

## **Small Claims Tribunal Decree 1991**

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC  
REPUBLIC OF FIJI, DECREE NO. 7

A decree to establish small claims tribunals in Fiji to provide prompt and inexpensive relief to claimants.

*SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT  
1994, Act No. 22 of 1994, [8 November 1994]*

*SMALL CLAIMS TRIBUNALS DECREE  
(AMENDMENT) ACT 1997, Act No. 15 of 1997, [17  
October 1997]*

*SMALL CLAIMS TRIBUNAL DECREE (AMENDMENT)  
PROMULGATION 2007, Promulgation No. 35 of 2007,  
[27<sup>th</sup> September 2007]*

SMALL CLAIMS TRIBUNAL RULES, 1994, Legal Notice No.  
96 of 2004, [1<sup>st</sup> November 1994]

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In exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces and acting in accordance with the advice of the Prime Minister and the Cabinet I hereby make the following Decree -

*Short title and commencement*

1.-(1) This Decree may be cited as the Small Claims Tribunal Decree, 1991.

(2) This Decree shall come into force on the day so specified by the Attorney-General and Minister for Justice by Notice in the *Fiji Republic Gazette*.

*Interpretation*

2. In this Decree, unless the context otherwise requires -

"claim" means a small claim lodged with or transferred to a Tribunal pursuant to this Decree;

"claimant" means a person who lodges a claim with a Tribunal and includes-

- (a) a claimant in any proceedings transferred to a Tribunal pursuant to section 23;
- (b) in respect of a counter claim, the counter claimant; and
- (c) any person who becomes a party to proceedings on any claim in the capacity of a claimant;

"Minister" means the Attorney-General and Minister for Justice;

"motor vehicle" has the same meaning as in the Traffic Act;

"Referee" means a person appointed as such under section 6 and includes a Resident Magistrate when he is exercising the jurisdiction of a Tribunal;

~~"Registrar"\* means the Registrar of the Magistrates' Court of which the Tribunal is a division pursuant to section 3(4) and includes any Deputy Registrar of that Court;~~ (SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT 1994, Act No. 22 of 1994, [8 November 1994])

"Registrar"\* means the Clerk of the Court of the Magistrates' Court of which the Tribunal is a division *pursuant to section 3(4) and includes any deputy Clerk of the Court of that court,* (SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT 1994, Act No. 22 of 1994, [8 November 1994])

"respondent" means any person against whom a claim is made and any person who becomes a party to the proceedings on that claim in the capacity of a respondent;

"small claim" means a claim in respect of which a Tribunal has jurisdiction under section;

"Tribunal" means a Small Claims Tribunal established under section **3**;

"work order" means an order to make good a defect in goods or chattels, or a deficiency in the performance of services by doing such work or attending to such matters (including the replacement of goods or chattels) as may be specified in the order.

## **PART I- ESTABLISHMENT OF TRIBUNALS**

### *Establishment of Tribunals*

**3.-(1)** The Minister after consultation with the Chief Justice, may from time to time, by notice in the *Fiji Republic Gazette*, establish in accordance with this section such number of

Tribunals as he thinks fit to exercise the jurisdiction in respect of small claims created by this Decree.

(2) A Tribunal established under subsection (1) shall be known as a Small Claims Tribunal.

(3) Each Small Claims Tribunal shall be a division of a Magistrates' Court.

(4) A notice under subsection (1) establishing a Small Claims Tribunal shall specify the Magistrates' Court of which the Tribunal is to be a division.

(5) The Minister may at any time, by notice in the *Fiji Republic Gazette* -

- (a) disestablish a Small Claims Tribunal; and
- (b) direct how the records of that Tribunal shall be dealt with.

#### *Exercise of Tribunal's Jurisdiction*

4.-(1) The jurisdiction of a Tribunal shall be exercised by a Referee appointed under section 6 of this Decree, or by a Resident Magistrate.

(2) If the Referee or Resident Magistrate hearing any proceedings in respect of a claim dies, becomes incapacitated, or is for any other reason unable or unavailable to complete the hearing or dispose of the proceedings, they shall be heard afresh by another Referee or Resident Magistrate, unless the parties agree that the proceedings be otherwise disposed of.

#### *Times and places of sittings*

5. The days, times, and places of the regular sittings of a Tribunal shall be determined by the ~~Chief Magistrate~~<sup>\*</sup> *Chief Registrar*.  
(SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT 1994, Act No. 22 of 1994, [8 November 1994])

## *Appointment of Referee*

6.-(1) The Chief Justice, after consultation with the Minister, may, from time to time, by warrant under his hand appoint qualified persons to be Referees for the purposes of this Decree.

(2) A person is qualified to be so appointed if he is capable by reason of his special knowledge or experience of performing the functions of a Referee. A Referee need not have legal qualifications.

(3) Subject to subsection (4), every person appointed as a Referee shall hold office for a term of 3 years and may, from time to time, be re-appointed for a like term.

(4) A Referee may at anytime be removed from office by the Chief Justice after consultation with the Minister for disability, bankruptcy, neglect of duty, misconduct, proved to their satisfaction or may at any time resign his office by writing addressed to the Chief Justice.

(5) A Referee may, with the consent of the Chief Justice, hold any other office or engage in any other employment of calling.

## *Salary and allowances*

7. There shall be paid to every Referee (other than a Resident Magistrate), such remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) as is determined by the Public Service Commission.

## **PART II - JURISDICTION AND FUNCTIONS OF TRIBUNALS**

### *Jurisdiction of Tribunals\**

**8.**-(1) Subject to this section and to section 9, a Tribunal shall have jurisdiction in respect of any claim which does not exceed ~~\$2,000~~ \$ 5000\* in value.

(2) To determine whether a claim exceeds ~~\$2,000~~ \$ 5000\* in value, the following shall be taken into account:

- (a) where a claim is made for the recovery of chattels, the value of those chattels; and
- (b) where a claim is made for a work order, the value of the work sought to be included therein.

(3) A claim for an unliquidated sum is deemed to be for a maximum value of ~~\$2,000~~ \$ 5000\*.

(4) If it is necessary for the purpose of this Decree to ascertain the value of any chattels or work or to resolve any dispute as to such value, that value shall be determined by the Tribunal in such manner as it thinks fit.

(5) A Tribunal shall also have such other jurisdiction as is conferred upon it by any other law.

\*[Jurisdiction has been increased to \$5,000 by SMALL CLAIMS TRIBUNAL DECREE (AMENDMENT) PROMULGATION 2007, Promulgation No. 35 of 2007, [27th September 2007]

### *Further limitations of jurisdiction*

**9.** A Tribunal shall have no jurisdiction in respect of any claim:

- (a) for the recovery of land or any estate or interest therein;
- (b) in which the title to any land or any estate or interest therein, is in question;

- (c) which could not be brought in a Magistrates' Court; and
- (d) which is required by any law to be brought only before any other specified court.

### *Counter claims*

**10.**-(1) A respondent may counterclaim against the claimant if the counterclaim is within the jurisdiction of the Tribunal.

(2) A counter claim shall be treated in all respects as if it were a claim under this Decree.

### *Abandonment to bring within jurisdiction*

**11.** A person may abandon so much of a claim as exceeds ~~\$2,000~~ \$ 5000\* in order to bring the claim within the jurisdiction of a Tribunal, and in that event any order of the Tribunal under this Decree or any other Law, in relation to the claim shall operate to discharge from liability in respect of the amount so abandoned any person against whom the claim and the subsequent order is made. \*[Jurisdiction has been increased to \$5,000 by SMALL CLAIMS TRIBUNAL DECREE (AMENDMENT) PROMULGATION 2007, Promulgation No. 35 of 2007, [27th September 2007]

### *Cause of action not to be divided*

**12.** A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of a Tribunal.

### *Contracting out prohibited*

**13.**-(1) A provision in any agreement to exclude or limit:

- (a) the jurisdiction of a Tribunal; or
- (b) the right of any person to involve that jurisdiction, shall be of no effect.

(2) Without limiting the generality of subsection (1), a Tribunal shall have jurisdiction in respect of a claim

notwithstanding any agreement relating thereto which provides for:

- (a) the submission to arbitration of any dispute or difference; or
- (b) the making of an award upon such a submission to be a condition precedent to any cause of action accruing to a party to the agreement.

(3) Subsection (1) does not apply where a cause of action has accrued, or is believed to have accrued, to a person and he had agreed to the settlement or compromise of the claim based on that cause of action.

#### *Exclusion of other jurisdictions*

**14.**-(1) If a claim is lodged with or transferred to a Tribunal and is within its jurisdiction, the issues in disputes in that claim (whether as shown in the initial claim or as emerging in the course of the hearing) shall not be the subject of proceedings between the same parties in any other Court or Tribunal unless -

- (a) an order is made under section 22 or section 35(1)(c);
- (b) the proceedings before that other Court or Tribunal were commenced before the claim was lodged with or transferred to the Tribunal; or
- (c) the claim before the Tribunal is withdrawn, abandoned, or struck out.

(2) If subsection (1)(b) applies to proceedings before another Court or Tribunal, the issues in dispute in the claim to which those proceedings relate (whether as shown in the initial claim or emerging in the course of the hearing) shall not be the subject of proceedings between the same parties to a Tribunal unless the proceedings are transferred to a Tribunal under section 23 or the claim before the other Court or Tribunal is withdrawn, abandoned, or struck out.

## *Functions of other jurisdictions*

**15.-(1)** The primary function of a Tribunal is to attempt to bring the parties to a dispute to an agreed settlement.

(2) If it appears to the Tribunal to be impossible to reach a settlement under subsection (1) within a reasonable time, the Tribunal shall proceed to determine the dispute.

(3) If an agreed settlement is reached, the Tribunal may make one or more of the orders which it is empowered to make under section 16 or under any other Law, and shall not, where giving effect to the agreement of the parties, be bound by the monetary restriction ~~proved\*~~ *provided* for by subsections 16(3) and (4). (SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT 1994, Act No. 22 of 1994, [8 November 1994])

(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities.

(5) Without limiting the generality of subsection (4), a Tribunal may, in respect of any agreement or document which directly or indirectly bears upon the dispute between the parties, disregard any provision therein which excludes or limits,

- (a) conditions, warranties, or undertakings; or
- (b) any right, duty, liability, or remedy which would arise or accrue in the circumstance of the dispute; ~~if there were no dispute;\*~~ *if there were no such exclusion or limitation.* (SMALL CLAIMS TRIBUNAL (AMENDMENT) ACT 1994, Act No. 22 of 1994, [8 November 1994])

(6) To give effect to its determination of the dispute or in granting relief in respect of any claim, which is not disputed, the Tribunal shall make one or more of the orders which it is

empowered to make under section 16 or under any other law.

### *Order of Tribunal*

**16.-(1)** A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions (whether as to the time for, or mode of, compliance or otherwise) as it thinks fit:

- i.* the Tribunal may order a party to the proceedings to pay money to any other party;
- ii.* the Tribunal may make an order declaring that a person is not liable to another in respect of a claim or demand for money, the delivery of goods or chattels, or that work he performed;
- iii.* the Tribunal may order a party to deliver specific goods or chattels to another party to the proceedings;
- iv.* the Tribunal may make a work order against any party to the proceedings;
- v.* if it appears to the Tribunal that an agreement between the parties, or any term thereof, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying the agreement, or setting it aside (either wholly or in part);
- vi.* if it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying or setting aside the agreement, or the writing (either wholly or in part);
- vii.* the Tribunal may make an order dismissing the claim.

(2) If a Tribunal makes a work order against a party it:

- (a) shall, where the order is made under section 15(6) or section 31(2); and
- (b) may, where the order is made under section 15(3),

at the same time make an order under subsection (1)(a) of this section to be complied with as an alternative to compliance with the work order.

(3) A Tribunal shall not make an order under this Decree which exceeds the monetary restriction hereunder which is applicable to that order and any order which does exceed that restriction shall be entirely of no effect. The monetary restrictions are:

- (a) an order under subsection (1)(a) shall not require payment of money exceeding ~~\$2,000~~ \$ 5000\*:
- (b) a declaration under subsection (1)(h) shall not relate to a claim or demand exceeding ~~\$2,000~~ \$ 5000\*;
- (c) an order under subsection (1)(c) shall not relate to goods or chattels exceeding ~~\$2,000~~ \$ 5000\* in value;
- (d) the work to be done or matters to be attended to under a work order shall not exceed ~~\$2,000~~ \$ 5000\* in value;
- (e) an order under paragraph (e) or paragraph (f) of subsection (1) shall not be made in respect of an agreement if the value of the consideration for the promise or act of any party to the agreement exceeds ~~\$2,000~~ \$ 5000\*.

\*[Jurisdiction has been increased to \$5,000 by SMALL CLAIMS TRIBUNAL DECREE (AMENDMENT) PROMULGATION 2007, Promulgation No. 35 of 2007, [27th September 2007]

(4) Except as provided in subsection (2), a Tribunal shall not, in respect of a claim, make more than one of the orders

authorised by subsections (1)(a), (1)(b), (1)(c) or (1)(d), or by any other Law, if the aggregate amount or value of those orders exceeds ~~\$2,000~~ \$ 5000\*; and every order so made contrary to this subsection shall be entirely of no effect.

\*[Jurisdiction has been increased to \$5,000 by SMALL CLAIMS TRIBUNAL DECREE (AMENDMENT) PROMULGATION 2007, Promulgation No. 35 of 2007, [27th September 2007]

(5) Nothing in subsection (1) shall restrict the making by a Tribunal of any order which it is authorised to make by any other Law.

(6) An order which is beyond the jurisdiction limitations of section 9 shall be of no force or effect.

#### *Orders of Tribunal to be final*

**17.** An order made by a Tribunal shall be final and binding on all parties to the proceedings in which the order is made, and subject to section 32 and except as provided in section **33**, no appeal shall lie in respect thereof.

### **PART III- PROCEEDINGS OR TRIBUNALS**

#### **CLAIMS**

##### *Lodging of claims*

**18.**-(1) Proceedings shall be commenced by the lodging of a claim in Form 1 of the First Schedule to this Decree together with the fee prescribed in the Second Schedule, with the appropriate Tribunal.

(2) The appropriate Tribunal for the purpose of subsection (1) is the one nearest by the most practicable route to the place where the claimant resides.

##### *Notice of claim and of hearing*

**19.**-(1) When a claim is lodged in accordance with section 18 of this Decree, the Registrar shall:

- (a) immediately fix a time and place of hearing and give notice thereof in the prescribed form to the claimant by endorsing the details on Form 1; and
- (b) as soon as reasonably practicable, give notice of the claim and of the time and place of hearing to-
  - i. the respondent; and
  - ii. every other person who appears to the Registrar to have a sufficient connection with the proceedings on the claim in the capacity of a claimant or respondent,

by delivering a sealed copy of the claim with the details of the hearing endorsed on it.

(2) If a Tribunal finds that a person who appears to it to have a sufficient connection with the proceedings on a claim in the capacity of a claimant or respondent has not been given notice of the proceedings it may direct the Registrar to give, and the Registrar shall give, to such person notice of the claim and of the time and place for hearing.

(3) For the purposes of this section, a person has a sufficient connection with the proceedings on a claim if his presence as a claimant or respondent is necessary to enable the Tribunal to effectually and completely determine the questions in dispute in the claim or to grant the relief which it considers may be proper.

### *Parties*

**20.**-(1) Subject to subsection (2) the claimant, the respondent, and every person to whom notice of a claim has been given under section 19(i), (ii) or section 19(2) shall be the parties to the proceedings on that claim.

(2) A Tribunal may at any time, order that the name of a person who appears to it to have been improperly joined as a party be struck out from the proceedings.



*Minors and persons under disabilities.*

**21.**-(1) Subject to this section a minor may be a party to, and shall be bound by, proceedings in a Tribunal as if he were a person of full age and capacity.

(2) If a minor who has not attained the age of 18 years is a party to any proceedings in a Tribunal, the Tribunal may, if it considers that it would be in the interests of the minor to do so:

- (a) at any time appoint to represent the minor a person who is willing to do so (and who is not disqualified by section 24(5)), and authorise that person to control the conduct of the minor's case; or
- (b) when approving a representative under section 24(3)(c), or at any time thereafter, authorise that representative to control the conduct of the minor's case.

(3) If a party to any proceedings in a Tribunal is a person of unsound mind:

- (a) the Public Trustee; or
- (b) if a Committee of the estate of that person of unsound mind has been appointed under the Mental Treatment Act the Committee, subject to that Act,

shall control the conduct of that person's case.

(4) A person empowered by or under this section to control the conduct of the case of another person may do all such things in the proceedings as he could do if he himself were a party to the proceedings in place of that other person.

*Transfer of proceedings to Magistrates' Court, etc.*

**22.**-(1) If any proceedings have been commenced in a Tribunal which it has no jurisdiction to hear and determine, the Tribunal may, instead of striking out the proceedings, order that they be transferred to a Magistrates' Court in its ordinary civil jurisdiction.

(2) If any proceedings have been commenced in a Tribunal which in the opinion of the Tribunal would more properly be determined in a Magistrates' Court, the Tribunal may, on the application of a party or of its own motion, order that proceedings be transferred to a Magistrates' Court in its ordinary civil jurisdiction.

(3) The Tribunal shall not make an order under this section in respect of a claim if any agreement of a kind described in section 13(2) requires that the claim be submitted to arbitration.

*Transfer of proceedings from Magistrates' Court, etc.*

**23.**-(1) If proceedings within the jurisdiction of a Tribunal have been commenced in a Magistrates' Court which has a Tribunal as a division of it, before a claim in respect of the same issues between the same parties has been lodged in or transferred to a Tribunal, the magistrate may, on the application of either party or of his own motion, order that the proceeding be transferred to the Tribunal, subject to such provision (if any) as to payment of costs as he thinks fit.

(2) If proceedings within the jurisdiction of a Tribunal has been commenced in the High Court before a claim in respect of the same issues between the same parties has been lodged in, or transferred to, a Tribunal, that Court or a Judge thereof may, on the application of either party or of its or his own motion, order that the proceeding be transferred to a Tribunal subject to such provision (if any) as to payment of costs as the Court or Judge thinks fit.

(3) A Tribunal to which proceedings are transferred pursuant to this section may have regard to any notes of evidence transmitted to it and it shall not be necessary for that evidence to be given again in the Tribunal unless the Tribunal so requires.

(4) Section 8(3) shall not apply to a claim which is transferred to a Tribunal pursuant to this section, unless the claimants consents to transfer.

## **HEARINGS**

### *Right of audience*

**24.**-(1) At the hearing of a claim every party shall be entitled to attend and be heard.

(2) Subject to subsections (3) and (6), no party shall appear by a representative unless it appears to the Tribunal to be proper in all the circumstances to so allow, and the tribunal approves such representative.

(3) The following parties may appear by a representative who is approved by the Tribunal:

- (a) the State, if the representative is a servant of the State;
- (b) a corporation or an unincorporated body of persons, if the representative is a employee or member thereof;
- (c) a person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons;
- (d) a minor, or other person under a disability.

(4) A Tribunal shall when a representative of a party is proposed for its approval, satisfy itself that the person proposed is acting in the best interests of that party and has

sufficient personal knowledge of the case and sufficient authority to bind the party.

(5) A Tribunal shall not approve a representative who is, or has been admitted as a barrister or solicitor or who, in the opinion of the Tribunal is, or has been, regularly engaged in advocacy work before Tribunals; but this prohibition does not apply where the person proposed for approved under subsection (3) is a person or one of the persons jointly liable or entitled with another or others, or is an employee of a party.

(6) The Consumer Council of Fiji may, by its employees, servants or agents, represent any claimant in proceedings before a Tribunal if the claimant so consent and the representative is not a barrister or solicitor.

#### *Proceedings may be held in private*

**25.** Proceedings before a Tribunal may be held in private if all of the parties agree thereto.

#### *Evidence*

**26.-(1)** Evidence tendered to a Tribunal by or on behalf of a party to any proceedings need not be given on oath, but the Tribunal may at any stage of the proceedings require that such evidence, or any specific part thereof, be given on oath whether orally or in writing.

(2) A Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so received or ascertained shall be disclosed to every party.

(3) A Tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of the Evidence Act and whether or not the same would normally be admissible in a Court of Law.

*Tribunal may act on evidence available*

**27.**-(1) If the case of any party is not presented to the Tribunal, after reasonable opportunity has been given to him to do so, the issues in dispute in the proceedings may be resolved by the Tribunal, or relief in respect of an undisputed claim may be granted by it, on such evidence or information as is before it, including evidence or information obtained pursuant to section **26**(2).

(2) An order made by the Tribunal in the circumstances described in subsection (1) shall not be challenged on the ground that the case of the party was not presented to the Tribunal, but the party may apply for a rehearing under section 32 on the ground that there was sufficient reason for his failure to present his case.

*No Costs allowable*

**28.** Costs shall not be awarded against a party unless, in the opinion of the Tribunal, a claim made by that party is frivolous or vexatious, in which case it may order that party to pay to another party the reasonable costs of that party in connection with the proceedings.

*Procedure where no provision made*

**29.** Subject to this Decree and any rules made hereunder, a Tribunal shall adopt such procedure as it thinks best suited to the ends of justice.

**ENFORCEMENT OF ORDERS**

*Enforcement of orders except work orders*

**30.**-(1) Every order made by a Tribunal requiring a party to pay money or deliver specific goods or chattels to another party shall be deemed to be an order of the Magistrates' Court of which the Tribunal is a division, and subject to this section, may be enforced accordingly.

(2) An application made to a Magistrates' Court for the issue of any process to enforce an order requiring a party to pay money to another as an alternative to compliance with a work order shall be in Form 2 of the First Schedule and the Registrar shall give notice of the application to the party against whom enforcement is sought.

(3) If that party does not file in the Court within a period of 21 days from the date it receives notice of the application in Form 2, a notice of objection in Form 3, the order may, after the expiry of that period, be enforced pursuant to subsection (1).

(4) The notice referred to in subsection (3) may only be given on the ground that it is [sic] the belief of the party that the order of the Tribunal has been fully complied with and that he therefore disputes the entitlement of the applicant to enforce it.

(5) If the party against whom enforcement is sought files the notice referred to in subsection (3) within the prescribed time, the Registrar shall refer the matter to the Tribunal to be heard and determined under section 31(2).

~~(6)\* Notwithstanding sections 62 and 63 of the Magistrates' Court Act, no filing fee shall be payable by a person who seeks to enforce an order pursuant to subsection (1), but any fee which would otherwise be payable therefor shall be recoverable from the opposite party for the credit of the Consolidated Fund.~~ (SMALL CLAIMS TRIBUNALS DEGREE (AMENDMENT) ACT 1997, Act No. 15 of 1997, [17 October 1997])

### *Enforcement of work orders*

**31.-(1) If:**

- (a) a party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and

- (b) that other party has not complied with an alternative money order provided for in section 16(2), the party, in whose favour the work order was made may, instead of applying to the Magistrates' Court for the issue of process for enforcement pursuant to section 30, lodge in the Tribunal a request in Form 4 of the First Schedule to this Decree that the work order be enforced.

(2) Proceedings on a request for enforcement under subsection (1) and on a notice under section 30(5) shall be treated as if [sic] such request or notice were a claim lodged under section 18, and upon the hearing of the matter the Tribunal may:

- (a) vary the work order or make a further work order or any other order which is authorised by section 16;
- (b) grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 16(2), or so much thereof as the Tribunal may allow and either subject to or without compliance with the provisions of section 30(2);
- (c) discharge any order previously made by the Tribunal.

(3) After the expiration of 12 months from the date of a work order, it shall not be enforced without the leave of the Tribunal.

## **PART IV - REHEARING AND APPEALS**

### *Rehearing*

**32.**-(1) Subject to subsection (2), a Tribunal may, upon the application or a party to any proceedings, order the rehearing of a claim, to be had [sic] upon such terms as it thinks fit.

(2) A rehearing may be ordered under subsection (1) only if an order has been made under section 15(6) or section 31(2) and, in the latter case, shall be limited to rehearing the enforcement proceedings taken under that section.

(3) Every application for a rehearing shall be in Form 5 of the first Schedule, shall be lodged together with the fee prescribed in the Second Schedule and shall be made within 14 days after the Tribunal's order and shall be served upon the other parties to the proceedings.

(4) When a rehearing is ordered:

- (a) the Registrar shall notify all parties to the proceedings of the making of the order and of the time and place appointed for the rehearing; and
- (b) the order of the Tribunal made upon the first hearing shall cease to have effect.

(5) Notwithstanding subsection (4)(b), if the party on whose application a rehearing is ordered does not appear at the time and place for the rehearing or at any time and place to which the rehearing is adjourned, the Tribunal may, without rehearing or further rehearing the claim direct that the original order be restored to full force and effect.

(6) This Decree shall apply to a rehearing in all respects as it applies to an original hearing.

### *Appeals*

**33.**-(1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:

- (a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or
- (b) the Tribunal exceeded its jurisdiction.

(2) An appeal brought pursuant to subsection (1) shall be made:

- (a) if against an order made by a Resident Magistrate exercising the jurisdiction of a Tribunal to the High Court; and
- (b) in any other case, to the Magistrates' Court.

(3)\* An appeal shall be brought by a party by the filing of a notice of appeal in Form 6 of the First Schedule to this Decree, together with the fee prescribed in the Second Schedule in the ~~High Court or any Magistrates' Court~~ Tribunal (as the case may be) within 14 days of the Tribunal's order. (SMALL CLAIMS TRIBUNALS DEGREE (AMENDMENT) ACT 1997, Act No. 15 of 1997, [17 October 1997])

(4) As soon as practicable after such notice of appeal has been filed the High Court or the Registrar of that Magistrates' Court (as the case may be) shall:

- (a) lodge a copy thereof in the Tribunal's records relating to the proceedings;
- (b) fix the time and place for the hearing of the appeal and shall notify the appellant;
- (c) serve a copy of even notice of appeal together with a notice of the time and place for hearing the appeal on even other party to the proceedings before the Tribunal and each such party may appear and be heard.

(5) The filing of a notice of appeal against an order shall operate as a stay of any process for the enforcement of that order but the High Court or the Magistrates' Court may at any time on the application of a party to the proceedings order that any process may be resumed or commenced or the process having been resumed or commenced, order that it be further stayed.

### *Referee to furnish report*

**34.**-(1) Within 14 days after a notice of appeal has been lodged in the Tribunal's records under section 33(3) the Referee who heard the proceedings shall furnish to the Registrar a report on the proceedings and on the manner in which the proceedings were conducted and the reasons therefore.

(2) A Referee shall keep a record of the proceedings of a Tribunal sufficient to enable him, if required, to furnish a report under subsection (1).

(3) If, for any reason, the Referee who heard the proceedings is unavailable to furnish the report, the same shall be compiled by the Registrar from such information as he is able to collect from the records of the Tribunal or otherwise.

### *Powers of court on appeal*

**35.**-(1) On the hearing of the appeal a Judge or Resident Magistrate may:

- (a) quash the order of the Tribunal and order a rehearing of the claim in the Tribunal on such terms as he thinks fit;
- (b) if the appeal is heard by a Resident Magistrate quash the order and invoke his authority under section 4 to exercise the jurisdiction of a Tribunal;
- (c) quash the order and transfer the proceedings to a Magistrates' Court for hearing; or
- (d) dismiss the appeal.

(3) An appeal under this section shall be heard by a Judge or Resident Magistrate in chambers and, subject to this Decree and any rules made hereunder, the procedure thereat shall be such as he may determine.

## **PART V - MISCELLANEOUS PROVISIONS**

### *Want of form*

**36.** No proceedings of a Tribunal or order or other document thereof shall be set aside or quashed for want of form.

### *Registrar to provide assistance*

**37.** A Registrar shall ensure that assistance is reasonably available from himself or his staff to any person who seeks it in completing the forms required by this Decree or any rules made thereunder, in relation to the lodging of a claim in a Tribunal, an application for a rehearing, an appeal against an order of a Tribunal, or the enforcement of an order in the Tribunal or in a Magistrates' Court.

### *Contempt of Tribunal*

**38.-(1)** Any person who:

- (a) wilfully assaults, insults, or obstructs a Referee, or any witness or any officer of a Tribunal during a sitting of a Tribunal or while a Referee a witness or an officer is going to or returning from a sitting of a Tribunal;
- (b) wilfully assaults, insults, or obstructs any person in attendance at a sitting of a Tribunal;
- (c) wilfully interrupts, or otherwise misbehaves at, a sitting of a Tribunal; or
- (d) wilfully and without lawful excuse disobeys any order or direction of a Tribunal (other than an order mentioned in section 15(3), section 15(6), or section 31(2) of this Decree) in the course of the hearing of any proceedings,

is guilty of an offence and is liable to a fine not exceeding \$500 or to imprisonment for any term not exceeding 6 months.

(2) A Referee may order the exclusion from a sitting of a Tribunal of any person whose behaviour in the opinion of the Referee, constitutes an offence against subsection (1), whether or not such person is charged with the offence; and any Registrar, or officer under his control, or police officer may take such steps as are reasonably necessary to enforce such exclusion.

*Protection of Referees, etc.*

**39.**-(1) A Referee shall have and enjoy the same protection as a Magistrate has and enjoys under the Magistrates' Courts Act.

(2) For the avoidance of doubt as to the privileges and immunities of Referees, parties representatives and witnesses in the proceedings of a Tribunal it is declared that such proceedings are judicial proceedings.

(3) The privileges and immunities referred to in subsection (2) shall extend and apply to any person who gives information or makes any statement to the Tribunal and relating to a claim.

*Publication of orders*

**40.** The Registrar shall cause to be published in such manner as the Minister from time to time directs, such particulars relating to the result of proceedings in Tribunals as the Minister specifies in the direction.

*Rules*

**41.**-(1) The Chief Justice may make rules:

- (a) regulating the practice and procedure of Tribunals;
- (b) prescribing such things (including fees) as are required by this Decree to be prescribed;

- (c) prescribing such matters as are necessary or convenient for carrying out the provisions of this Decree.

(2) Without limiting the generality of subsection (1), rules may be made providing for the following:

- (a) the keeping of records by Tribunals and the form thereof;
- (b) the form of documents to be issued by Tribunals and the sealing of its documents;
- (c) the form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by such persons;
- (d) the function, powers, and duties of Tribunals and Registrars in relation to -
  - i. the service of documents and giving of notices;
  - ii. the enlargement of dates of hearing; and
  - iii. the adjournment of proceedings;
- (e) the withdrawal and amendment of claims;
- (f) the summoning of witnessing, and the payment of witnesses from public funds or otherwise;
- (g) the commission of offences by, and punishment of persons who refuse to give evidence or obey a summons to witness;
- (h) the transfer of proceedings -
  - i. from a Magistrates' Court or the High Court to a Tribunal;
  - ii. from a Tribunal to a Magistrates' Court;
  - iii. from one Tribunal to another;
- (i) the removal of orders of tribunals into a Magistrates' Court for enforcement;
- (j) the searching of the records of Tribunals.

(3) Notwithstanding section 42, rules made under this section may make particular provision for:

- (a) the giving of notices to, and service of documents on the State; and
- (b) the length of the notice to be given to the State before proceedings to which the State is a party may be heard.

*State Proceedings Act not restricted*

**42.** Nothing in this Decree shall limit or restrict the operation of the State Proceedings Act.

*State bound*

**43.** This Decree binds the State.

*Transitional*

**44.**-(1) An action commenced in the Magistrates' Court or the High Court, prior to the date this Decree comes into force, shall not be transferred to a Small Claims Tribunal unless with the consent of all parties.

(2) A right accrued or obligation incurred before this Decree comes into force shall not be affected by the operation of section 15(4).

Made at Suva this 12<sup>th</sup> day of March 1991.

PENAIA K. GANILAU  
President of the Sovereign Democratic  
Republic of Fiji and Commander-in-Chief  
of the Armed Forces

[Legal Notice No. 96]

## **SMALL CLAIMS TRIBUNAL RULES, 1994**

IN exercise of the powers conferred upon me by Section 41 of the Small Claims Tribunal Decree 1991, I have made the following rules—

### *Short title, commencement*

1. These rules may be cited as the Small Claims Tribunal Rules, 1994, and shall come into force on the day that the Small Claims Tribunal Decree 1991 comes into force.

### *Application*

2. These rules regulate proceedings before the Small Claims Tribunal and they supplement the provisions of the Small Claims Tribunal Decree 1991 as amended (hereafter called the "Decree\*").

### *Date of hearing*

3. (1) When a claim is lodged in a Small Claims Tribunal, the Clerk of the Court shall set a hearing date and endorse it on the claim form.

(2) The hearing date is to be set as follows—

(a) if all respondents live within 6 hours normal travelling time from the Tribunal—

1. the date of hearing is to be set not less than 15 days nor more than 30 days from the date of lodgement of the claim; and

2. each respondent is to be given at least 10 days notice of the initial hearing date and every adjourned hearing date;

(b) if any respondent lives further than 6 hours normal travelling time from the Tribunal—

1. the date of hearing is to be set not less than 30 days nor more than 45 days from the date of lodgement of the claim; and
2. each respondent is to be given at least 15 days notice of the initial hearing date and every adjourned hearing date.

(3) If, on the hearing date or before the hearing date, it appears to the Tribunal or the Clerk of the Court that insufficient notice of a hearing date has been given, the hearing shall be adjourned.

### *Adjournments*

4.-(1) A hearing may be adjourned for good cause by the Tribunal or by the Clerk of the Court to a later time, to another date, or to a date to be fixed.

(2) An adjournment may be granted on the application of a party or upon the Tribunal's or Clerk of the Court's own motion.

(3) If a hearing date is adjourned, the Clerk of the Court shall notify all parties to the proceeding of the date to which the hearing has been adjourned, by posting or otherwise giving to each party a notice of adjournment in Form 7 of the Schedule to these Rules.

(4) A hearing may be adjourned to a date to be fixed and, if so, any party may apply in writing to the Clerk of the Court for the fixing of a new hearing date.

### *Service of Documents*

5. These rules about service of process in a Small Claims Tribunal are to be generally the same as in a Magistrates' Court; and accordingly the provisions of Order VII of the

Magistrates' Courts Rules apply to the service of process in a Small Claims Tribunal;

Provided that:

- (a) A Tribunal may at any time order that service of any process be made in any way that the Tribunal decides will bring notice of the process to the person to be served;
- (b) A Tribunal may waive strict compliance with any rules as to service, if it is of the opinion that no injustice will be caused thereby;
- (c) Any specific provision in the Decree or these Rules about service will take precedence over the Magistrates' Courts Rules.

#### *Withdrawal of Claim*

6.—(1) A claimant may withdraw a claim at any time—

- (a) with the leave of the Tribunal, or
- (b) by filing a notice of withdrawal in Form 8 of the Schedule to these Rules.

(2) A claim that is not withdrawn against all respondents continues against any remaining respondents.

(3) Notwithstanding the withdrawal of a claim—

- (a) a Tribunal may order that the applicant is liable to pay witnesses fees, allowances and travelling expenses;
- (b) any order made by a Tribunal remains in force, unless discharged or varied by a Tribunal.

#### *Representatives*

7.—(1) A Tribunal may approve a person to act as a representative of a party at any time- either before a hearing or after a hearing has commenced.

(2) A Tribunal may, at the request of a party, appoint that party's husband or wife to act as her or his representative.

### *Witnesses Summons*

**8.—**(1) If the Tribunal decides that the attendance of a witness is reasonably necessary to properly determine a matter, it may issue a summons, in Form 9 of the Schedule to these Rules, requiring any person—

- (a) to attend before the Tribunal at the time and place specified in the summons; and
- (b) to give evidence in the proceedings; and
- (c) to produce to the Tribunal such documents in that person's possession or control as are specified in the summons.

(2) When issuing a summons under this rule, the Tribunal shall fix the fees, allowances and travelling expenses that are to be paid to the witnesses and these are to be tendered at the time of service of the summons.

(3) The fees, allowances and travelling expenses are to be paid by such of the parties (or more than one of them) as the Tribunal determines.

(4) A person who has been duly served with a summons under this rule (regardless of whether the correct fees etc. were tendered), and who fails to comply with the requirements of that summons, is guilty of an offence and is liable to a fine not exceeding \$300.

### *Evidence*

**9.—**(1) In the interests of justice and expediency, the Tribunal may call for evidence from any person, and may—

- (a) ask questions of any witness;
- (b) call its own witnesses, including witnesses to give

- expert evidence;
- (c) telephone a person and take into account the results of such telephone conversation.

(2) Even if a respondent fails to appear at a hearing, the Tribunal must not make an order (other than relating to an adjournment), unless it satisfies itself of the claimant's case by calling for evidence.

### *Language of Tribunal*

**10.**—(1) Proceedings of a Small Claims Tribunal may be conducted in the language that the Tribunal considers is best suited to the parties, but the record of the Tribunal, a report under Section 34(1), and the Order of the Tribunal, must be in English.

(2) The Tribunal may use any trustworthy person to translate proceedings for the benefit of a party or the Tribunal.

### *Amendment of claim*

**11.** A Tribunal may in the interests of justice and expediency, allow a party to amend its claim at any stage of proceedings, but when allowing an amendment, the Tribunal must ensure that the other parties are given adequate notice of the amendment and are allowed such adjournment as is reasonable to allow them to consider and prepare their case and call other evidence if necessary.

### *Sealing of Documents*

**12.** The Clerk of the Court shall keep the seal of the tribunal and shall date and affix such seal to-

- (a) all documents lodged in a Tribunal;
- (b) all Orders of a Tribunal;
- (c) all other documents that require authentication as documents relating to a Small Claims Tribunal.

### *Form of Orders*

**13.—**(1) The order of a Tribunal shall be in the basic form of Form 10 of the Schedule to these Rules.

(2) An order for costs may only be made as set out in Section 28 of the Decree, but a Tribunal may order that a party is to pay the fees, allowances and travelling expenses of witnesses (including parties to the proceedings).

### *Records*

**14.** The Clerk of the Court shall maintain a register of claims and such other records as are specified by the Chief Registrar.

### *Transferred Proceedings*

**15.—**(1) If a claim is transferred to a Magistrates' Court under Section 22 of the Decree, the Magistrates' Court is not obliged to consider the matter unless the claimant complies with its directions as to the filing of the appropriate originating process as it orders.

(2) If a proceedings are transferred to a Tribunal, the originating process filed by the claimant in the Magistrates' Court or High Court, as the case may be, is to be taken to be a claim under the Small Claims Tribunal Decree.

Dated this 1st day of November 1994.

T.TUIVAGA  
Chief Justice