to give evidence in opposition to the claim, and each witness, after giving evidence, may be questioned by the claimant and by the justices.

(d) Concluding statements to claim

The chairperson shall then invite the claimant and the defendant, if they wish, to make a short statement to the court to summarise the main points that he or she wishes to emphasise to the court in relation to the claimant's claim.

(e) Counter-claim or set-off

If a defendant has filed a statement of counter-claim or set-off, the court shall, after hearing the evidence of the defendant in opposition to the claim, proceed to hear the defendant and witnesses for the defendant in support of that counterclaim or

set-off, and after the defendant and each witness has given evidence he or she may be questioned by the claimant and by the justices.

The claimant and witnesses for the claimant may then give evidence in opposition to the counter-claim or set-off, and after the claimant and each witness has given evidence he or she may be questioned by the defendant and by the justices.

The court shall then allow the defendant and the claimant an opportunity, if they wish, to make a short statement to the court to summarize the main points that he or she wishes to emphasise to the court in relation to the defendant's counter-claim or set-off.

(7) Language of hearing

The language of the hearing shall be Bislama, and if a party or a witness does not understand Bislama, a suitably qualified person must be obtained by the court to interpret for that party or witness.

(8) Certain questions not allowed

The chairperson must ensure that the following kinds of questions are not asked by the parties or the justices:

- (a) questions that are not relevant to the case;
- (b) questions that are expressed in a provocative or argumentative manner;
- (c) leading questions, ie questions which suggest the answer.

(9) Assistance for party

A claimant or defendant may, with the permission of the court, be assisted by any person except a lawyer.

(10) Land to be visited

If a claim is in respect of ownership or boundary of customary land, the court must visit the land and inspect the boundaries before making judgment.

(11) Respect and order during hearing

The chairperson of the court is responsible for maintaining respect and order in the courtroom, and, if that is not possible, the court should be adjourned to another time or place.

Rule 7 - Judgment of Court

(1) **Discussions between justices before giving judgment**

After the hearing of the evidence and statements of the parties is completed, the justices must discuss what should be the judgment of the court. Such discussions may take place at the court table, but if the case is difficult, the chairperson should adjourn the court so that the discussions can be held in private in another place.

The clerk must not take part in these discussions, or be present with the justices when those discussions are taking place.

(2) **Judgment may be given orally but must be in writing for difficult or land cases**

The judgment of a court may be given orally or in writing, but if the claim is a difficult one or relates to ownership or boundary of customary land, the judgment must be given in writing.

(3) **Judgment must be based upon evidence**

The judgment of a court must always be based upon the evidence that has been given to the court, but should not be based upon information that has come to the knowledge of the justices from outside the courtroom.

(4) **Judgment must be given in favour of party whose evidence is more convincing**

The judgment of the court should be given in favour of the party whose evidence is, in the opinion of the justices, more convincing.

(5) **Judgment on claim and also counter-claim or set-off, if any**

In giving judgment the court should first give judgment upon the claim of the claimant, and then give judgment on any counter-claim or set-off of the defendant.

(6) **Supplementary orders**

After giving judgment, the court may make orders as to:

- (a) the time when the judgment is to be complied with;
- (b) interest that is to be paid on money that is owing;
- (c) fees and expenses that are to be paid by the parties;
- (d) any other matter that is reasonable or necessary to enable the judgment to take effect.

(7) Judgment and orders must be announced by chairperson of court but in accordance with opinion of the justices

The judgment of the court, and any supplementary orders, shall be announced by the chairperson of the court, but the announcement must be in accordance with the opinion of all the justices, or the majority of the justices.

Rule 8 - Notification of right of appeal

After the chairperson has announced the judgment of the Court, the chairperson must also notify the parties that they have a right to appeal from that judgment to the Supreme Court in cases relating to ownership or boundary of customary land, and to a Magistrate's Court in all other cases, within 30 days from the date of the judgment.

Rule 9 - Enforcement of judgment of court

A party in whose favour judgment or a supplementary order has been made by an Island Court may apply orally or in writing to the Supervising Magistrate for enforcement of the order or judgment if it remains unsatisfied.

Rule 10 – Forms

The forms in Schedule 1, or forms to the like effect, may be used in all a claims to which they are applicable, with such variations as the circumstances may require.

Rule 11 - Fees

The fees specified in Schedule 2 shall be paid by the appropriate party.

SCHEDULES

SCHEDULE 1

Form Civil 1

ISLAND COURT (CIVIL PROCEDURE) RULES

SUMMONS TO DEFENDANT

**In theIsland Court
Civil Caseof 20....**

Between.....of....., Claimant

Andof....., Defendant

To.....of....., Defendant.

You are required to attend this Court at.....on..day, the...day Of.....20...
At0'clock in the morning/afternoon, when the claim brought against you by the
above-named claimantf set out in the attached statement of claim will be heard.

If you fail to attend as required, the court may proceed in your absence and give
judgment against you after hearing the claimant.

Signed.....Court Clerk

Summons was served by me on the defendant at.....on day
the.....day of20...

Signed(Name)

.....(Occupation)

ISLAND COURT (CIVIL PROCEDURE) RULES

SUMMONS TO DEFENDANT/WITNESS

In theIsland Court
Civil Caseof 20....

Between.....of....., Claimant

Andof....., Defendant

To.....of.....

You are required to attend in person before this court at.....

on.....day, the.....day of.....20.... at ...0'clock in the
morning/afternoon,

and from then on until this case is completed, to give evidence as to all you know in this
case.

And also to bring with you and produce to the court at the same time and place the
following

document or article,
namely.....
.....
.....

You are summoned at the request of

Dated at this.....day of20.....

Signed.....Court Clerk

Summons was served by me on the defendant at.....on
.....day the.....day of20...

Signed(Name)

.....(Occupation)

ISLAND COURT (CIVIL PROCEDURE) RULES

STATEMENT OF CLAIM

In theIsland Court

Civil Caseof 20.....

Between.....of....., Claimant

Andof....., Defendant

I,of.....

claim from the defendant

.....[State clearly and precisely what the claim is, and the grounds of, or reasons for, why the claim is made. If what is claimed is land draw a sketch map of the land, showing boundaries].....

Dated this....day of.....20.....

Signed.....Claimant

Filed at Island Court thisday of.....20.....

Fee paid: VT.....

SignedCourt Clerk

JUDGMENT

In theIsland Court

Civil Caseof 20.....

Between.....of....., Claimant

Andof....., Defendant

It is hereby adjudged that-

The claim of the claimant is dismissed and the claimant is ordered to pay to the defendant VTas costs and expenses.

OR

The defendant is ordered to pay the claimant the sum of Vt..... plus the sum of VT..... as costs and expenses.

OR

The defendant is ordered to return immediestely to the palaintiff the following goods.....

OR

The defendant is ordered to pay to the claimant the sum of VT.....plus VTas costs and expenses on the claimant’s claim, and the claimant is ordered to pay to the defendant the sum of VT.....plus the sum of VT...as costs and expenses on the defendant’s counter-claim.

OR

The defendant is ordered to pay to the claimant the sum of VT.....plus VT....as costs and expenses on the claimant’s claim, less the amount of VTwhich is owing by the claimant to the defendant and is deducted as set-off.

OR

The claimants are adjudged to be the true custom owners of the land known as, and having boundaries as follows..... The defendant is ordered to move off the said land immediately and not return.

NB. The above are examples only, and the record of the judgment in each case must be in accordance with the terms of the judgment announced by the chairperson.

SCHEDULE 2

FEES

	<u>VT</u>
1. Filing of statement of claim (except ownership of customary land)	1,000
2. Filing of statement of claim of ownership or boundary of customary land	30,000
3. Filing of any other document except appeals	1,000
4. Filing appeal to Magistrate's Court	5,000
5. Filing appeal to Supreme Court (land)	75,000
6. Copy of judgment of Island Court	1,000
7. Interpreter's fee (per day)	1,000