

REPUBLIC OF NAURU
CIVIL PROCEDURE ACT 1972

CIVIL PROCEDURE (AMENDMENT) RULES 1972

IN EXERCISE of the powers conferred, on me by section 76 of the Civil Procedure Act 1972, I hereby make the following rules of court-

SHORT TITLE

1. These Rules may be cited as the Civil Procedure (Amendment) Rules 1972.

INTERPRETATION

2. In these Rules "the Rules of Court" means the Rules of Court set out in the Schedule to the Schedule to the Civil Procedure Rules 1972.

ADDITION OF A NEW ORDER 50 TO THE RULES OF COURT

3. The Rules of Court are amended by the addition of the new Order 50 set out in the First Schedule to these Rules.

ADDITIONAL FORMS PRESCRIBED

4. Appendix A to the Rules of Court is amended by the addition of the two new forms, Forms Nos. 52 and 53, set out in the Second Schedule to these Rules.

Made this 15th day of November 1972.

I. R. Thompson
Chief Justice

FIRST SCHEDULE

(Rule 3)

ORDER 50

PROCEEDINGS BY AND AGAINST THE REPUBLIC

APPLICATION AND INTERPRETATION (O. 50, r. 1)

1. (1) These Rules apply to civil proceedings to which the Republic is a party subject to the following rules of this Order.

(2) In this Order -

"civil proceedings by the Republic", "civil proceedings against the Republic" and "civil proceedings by or against the Republic" have the same respective meanings as in Part III of the Republic Proceedings, Act 1972; they include civil proceedings by or against an instrumentality of the Republic or statutory corporation to which the provisions of section 3 of that Act have been applied by the Cabinet but do not include any of the proceedings specified in section 16 of that Act;

"civil proceedings to which the Republic is a party" has the same meaning as it has for the purposes of the Republic Proceedings Act 1972 by virtue of subsection (3) of section 2 of that Act but also includes civil proceedings to which an instrumentality of the Republic or a statutory corporation to which the provisions of section 3 of that Act have been applied by the Cabinet is a party;

"instrumentality of the Republic" and "officer of the Republic" have the same meanings as they have for the purposes of the Republic Proceedings Act 1972 by virtue of subsection (2) of section 2 of that Act;

"order against the Republic" means any order, including an order for costs, made in any civil proceedings by or against the Republic or in connection with any arbitration to which the Republic is a party, in favour of any person against the Republic or against a Government department or against the President or an officer of the Republic as such;

"order" includes a judgment, decree, rule, award or declaration.

(3) In this Order a reference to the Registrar shall, where the proceedings are in the District Court, be taken as reference to the resident magistrate.

CERTIFICATE OF LEAVE TO COMMENCE CIVIL PROCEEDINGS AGAINST THE REPUBLIC TO BE FILED BEFORE ISSUE OF WRIT (O. 50, r. 2)

2. No writ of summons to commence civil proceedings against the Republic which by virtue of section 3 of the Republic Proceedings Act 1972 cannot be taken without the leave of the Cabinet shall be issued unless prior to its issue the plaintiff has presented at the registry of the Court in which the proceedings are to be commenced a certificate under the hand of the Secretary of the Cabinet that the Cabinet has given leave for those proceedings to be commenced and such certificate has been filed.

PARTICULARS TO BE INCLUDED IN INDORSEMENT OF CLAIM (O. 50, r. 3)

3. (1) in the case of a writ of summons which commences civil proceedings against the Republic the indorsement of claim required by Rule 3 of Order 5 shall include a statement of the circumstances in which the Republic's liability is alleged to have arisen and as to the Government department, instrumentality of the Republic or statutory corporation, or the President or officer of the Republic, concerned.

(2) If in civil proceedings against the Republic the Secretary for justice considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for appearing, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where the Secretary for Justice gives a notice under this rule, the time limited for appearing shall not expire until 4 days after he has notified the plaintiff in writing that he is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the plaintiff by summons served on the Secretary for Justice not less than 7 days before the return day, decided that no further information as, to the matters referred to in paragraph (1) is reasonably required.

SERVICE ON THE REPUBLIC (O. 50, r. 4)

4. (1) order 8, other than Rules 6 and 7, Order 9 and any other provision of these Rules relating to service out of Nauru shall not apply in relation to the service of any process by which civil proceedings against the Republic are begun.

(2) Personal service of any document required to be served on the Republic for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Republic service on the Republic must be effected by leaving the document at the office of the Secretary for Justice or of any member of the staff of the Secretary for Justice whom he has nominated for the purpose.

(3) In relation to the service of any document required to be served on the Republic for the purpose of or in connection with any civil proceedings by or against the Republic, Rules 5 and 9 of Order 42 shall not apply, and Rule 7 of that Order shall apply as if the reference therein to Rule 2 and subparagraph (a) of Rule 5(1) of that Order were a reference to paragraph (2) of this rule.

COUNTERCLAIM IN CIVIL PROCEEDINGS BY REPUBLIC (O. 50, r. 5)

5. (1) No counterclaim which by virtue of section 3 of the Republic Proceedings Act 1972 cannot be made without the leave of the Cabinet may be included with the defence in civil proceedings commenced by the Republic unless the Cabinet has given leave for the counterclaim to be made.

(2) Where any defendant in civil proceedings by the Republic has applied to the Cabinet for leave to make a counterclaim in those proceedings, the defence shall be indorsed with a note to that effect.

(3) Where the defence of any defendant in civil proceedings by the Republic is indorsed as provided for by the last preceding paragraph and leave to make the counterclaim is given by the Cabinet, that defendant may, within 14 days of the decision of the Cabinet upon his application having been sent to him, serve on the Secretary for Justice a counterclaim in accordance with such leave and lodge a copy thereof, together with a certificate under the hand of the Secretary to the Cabinet that leave to make that Counterclaim has been given by the Cabinet, in the registry of the Court in which the proceedings have been commenced.

(4) Notwithstanding the provisions of Rule 1 of Order 29, where the defence of any defendant in civil proceedings by the Republic is indorsed as provided for by paragraph (2), the suit shall not be set down for trial until 15 days after the decision of Cabinet upon the application has been sent to the defendant concerned or, where the defendant concerned has served a counterclaim in accordance with the provisions of the last preceding paragraph, 15

days rafter such service.

COUNTERCLAIM AND SET-OFF (O. 50, r. 6)

6. (1) Notwithstanding the last preceding rule and Rules 17 and 18 of Order 15, a person may not in any proceedings by the Republic make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of any taxes, duties or penalties.

(2) Notwithstanding Rule 5, Rule 2 of Order 12 and Rules 17 and 18 of Order 15, no counterclaim may be made, or set-off pleaded, without the leave of the Registrar, by the Republic in proceedings against the Republic, or by any person in proceedings by the Republic if the Subject-matter of claim in the suit relates to a Government department, an instrumentality of the Republic or a statutory corporation and the subject-matter of the counterclaim or set-off does not relate to that department, instrumentality or corporation.

(3) Any application for leave under this rule must be made by summons.

THIRD PARTY PROCEEDINGS AGAINST THE REPUBLIC (O. 50, r. 7)

7. (1) Notwithstanding anything in Rule 1 of Order 13, a third party notice to join the Republic, a Government department, an instrumentality of the Republic or a statutory corporation to which the Cabinet has applied the provisions of section 3 of the Republic Proceedings Act 1972, or the President or an officer of the Republic in his official capacity, as a third party in any proceedings shall not be issued or given without the leave of the Registrar and, where the proceedings may, by virtue of section 3 of the Republic Proceedings Act 1972, be taken only with the leave of the Cabinet unless the party issuing, or seeking to have issued, the notice has lodged in the registry for filing a certificate under the hand of the Secretary to the Cabinet that leave to take those proceedings has been given by the Cabinet.

(2) Leave to issue such a notice as is referred to in the last preceding paragraph shall not be granted unless the Registrar is satisfied that the Republic is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Republic has arisen and as to the Government department, instrumentality of the Republic or statutory corporation, or the President or the officer of the Republic, concerned.

(3) Where application has been made to the Cabinet for leave to take the proceedings, the party who has made the application may apply to the Registrar by summons for an order that the suit is not to be set down for trial without the leave of the Registrar, such leave not to be given until that party has withdrawn his application or has been notified of the decision of the Cabinet upon it and has had reasonable time to take the appropriate steps, if any, in the proceedings consequent upon that decision.

JUDGMENT IN DEFAULT (O. 50, r. 8)

8. (1) Except with the leave of the Registrar, no judgment in default of appearance or of pleading shall be entered against the Republic in civil proceedings against the Republic or in third party proceedings against the Republic.