

LAWS OF SOUTHERN SUDAN

*The Code of Civil Procedure Act,  
2007*

# **Laws of Southern Sudan**

## **The Code of Civil Procedure Act, 2007**

**In accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following:**

### **Chapter I**

#### **Preliminary Provisions**

##### **Section 1. Title and Commencement**

This Act may be cited as "The Code of Civil Procedure Act, 2007" and shall come into force on the date of its signature by the President.

##### **Section 2. Repeal and Saving**

The Civil Procedure Act, 2003, is hereby repealed; *provided that*, all proceedings, orders and regulations taken or made thereunder, except to the extent that they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall continue in force or effect, until they are repealed or amended in accordance with the provisions of this Act. In no event shall the provisions of this Act affect individual suits in process or already decided.

##### **Section 3. Purpose**

The purpose of this Act is to establish the procedures and practices that shall be applied in the Courts of Southern Sudan when hearing civil suits and other related proceedings as defined herein, and other matters related thereto.

##### **Section 4. Authority and Application**

- (1) This Act is being drafted under the powers vested in the Government of Southern Sudan under Schedule (B) of the Interim Constitution of Southern Sudan, 2005 ("ICSS"), to establish minimum Southern Sudan standards and uniform norms in the areas of civil procedures and judicial institutions.
- (2) The provisions of this Act shall be applied to all the civil proceedings in or before any Court in Southern Sudan, except for civil proceedings under National Laws, which will be governed by National procedures.

**Section 5. Provisions Affecting Application**

- (1) Except as specifically provided below, the provisions of this Act shall apply to all the civil suits and proceedings pending before the Courts at the commencement of such proceedings.
- (2) The following provisions shall not apply at the commencement:
  - (a) the provisions modifying jurisdiction, where the commencement of such proceedings, take place after the hearing of the suit has started; and,
  - (b) the provisions regulating the modes of objection in respect to decrees made before the commencement of such provisions where they abrogate an existing mode or create a new one.

**Section 6. Rules Applicable to Suits based on Personal Law**

Where a suit or other proceeding in a Civil Court raises a question regarding succession, inheritance, legacies, gifts, marriage, divorce, or family relations, the rule for decision of such question shall be:

- (a) any custom applicable to the parties concerned; *provided that*, it is not contrary to justice, equity or good conscience and has not been by this, or any other enactment, altered or abolished or has not been declared void by the decision of a competent Court; or,
- (b) the Sharia Law in cases where the parties are Muslims except so far as it has been modified by such custom as is above referred to.

**Section 7. Law to be applied in the Absence of Express Provisions**

- (1) In matters of procedure not provided for by this Act, the Court shall apply such rules as are likely to serve the ends of justice.
- (2) In cases not provided for by any law, the Court shall act according to Southern Sudan judicial precedents, custom and principles of justice, equity and good conscience.

**Section 8. Interpretations**

- (1) In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

“*Abate*” or “*Abatement*” means the defeat of a pending action for reason unrelated to the merits of the claim;

“*Administrative authority*” means any GoSS or State Institution that is authorized to make a binding decision;

**“Affidavit”** means a voluntary, written declaration of facts, sworn to by the declarant, that the law allows to be used, in certain situations and proceedings, in lieu of testimony;

**“Appeal”** means a proceeding undertaken to have a decision reconsidered by a higher authority;

**“Appellant”** means the party who appeals against a lower court decision to a higher court seeking reconsideration or reversal of that decision;

**“Constitution”** means the Interim Constitution of Southern Sudan, 2005 (“ICSS”);

**“Court”** means any court of Southern Sudan of competent jurisdiction to hear a civil matter or suit;

**“Defendant”** means the person sued in a civil proceeding by a plaintiff;

**“Domicile”** means a place at which a person is physically present and which the person regards as his or her home;

**“Goss Institutions”** includes all of the following:

- (a) GoSS, or any GoSS Ministry, the Bank of Southern Sudan, or any department, institution or undertaking thereof;
- (b) any State government, department, institution of Southern Sudan or undertaking thereof;
- (c) a local authority; or
- (d) any authority, board, commission, committee or other body, whether paid or unpaid, which is vested with or is performing, whether permanently or temporarily, functions of public nature;

**“Government”** means the Government of Southern Sudan (GoSS);

**“Guardian ad Litem”** means a guardian or lawyer appointed by the Court to appear in a lawsuit or proceeding on behalf of an incompetent or minor;

**“Hearing”** means a session of court held for the purpose of deciding issues of fact or law;

**“Immovable property”** means any land, buildings and permanent structures, and any object firmly attached to the land, building or permanent structure;

**“Interdict”** means a natural person who, because of an infirmity, cannot make reasoned decisions about his or her personal care or property, or is unable to effectively communicate those decisions;

**“Interlocutory order”** means an interim or temporary order, not constituting a final resolution of the whole controversy;

**“Issue of fact”** means a point supported by one party’s evidence and contradicted by another’s;

**“Joinder”** means the joining of parties or claims in a single law suit;

**“Judgement”** means a Court’s final determination of the rights and obligations of the parties in a suit;

**“Minister”** means the Minister of Legal Affairs and Constitutional Development;

**“Movable property”** means any property other than immovable property;

**“Mortgagee”** means the person to whom property is mortgaged, the mortgage creditor or lender;

*“Mortgagor”* means the person who mortgaged property, the mortgage debtor, or borrower;

*“Petition”* means a formal written request presented to a Court;

*“Plaint”* means the initial pleading in a civil suit which states the basis for the Court’s jurisdiction, the basis for the plaintiff’s claim, and demand for relief;

*“Plaintiff”* means the party who brings the civil suit in a Court against a defendant;

*“Pleading”* means a formal document in which a party to a suit sets forth or responds to allegations, claims, denials or defences;

*“President”* means the President of the Government of Southern Sudan;

*“Resident”* means a person who is living in a place for a period of six months or more;

*“Respondent”* means the party against whom an appeal is made;

*“Sitting”* means a court session; and,

*“Temporary injunction”* means a court order commanding or preventing an action, issued before or during trial to prevent an irreparable injury from occurring before the Court has decided the suit.

## **Chapter II**

### **Matters of Jurisdiction**

#### **International Jurisdiction**

##### **Section 9. Suit Against a Southern Sudan National**

With the leave of the Court, and with the exception of suits concerning immovable property situated outside Southern Sudan, a suit may be instituted against a Southern Sudanese before the Courts of Southern Sudan, even if he or she has no domicile or residence in Southern Sudan.

##### **Section 10. Suit against a Foreigner with Domicile or Residence in Southern Sudan**

The Courts of Southern Sudan shall be competent to try suits instituted against foreigners who are domiciled or resident in Southern Sudan, except suits in respect of an immovable property situated outside Southern Sudan.

##### **Section 11. Suit of a Business Nature Against a Foreigner**

The Courts of Southern Sudan shall be competent to try a suit instituted against a foreigner who has no domicile or residence in Southern Sudan, in the following circumstances:

- (a) if the subject matter of the dispute is connected with a movable or immovable property located in Southern Sudan;
- (b) if the suit is in respect of a liability which arose or was performed or ought to have been performed in Southern Sudan, or,

- (c) in respect to an act of bankruptcy or any other act which took place in Southern Sudan.

## **Section 12. Suit of a Personal Nature Against a Foreigner**

The Courts of Southern Sudan shall be competent to try a suit instituted against a foreigner who has no domicile or residence in Southern Sudan, in the following circumstances:

- (a) if the suit is for the annulment of marriage or divorce or for judicial separation, provided that the petition is filed by a spouse who is domiciled in Southern Sudan against another spouse who is no longer domiciled in Southern Sudan;
- (b) if the suit is for maintenance of a child who is a resident of Southern Sudan or a parent or a spouse who is domiciled in Southern Sudan;
- (c) if the suit is in respect to the parentage of a child who is a resident of Southern Sudan, or for the termination, restriction, stay, or re-establishment of the guardianship;
- (d) where the suit is related to any personal matter, if the plaintiff is a Southern Sudanese or a foreigner, and the defendant has no known domicile outside Southern Sudan, or where Southern Sudan law is the proper law to be applied; and/or,
- (e) where the suit relates to guardianship of property, if the minor or the interdict is domiciled or resident in Southern Sudan, or where Southern Sudan was his or her last domicile or residence.

## **Section 13. Several Foreign Defendants**

The Courts of Southern Sudan shall be competent to try suits where all the defendants are foreigners; *provided that*, any one or more of the said foreigners is domiciled or resident in Southern Sudan.

## **Section 14. Matters of Inheritance and Estates**

The Courts of Southern Sudan shall be competent to hear matters of inheritance and suits relating to estates of a deceased person where such deceased person was Southern Sudanese or where the estates or any parts thereof are located in Southern Sudan.

## **Section 15. Submission to Jurisdiction**

The Courts of Southern Sudan shall be competent to try suits not within their jurisdiction if the defendant submits to such jurisdiction expressly or impliedly, and the Court does not of its own motion declare itself incompetent for lack of jurisdiction.

## **Section 16. Local Court Competence**

In cases where a Court of Southern Sudan assumes jurisdiction under sections 9, 10,11 or 12 of this Act, the plaintiff shall have the option to institute the suit before the Court within whose jurisdiction he or she resides or conducts business.

### **Section 17. Subsidiary and Incidental Matters**

Where a Court of Southern Sudan is competent to try a suit, such competence extends to all preliminary issues and incidental matters, as well as to all applications connected with such suit; *provided that*, it is in the best interest of justice.

### **Jurisdiction with Reference to Value and Subject Matter**

#### **Section 18. The Supreme Court**

- (1) The Supreme Court of Southern Sudan shall be the court of final judicial instance in respect of any Civil litigation under Southern Sudan or state law, including statutory and customary law, save that any decisions arising under national laws shall be subject to review and decision by the National Supreme Court.
- (2) Without prejudice to the provisions of subsection (1), above the Supreme court shall have the following powers and jurisdiction:
  - (a) jurisdiction to decide on disputes that arise under the ICSS and the constitutions of Southern Sudan states at the instance of individuals, juridical entities or governments;
  - (b) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws of Southern Sudan or states of Southern Sudan that are inconsistent with the Constitution of Southern Sudan and the states Constitutions to the extent of the inconsistency;
  - (c) be a court of review and cassation in respect of any civil and administrative matters arising out of or under Southern Sudan laws;
  - (d) receive appeals against decisions and judgements of the courts of appeal;
  - (e) have original and final jurisdiction to resolve disputes between the states of Southern Sudan and between the Government of Southern Sudan and a State; *provided that*, this jurisdiction shall not extend to disputes relating to exclusive, concurrent or residual powers of the national government; and
  - (f) Interpret the Constitution and legal provisions
  - (g) Protect the rights and freedoms conferred by the Constitution
  - (h) Conflict of Judicial Jurisdiction
  - (i) have such other competences as may be determined by this Act or any other law.

#### **Section 19. The Court of Appeal**

The Court of Appeal shall have jurisdiction to hear and determine the following matters:

- (a) appeals against judgements and orders of the High Courts; and,
- (b) appeals against administrative decisions made by administrative authorities.
- (c) any other matter assigned to its jurisdiction by the ICSS or any other law;

**Section 20. The High Court**

- (1) A High Court shall have jurisdiction to try original suits without limit as to value or subject matter, except as otherwise provided by law.
- (2) Without prejudice to the provisions of subsection (1) above, a High Court shall have exclusive jurisdiction to:
  - (a) try originally, suits concerning companies, trade marks, business names, bankruptcy and settlement between creditors;
  - (b) try originally, suits concerning matters of personal law in respect of foreigners;
  - (c) hear and determine appeals against judgements and orders of County Courts of the First and Second Grade Judges; and,
  - (d) review administrative decisions made by State or County authorities, or any authority there under.

**Section 21. The County Courts**

- (1) A County Court of the First Grade Judge shall have jurisdiction to try any suit without limit as to value and shall also have jurisdiction to hear and determine appeals against judgements and orders of Payam Courts, and such other appeals as may be expressly provided by any other law.
- (2) A County Court of the Second Grade Judge shall have original jurisdiction to try suits of value not exceeding SP1000.

**Section 22. Payam Court**

- (1) A Payam Court shall have original jurisdiction to try suits with a value not exceeding SP500 subject to any limitation which may be contained in its warrant of establishment.
- (2) A Payam Court shall not have original jurisdiction to try the following:
  - (a) suits in which one or both parties is a GoSS Institution, a corporation or an association which has a legal personality;
  - (b) suits in which the cause of action concerns a Act of exchange or promissory note;
  - (c) suits involving the interpretation of any provision of the law; and,
  - (d) any class of suit specified from time to time by the President of the Supreme Court.



- (3) Where during the course of a suit, a matter not within the jurisdiction of a Payam Court arises, the latter shall refer that matter to the competent Court, and the Court to which the matter is referred shall be bound to proceed with it as if it arose in a suit before it.

**Section 23. Procedure before Payam Court**

- (1) A suit shall be instituted in the competent Payam Court. If the plaintiff which should be heard in the Payam Court is presented to a County Judge he or she shall refer it to the appropriate Payam Court.
- (2) If it appears to a Payam Court that it has no jurisdiction, it shall refer the suit to the County Court under whose jurisdiction the suit falls.

**Local Jurisdiction**

**Section 24. A Court in which a Suit is Instituted**

Every suit shall ordinarily be instituted in the Court of the lowest grade competent to try it.

**Section 25. Suit Relating to Immoveable Property**

A suit relating to immovable property shall be instituted before the Court within whose jurisdiction the immovable property or any portion thereof is situated.

**Section 26. Suit for Compensation**

A suit that seeks compensation for a wrong committed against a person or which is related to movable property, shall be instituted before the Court within whose jurisdiction the wrong was committed or before the Court within whose jurisdiction the defendant resides or conducts business.

**Section 27. Other Suits**

- (1) Without prejudice to the provisions of sections 24, 25 and 26, above, any of the following Courts shall have jurisdiction:
  - (a) the Court within whose jurisdiction the cause of action arises wholly or in part;
  - (b) the Court within whose jurisdiction the defendant at the time of the commencement of the suit resides or conducts business; or,
  - (c) the Court within whose jurisdiction any of the defendants at the commencement of the suit resides or conducts business, if the Court so permits.

- (2) The place of residence of a company, association, society or corporation shall be deemed to be the place where it conducts business or place where the entity has its head office or one of its branches.
- (3) In suits arising out of contracts, a cause of action arises within the meaning of subsection 1(a) above, at any of the following places:
  - (a) the place where the contract was made;
  - (b) the place where the contract was to be wholly or partly performed or executed;
  - (c) the place where, in accordance with express or implied terms of the contract, any money was paid.

**Section 28. Where Competent Court Can not be Ascertained**

- (1) If the defendant has no residence or place of business in Southern Sudan and it is impossible to ascertain the competent Court to apply the provisions of this Chapter, the Court within whose jurisdiction the plaintiff resides or conducts business, shall have jurisdiction.
- (2) If the plaintiff has neither place of residence nor place of business, the Courts in the capital of Southern Sudan shall have jurisdiction.

## **Chapter III**

### **Transfer of Suits**

**Section 29. Transfer where More than one Court is Competent**

- (1) Any party to a suit may apply to the Court in which the suit has been instituted to have the suit transferred to another competent Court.
- (2) The application for transfer shall be made at the preliminary stages of the suit, but shall not be granted in any suit after the framing of issues.
- (3) After hearing the other party, the Court shall make a determination with respect to such application for transfer, taking into consideration the interests of the parties and to what extent it is useful to transfer such suit.

**Section 30. General Power of Transfer**

- (1) A High Court Judge, on its own motion or on the application of any party, after giving notice to the other parties, and hearing such of them that wish to be heard, may transfer any suit pending before it, or pending before any Court subordinate to it, to any other subordinate Court which is competent to try the suit.

- (2) The Court of Appeal may exercise the powers provided for in subsection (1) above, in relation to any suit pending before a Court subordinate to it.
- (3) The President of Supreme Court may exercise the powers provided for in subsection (1) above, in relation to any suit pending before any Court in Southern Sudan.

## **Chapter IV**

### **Matters not within the Jurisdiction of a Court**

#### **Section 31. Prior Adjudication**

- (1) No Court in Southern Sudan shall try any suit or issue which is directly and substantially based on a matter in issue, that was decided in a former suit between the same parties, or between parties under whom they or any of their claims, litigating under the same title in any competent Court.
- (2) Any application contained in a petition or a ground of defense in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
- (3) Any relief claimed in the plaint which is not expressly granted by the prior decree shall, for the purposes of this section, be deemed to have been rejected.
- (4) Criminal proceedings are not a suit within the meaning of this section.

#### **Section 32. Pending Suits**

No suit shall be allowed in respect of a dispute pending before any other competent Court.

## **Chapter V**

### **Institution and Contents of a Suit**

#### **Section 33. Institution of a Suit**

- (1) A suit is deemed to be instituted on the date of payment of Court fees or, if the plaintiff is exempted from payment of fees by law or order of Court, on the date on which the plaint was allowed by the Court.
- (2) No suit shall be instituted against a GoSS Institution or against a public servant in respect of any act purporting to be done by such public servant in his or her official capacity or during or by reason of discharge of his or her duty, unless and until either the plaintiff or the Court, as the case may be, have served notice of the claim

or of the intention to institute a suit on the Minister, and two months (or such shorter period as the Minister shall agree) shall have elapsed after such service.

#### **Section 34. Contents of a Complaint**

A complaint shall contain the following particulars:

- (a) the name of the Court in which the suit is instituted;
- (b) the name, profession, or occupation and place of residence of the plaintiff;
- (c) the name, profession, or occupation and place of residence of the defendant;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when they arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his or her claim, the amount so allowed or relinquished; and,
- (i) a statement of the value of the subject matter of the suit.

#### **Section 35. Amendment of a Complaint**

When there is an error or omission in the particulars required to be contained in a complaint, the Court may return it to the plaintiff for amendment during a period to be fixed by the Court, or the Court may cause the complaint to be amended there and then.

#### **Section 36. Contents of a Suit**

- (1) A suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his or her claim in order to bring the suit within the jurisdiction of a particular Court.
- (2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his or her claim, he or she shall not afterwards sue in respect of the portion so omitted or relinquished.
- (3) A person entitled to more than one relief in respect of the same cause of action may sue for any or all of them; *provided that*, if he or she omits a cause of action or fails to sue for all potential relief, he or she shall not afterwards be permitted to sue for any relief so omitted, except with the leave of the Court.
- (4) For the purposes of this section, an obligation and collateral security for its performance and successive claim arising under the same obligation shall be deemed to constitute one cause of action.

#### **Section 37. Persons with the Same Interest**

- (1) Where there are several persons with the same interest in one suit, one or more of the said persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested.
- (2) In cases which require that notice of the initiation of the suit be given to all interested parties, the Court shall require that notice be given to all such persons by personal service or, where such service is not reasonably practicable, by advertisement in newspapers or in such other manner as the Court may direct.
- (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subsection (1) above, shall be afforded a reasonable opportunity to object and may apply to be made a party to the suit.

**Section 38. Summary Dismissal of a Plaintiff**

The Court shall dismiss the plaintiff summarily, where upon examination of the plaintiff and after hearing of the plaintiff if necessary, it appears that:

- (a) the plaintiff does not disclose a cause of action;
- (b) the relief claimed is undervalued, and the plaintiff on being required to correct the valuation within the time fixed by the Court has failed to do so;  
or,
- (c) the suit is one which the Court is incompetent to try.

## **Chapter VI**

### **Summons**

**Section 39. Contents of Summons**

- (1) Where the plaintiff is presented in the proper form as required by section 34, or duly amended in accordance with section 35, the Court shall, if it does not reject the plaintiff under section 38, order that the plaintiff be allowed and fees be paid and shall issue summons, accordingly.
- (2) The summons shall be in the prescribed form, signed by the Judge, contain a precise statement of the cause of action and the relief claimed, and direct the defendant to appear and answer at a named date, time and place.
- (3) When fixing the date of hearing, the Court shall allow sufficient time between service of summons and date so fixed for hearing.
- (4) The Court may order that a copy of the plaintiff be attached to the summons.
- (5) Court fees shall be paid within seven days from the date on which payment is ordered, otherwise the Court shall dismiss the plaintiff.

**Section 40. Service of Summons**

- (1) Service of summons shall be effected by officials of the Court unless the Court or the law directs otherwise.
- (2) Service of summons shall be made by delivering or tendering a copy of the summons to the defendant.
- (3) Wherever it is practicable, service shall be made on the defendant in person unless he or she has an agent empowered to accept service.

**Section 41. Time of Service of Summons**

No summons shall be served between sunset and sunrise unless it is necessary to do so, and leave of the Court is obtained.

**Section 42. Service on Several Defendants**

Except as otherwise provided by law, where there are several defendants, service of the summons shall be made on each defendant.

**Section 43. Service Where Defendant Cannot be Found or Refuses to Accept Service**

- (1) Where a defendant cannot be found, service may be made:
  - (a) on any adult member of his or her family with whom the defendant resides;  
or,
  - (b) where the suit is for immovable property, on any agent of the defendant or heir in charge of such property.
- (2) Where the person upon whom the summons is to be served, refuses to accept service or where the serving officer after using all due and reasonable diligence cannot find the defendant and there is no agent to accept service of the summons on the defendant's behalf or any other person on whom service can be made, the serving officer shall return the summons to the Court with a report explaining the circumstances, endorsed thereon or annexed thereto.

**Section 44. Substituted Service**

- (1) Where the Court is satisfied that there is reason to believe that the defendant is intentionally avoiding service, or that for any other reason the summons cannot be served, the Court shall order the summons to be served by any of the following means:
  - (a) by fixing a copy of the summons on a conspicuous place in the Court House and also on the door of the defendant's last known address;
  - (b) by an advertisement in a newspaper of wide circulation; or,

- (c) in such other manner as the Court deems appropriate.
- (2) Service substituted by order of the Court shall be effective from the time the procedure directed by the Court has been carried out.

**Section 45. Service on a Defendant who does not Reside in Southern Sudan**

If the defendant does not reside in Southern Sudan and has no agent empowered to accept service, the summons shall be sent to the Chief Registrar of the Judiciary who shall, in turn, send it to the Ministry of Regional Cooperation to serve the summons through diplomatic channels, or in such other manner as the Court may direct.

**Section 46. Service on a Firm, Business Agent, Company or Business**

- (1) Summons relating to partnership or business agents shall be served at the principal place of business upon any partner, manager business agent or any person having control or management of the partnership business or, where there is no such place of management, upon any partner.
- (2) A summons to a company or association having a corporate status shall be served at its principal office upon the Secretary or Director or any principal officer of the company or association, or as provided by law.
- (3) A summons in respect of a foreign company with a branch or agent in Southern Sudan shall be served on such branch or agent, or as otherwise provided by law.

**Section 47. Service on Defendant's Agent**

- (1) In a suit relating to any business or work of a person who does not reside within the local limits of jurisdiction of the Court from which the summons is issued, service of the summons on any manager or agent who, at the time of the service, personally carries on such business or work for such person within such limits, shall be deemed to be valid service.
- (2) For the purpose of this section the captain of a ship shall be deemed an agent for the owner or charterer of the ship.

**Section 48. Service on GoSS Institution**

Where any GoSS Institution is sued, the summons shall be served on the Minister, with a copy to the GoSS Institution subject of the suit.

**Section 49. Service on Members of the SPLA and other Regular Forces**

Where the defendant is a member of the SPLA or other regular forces, the Court shall send the summons to his or her commanding officer at the place where the defendant is stationed.

**Section 50. Service on Prisoners**

Summons addressed to prisoners shall be served by delivery to the prisons officer in charge of the prison.

**Section 51. Service on Sailors and Plane Crews**

Summons addressed to sailors, any person working on a ship or plane crew, shall be served on the person or by delivery to the captain of the ship or the plane.

**Section 52. Commencement of Service**

In the cases provided for in sections 49, 50 and 51 above, service shall be effective from the time of delivery of the summons to the commanding officer, the prisons officer or the captain of the ship or pilot of the plane, respectively.

**Section 53. Transfer of Summons to another Court**

A summons may be transferred for service to the lowest Court within whose jurisdiction the defendant resides, or to any Court by which service can be more conveniently effected.

**Section 54. Endorsement of Service**

- (1) The person serving the summons shall endorse on the original summons the date and time of service, the name, trade and profession of the defendant or of the person upon whom it is served and his or her relation to the defendant.
- (2) The person serving the summons shall obtain the signature of such person on the summons or the person shall prove the refusal of such person to receive the summons and the reason thereof.

**Section 55. Other Summons**

The provisions of this Chapter shall, as far as practicable, apply to all types of summons issued by a Court.

## **Chapter VII**

### **Valuation of Suit**



## **Section 56. Valuation of Suit**

- (1) The value of a suit for the purpose of determining the Court of appropriate jurisdiction under this Act, shall be based on the value of the underlying suit, exclusive of any additional fees and charges including, but not limited to Court costs, advocate fees, punitive damages, or other ancillary fees and costs.
- (2) In determining the value of the underlying suit, the following provisions shall apply:
  - (a) in personal actions, the value of the suit shall be the total amount, value or damage sought to be recovered, and includes:
    - (i) the amount of money or damages, whether liquidated or unliquidated;
    - (ii) the value of any claim for the seizure of property;
    - (iii) any claim for rent or similar profits;
    - (iv) any claim for any debt, damages or compensation arising under any law;
    - (v) in suits for maintenance, the total amount claimed if the period for which maintenance is claimed is less than one year and, the amount of twelve months' maintenance in any other case;
    - (vi) in suits to establish the right to payment of a periodical sum other than maintenance, ten times the amount claimed to be payable in one year; and,
  - (b) in other actions and matters the value of the suit shall be the total amount, value or damage sought to be recovered, and includes:
    - (i) the amount or value owing on any mortgage, encumbrance, charge or lien, regardless of whether payment or enforcement by delivery of possession of the property is sought;
    - (ii) the amount or value of damage sustained or the estate or fund in respect of which relief is sought in suits involving fraud or mistake;
    - (iii) the value of the interest in property where an action for specific performance of an agreement for the sale or other disposition of an interest in land or of any other property right is sought;
    - (iv) the amount in dispute, or the value of the property affected, in suits for rectifying, delivering up or cancelling any agreement;
    - (v) the amount or value relating to a declaration of partnership or dissolution or winding up of, or otherwise relating to, any partnership;
    - (vi) the amount or value of the underlying property in suits involving the sale, partition or division of property;
    - (vii) the amount or value of the estate in suits involving the administration of the estate of a deceased person;
    - (viii) the amount or value of the estate, fund or trust in suits involving the execution of a trust or a declaration that a trust subsists;
    - (ix) the amount of value relating to the custody, maintenance or advancement of a child including the appointment of a guardian to

- the property or person of a child but not so as to authorise any order under this provision affecting assets or property of a child;
- (x) the value of the land in suits relating to recover possession of any land; and,
  - (xi) the value of the land in suits seeking to restrain, whether by injunction or otherwise, any actual, threatened or apprehended trespass or nuisance to land.

## **Chapter VIII**

### **Appearance and Non-Appearance**

#### **Section 57. Right to Appear**

- (1) On the day fixed for hearing of the suit, the parties shall attend the Court in person or by their respective advocates.
- (2) An appearance by the following persons shall be deemed to be an appearance by the parties themselves:
  - (a) the Minister, or his or her representatives or legal counsels, appearing on behalf of a GoSS Institution;
  - (b) agents authorized to appear by an authentic Power of Attorney from an official authority.

#### **Section 58. Limit on Agency**

- (1) Appointment of an agent empowers the agent to do all acts pertaining to the initiation or defense of the suit until judgement and decree are passed and delivered by the Court.
- (2) Without prejudice to the requirement of special authorization in certain matters provided by law, such agency includes the receipt of fees and payment of costs.

#### **Section 59. Consequence of Non-Appearance of both Parties**

- (1) If both plaintiff and defendant fail to appear at the first sitting, the suit shall be dismissed by the Court.
- (2) Where a suit is dismissed under subsection (1) above, the plaintiff may bring a new suit, or if within a period of thirty days from the date of the dismissal of the suit, he or she satisfies the Court that there was sufficient cause for his or her failure to appear, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

**Section 60. Procedure Where Defendant Fails to Appear**

- (1) If the plaintiff appears at the first sitting and the defendant fails to appear, the Court shall:
  - (a) proceed to hear the suit in the defendant's absence; *provided that*, satisfactory evidence is provided that confirms that the summons was duly served;
  - (b) if it is proved that the summons was not duly served, the Court shall adjourn the suit and direct a second summons to be issued and served on the defendant;
  - (c) if it is proved that the summons was served on the defendant but not in sufficient time to enable him or her to appear and answer at the day fixed in the summons, the Court shall postpone the hearing of the suit to a future date to be fixed by the Court, and shall direct notice of such date to be given to the defendant.
- (2) Where the defendant appears at any subsequent time to which the hearing is adjourned and assigns good cause for his or her previous failure to appear, he or she may, upon such terms as the Court may direct as to payment of costs or otherwise, be heard in answer to the suit in like manner as if he or she had appeared at the first sitting.
- (3) Where a decree is passed against a defendant who has not appeared in accordance with the provisions of subsection (1)(a) above:
  - a. he or she shall be notified of such decree, and he or she may apply at any time within thirty days from the date of notification, to the Court which passed the decree for an order to set it aside; and,
  - b. if he or she satisfies the Court that the summons was not duly served or that he or she did not have sufficient time before the hearing, the Court shall make an order setting aside the decree upon such terms as to costs, payment into Court or otherwise as it deems appropriate and shall appoint a day for the hearing of the suit.

**Section 61. Procedure where Plaintiff Fails to Appear**

- (1) Where at the time fixed for the first sitting, the defendant appears and the plaintiff does not appear, the Court shall make an order that the suit be dismissed unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where only part of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

- (2) Where a suit is wholly or partly dismissed, the plaintiff shall be precluded from bringing a new suit in respect of the same cause of action.
- (3) Where a suit is so dismissed, the plaintiff may apply within thirty days from the date of the dismissal for an order to set the dismissal aside; and if he or she satisfies the Court that there was sufficient cause for his or her non-appearance when the suit was called for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it deems appropriate and shall appoint a day for proceeding with the suit.

**Section 62. Failure to Appear by One or More Plaintiffs**

Where there are two or more plaintiffs, and one or more of them fail to appear, the Court may, at the instance of the plaintiff or plaintiffs that do appear, proceed with the suit in the same way as if all the plaintiffs had appeared, or make such orders as it deems appropriate.

**Section 63. Failure to Appear by One or More Defendants**

Where there are two or more defendants, and one or more of them fail to appear, the suit shall proceed and the Court shall at the time of pronouncing judgement make such order as it deems appropriate with respect to the defendants who did not appear.

**Section 64. Notice to be Given to Opposing Party**

No order shall be made under section 60(3) of this Act and no decree shall be set aside under section 61(3) of this Act unless notice of the application therefore has been served on the opposing party.

**Section 65. Failure to Appear on Day to which the Suit is Adjourned**

Where on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court shall make such decrees or orders as it deems appropriate.

## **Chapter IX**

### **Court Sittings**

**Section 66. Official Language of the Courts**

The official language of the Courts of Southern Sudan shall be English and Arabic, but a Court may hear parties or witnesses who are ignorant of English and Arabic in any other language through an interpreter on oath, subject to any law providing otherwise in respect of certain cases or certain localities.

**Section 67. Open Sittings**

The Court sittings shall be open, but the Court may sit *in camera* where considerations of public interest or morality so demand.

**Section 68. Mode of Taking Evidence in Court**

The statements of the witnesses and parties to the suit or any documents or pleadings presented by them shall be taken by the Court, or a clerk appointed by the Court and the record may be read over on application by any of the parties.

**Section 69. Adjournment and Extension of Time**

The Court may, at any stage of the suit, for sufficient reasons and on such terms as to costs as it deems appropriate:

- (1) adjourn the hearing of the suit, from time to time, for short and reasonable periods;
- (2) either before or after the expiration of the time appointed by this Act or by an order of the Court for the doing of any act, extend the time for the doing of such an act.

**Section 70. Order in Court**

- (1) The control and management of the Court sittings are committed to the President of the Court, and subject to the provisions of any other applicable law.
- (2) The President of the Court may clear the Court of any person who contravenes the rules of the sitting or immediately sentence him or her to imprisonment for a period not exceeding seven days or fine not exceeding SP30 if he or she does not obey the order of the Court and the said sentence shall not be subject to appeal.
- (3) The Court before the end of the hearing may withdraw such sentence.

## **Chapter X**

### **Proceedings of the Suit**

**Section 71. Submission of Pleadings**

- (1) At the first sitting for hearing the suit or at any time subsequent thereto to which the proceedings are adjourned, the Court shall examine the parties who appear, in order to ascertain upon what questions of law or fact the parties are at dispute.

- (2) The Court may, instead of examining the parties, order them to submit written pleadings.

### **Section 72. Contents of Pleadings**

- (1) Every pleading shall contain the following information:
  - (a) the name of the parties;
  - (b) material facts in a concise form, and not law;
  - (c) material facts and not the evidence by which they are to be proved;
  - (d) dates, sums and numbers expressed in figures; and,
  - (e) signature of the party or his or her authorized agent or his or her advocate.
- (2) Every plaint shall be divided into paragraphs and numbered consecutively.

### **Section 73. Contents of Written Statement of Defence**

- (1) The written statement of defence, submitted by the defendant, shall contain the following information:
  - (a) the names of the parties;
  - (b) all grounds of defense;
  - (c) specific admission or denial of each ground alleged by the plaintiff, except the amount of damages.
- (2) Every allegation of fact contained in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability; *provided that*, the Court may require any allegation of fact not specifically denied to be established by another mode of proof.

### **Section 74. Further and Better Statement of Particulars**

A further and better statement of the nature of a claim or defense or further and better particulars of any matter stated in any pleading, may be ordered by the Court on application of the parties and upon such terms as it deems appropriate.

### **Section 75. Amendment of Pleadings by the Court**

The Court may at any stage of the proceedings order any pleadings to be struck out or amended, if the Court believes they are unnecessary, or tend to prejudice or delay the trial of the suit.

### **Section 76. Amendment of Pleadings by the Parties**

- (1) The Court may at any stage of the proceedings but before judgement, allow either party to alter or amend his or her pleadings in such manner and on such terms as

may be just, and all such other amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

- (2) Every amendment shall be made within the time specified by the order of the Court, and if no time is thereby specified, within fifteen days from the date of the order.
- (3) No amendment shall be allowed after the expiry of such specified time as aforesaid or of such fifteen days, as the case may be, unless the time is extended by the Court.

**Section 77. Procedure where Defendant Fails to Present Written Statement Called for by the Court**

Where the defendant from whom a written statement of defense is required, fails to present such statement within the time fixed by the Court, the Court may, after taking evidence in support of the plaintiffs claim, pronounce judgement against the defendant or make such order in relation to the suit as it deems appropriate.

**Section 78. Framing of Issues**

From the examination of parties and their pleadings the Court shall frame and record:

- (a) the material facts upon which the parties are agreed;
- (b) the questions of law or fact upon which the parties are at variance; and,
- (c) a note of the evidence they intend to introduce to establish questions of fact which may be in issue.

**Section 79. Amendment of Issues**

The Court at any time before passing a decree may amend the issues or frame additional issues on such terms as it deems appropriate in relation to costs or any other matter.

**Section 80. Where no Defence is Made**

The Court is not bound to frame and record issues where the defendant makes no defence.

**Section 81. Hearing of Suit**

After framing of issues the Court shall either proceed at once to hear the suit or appoint a time for the hearing thereof.

**Section 82. Mode of Hearing**

- (1) On the day fixed for the hearing of the suit, the party upon whom the burden of proof lies shall begin by stating his or her case and producing every evidence in support of the issues which he or she is bound to prove.

- (2) Upon completion of the first party's statement, the other party shall then state his or her case and produce every evidence in his or her defence, he or she may then address the Court generally.
- (4) The party beginning may then reply generally on the whole case.

### **Section 83. Issues of Law and Fact**

Where issues of law and fact arise in the same suit, and the Court is of opinion that the suit or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it deems appropriate, postpone the framing of the issues of fact until after the issues of law have been determined.

## **Chapter XI**

### **Witnesses**

#### **Section 84. Power to Summon Witnesses**

The Court may at any time, either of its own motion or on the application of any party:

- (a) issue summons to any person whose attendance is required to give evidence or produce documents or other material objects producible as evidence;
- (b) order any person present in Court to give evidence or to produce any document or other thing then and there in his or her possession or power;
- (c) make such orders as may be necessary and 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 any other object as aforesaid.

#### **Section 85. Power to Compel Witnesses to Attend**

- (1) Where a person to whom a summons has been issued under section 84, above, neglects or refuses to obey the summons, the Court may, if it is satisfied that the person so summoned has failed to comply with it without lawful excuse or has intentionally avoided service, issue a warrant for the arrest of such person.
- (2) The Court may either instead of, or in addition to issuing a warrant of arrest of such person, make an order for the attachment of his or her property in such amount as the Court deems appropriate, not exceeding the amount of the costs of the attachment and of any fine which may be imposed under subsection (4), below.



- (3) Where at any time after the attachment of his or her property such person appears and satisfies the Court that he or she did not without lawful excuse fail to comply with the summons or intentionally avoid service, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment, as the Court deems appropriate.
- (4) Where such person does not appear, or appears but fails to satisfy the Court, pursuant to subsection (3) above, the Court may impose a fine on him or her not exceeding SP10 and, if necessary, may order his or her property or any part thereof to be attached and sold, or if already attached under subsection (2) above, to be sold for the purpose of satisfying all costs of such attachment together with the amount of such fine, if any.
- (5) The attachment shall be made in the manner provided for the attachment of property in the execution of a decree.

**Section 86. Refusal to Give Evidence**

Where a party to a suit present in Court refuses, without lawful excuse, when required by the Court to give evidence or to produce any document or any other thing in his or her possession or power, the Court may pronounce judgement against him or her or make such order in relation to the suit as it deems appropriate.

**Section 87. Expenses of Witnesses**

Where a party applies for a summons to be issued to a witness, the Court may order such party to pay into Court such sum of money as the Court thinks reasonable to defray the travelling and other expenses of the person summoned.

**Section 88. Mode of Hearing Witnesses**

Save as otherwise provided by this Act, evidence of the witnesses and of any other parties appearing as witnesses shall be taken by or under the personal superintendence of the judge orally, and in an open Court.

**Section 89. Witnesses to Take Oath or Make Affirmation**

Every witness before giving evidence shall take an oath or make a solemn affirmation that he or she will say the truth, the whole truth and nothing but the truth.

**Section 90. Cross-examination and Re-examination**

- (1) Each party may cross-examine the opposing party and all his or her witnesses.

- (2) The party calling a witness may re-examine him or her after he or she has been cross-examined by the opposing party.
- (5) After re-examination, the witness shall not be further questioned or re-called, except through or by leave of the Court.

**Section 91. Irrelevant or Oppressive Questions**

The Court shall disallow any question which appears to the Court to be irrelevant, oppressive or vexatious.

## **Chapter XII**

### **Joinder of Parties**

**Section 92. Application for Joinder**

- (1) Any person who can demonstrate a genuine interest in the outcome of a suit, may apply to the Court to be joined as a party to the suit.
- (2) The application for joinder shall be made to the Court and served on all the parties to the suit.
- (3) No application for joinder shall be allowed after final submissions.

**Section 93. Objection to Joinder**

- (1) Parties to the suit may object to an application for joinder whether submitted by the opposing party or by a third party.
- (2) If the Court is satisfied that the application for joinder does not rely on any genuine interest or that it is meant to delay the trial, it shall reject the application for joinder.

**Section 94. Power to Add or Dismiss Parties**

- (1) The Court may of its own motion or on the application of the parties, at any time before passing a decree, order:
  - (a) that any person be made plaintiff or defendant, if his or her joinder is either necessary or proper for the fair and/or just trial of the suit or its final disposal;
  - (b) that any plaintiff be made defendant or that any defendant be made plaintiff;
  - (c) that the parties improperly or unnecessarily joined be dismissed.
- (2) No person shall be added as a plaintiff without his or her consent.

## **Chapter XIII**

### **Tender of Debt or Damages**

#### **Section 95. Payment into Court by Defendant**

- (1) The defendant, in a suit to recover a debt or damages, may at any stage of the suit deposit into the Court such sum of money as he or she considers to be in full settlement of the claim.
- (2) The Court shall give notice of the deposit to the plaintiff. The amount of the deposit shall, with the leave of the Court, be paid to the plaintiff on his or her application.
- (3) No interest shall accrue to the plaintiff on any sum deposited into the Court, from the date of the service of such notice on the plaintiff, regardless of whether such sum is in full or partial settlement of the claim.

#### **Section 96. Procedure Where Plaintiff Accepts Full or Partial Satisfaction**

- (1) Where the cause of action in a suit seeks the payment or recovery of money, and one of the parties admits that such money is owed by him or her, the Court may order the deposit of such money into the Court, or the delivery thereof to the other party on such terms as it thinks necessary.
- (2) The execution of such order shall be made in the manner provided for by this Act for execution of financial decrees.
- (3) Where the Court makes a final decree in the suit, it shall take into consideration any sum of money paid or collected in accordance with the provisions of this section.
- (4) Where the plaintiff accepts the deposited amount in partial satisfaction of his or her claim, he or she may proceed with his or her suit for the balance, and if the Court decides that the deposit was, in fact, a full satisfaction of the plaintiff's claim, the

plaintiff shall pay the cost of the suit incurred after the deposit, as well as the costs previously incurred so far as they were caused by the excess claim by the plaintiff.

- (5) Where the plaintiff accepts the deposited amount in full satisfaction of his or her claim he or she shall present to the Court a statement to that effect, and the Court shall pronounce judgement accordingly; and in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

## **Chapter XIV**

### **Abatement of Suits**

#### **Section 97. Death of one of the Parties**

- (1) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives the death.
- (2) Where a party to a suit dies, his or her legal representative or heirs shall be made a party to the suit, on the application of such legal representative or heirs or of any party to the suit.

#### **Section 98. Bankruptcy of Plaintiff**

- (1) The bankruptcy of a plaintiff in a suit, where the bankruptcy receiver might maintain the suit for the benefit of the creditors, shall not cause the suit to abate unless the receiver declines to continue the suit or to give security for the costs or unless for any special reason the Court otherwise directs.
- (2) Where the receiver neglects or refuses to continue the suit, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy, and the Court may make an order dismissing the suit or make such order as it deemed appropriate.
- (3) Where a suit abates or is dismissed under the provisions of this section, the receiver may apply for an order to set aside the abatement or dismissal; and if it is proved that he or she was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal on such terms as to costs or otherwise as it deems appropriate.

#### **Section 99. Dismissal of Suit for Abandonment**

- (1) When a suit is adjourned indefinitely, or until application is made or where an order is made staying a suit, such suit shall be dismissed by the Court, if an application is made by either party within one year of the date on which the order for adjournment or stay was made.
- (2) Where a suit is dismissed under subsection (1) above, no new suit shall be brought on the same cause of action by the same parties, but either party may apply to the Court to set aside the dismissal order; *provided that*, the application is made before the right to sue is extinguished by lapse of time and the Court may for sufficient reasons set aside the dismissal order upon such terms as to costs and otherwise as it deems appropriate.

## **Chapter XV**

### **Judgements and Decrees**

#### **Section 100. Suit Reserved for Judgement**

- (1) The Court, after the suit has been heard, shall either immediately or at any subsequent short and reasonable time, of which due notice shall be given, pronounce its judgement.
- (2) If for any reason the Court adjourns the pronouncement of judgement for a second time, the Court shall record its reasons for such adjournment, and shall fix a date for the pronouncement of judgement. The Court shall not thereafter adjourn pronouncement except for substantial reasons to be recorded.

#### **Section 101. Pronouncement of Judgement**

The judgement shall be pronounced in an open sitting of which due notice shall be given to the parties.

#### **Section 102. Judgement and its Reasons**

The judgement shall be in writing and shall state the reasons for the decision.

#### **Section 103. Contents of Judgement**

The judgement shall contain the following particulars:

- (1) the file number of the suit;
- (2) the names and description of the parties;
- (3) the date and place of judgement and the Court which issued it;
- (4) the name of the judge who passed it;
- (5) the admissions and the issues;

- (6) the reasons supporting the judgement;
- (7) the decree; and,
- (8) the name(s), signature(s) of the judge(s) who issued the judgement.

**Section 104. Contents of Decree**

- (1) The decree shall contain:
  - (a) the file number of the suit;
  - (b) the names and description of the parties; and,
  - (c) the relief's granted or other determination of the suit.
- (2) The decree shall also state the amount of costs and by whom such costs are to be paid.
- (3) The decree shall bear the same date as the judgement and the name and signature of the presiding Judge who issued it.

**Section 105. Decree for Delivery of Movable Property**

Where the suit involves movable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be made.

**Section 106. Decree Requiring Alteration in Register**

Where the decree directs an alteration to be made in any register established under any other law, the decree shall contain specific direction to carry out the required alteration.

**Section 107. Preliminary Decree**

In any suit the Court may, before passing its final decree, pass a preliminary decree directing such accounts and inquiries to be taken and made as it deems appropriate.

**Section 108. Decree may determine the Mode of Payment**

- (1) Where and in so far as the decree is for the payment of money, the Court may, for sufficient reasons, fix the date of payment, or order that payment of the sum decreed shall be made by installments with or without interest.
- (3) Where a judgement debtor defaults in paying any installment, the decree holder shall be entitled to make execution for the whole sum remaining unpaid unless the Court otherwise directs.

**Section 109. Interest After Institution of Suit**

- (1) Where a decree is for the payment of money, the Court may order interest to be paid on the principal sum adjudged from the date of the initiation of the suit until the date of payment or to such other date as the Court deems appropriate.
- (2) The rate of interest shall not exceed the rate of interest adjudged on such principal sum of any period prior to the initiation of the suit, and shall not exceed the prime rate established by the Bank of Southern Sudan plus five basic points.
- (3) No interest shall be ordered under this section unless the plaintiff has claimed it in his or her plaint.
- (4) Where such decree is silent with respect to the payment of interest as aforesaid, the Court shall be deemed to have refused such interest and separate suit therefore shall not be instituted.

**Section 110. Costs**

- (1) The Court, in making a final judgement shall, of its own motion, determine the payment of the costs of the suit.
- (2) Costs shall include fees of advocates and experts and witnesses expenses.
- (3) The judgement debtor shall be ordered to pay the costs, unless the Court, for sufficient reasons, otherwise directs.

**Section 111. Delivery of Copy of the Judgement and Decree**

A copy of the judgement or of any part of the record shall be provided to any party on fees and a copy of a decree shall be given without fee.

## **Chapter XVI**

### **Suit by or Against Trustees, Executors, Administrators, Minors or Persons of Unsound Mind**

**Section 112. Representation of Beneficiaries**

In all suits involving a person and property vested in or under the control of a trustee, executor or administrator, the interests of such person may be represented by the trustee, executor or administrator, but it shall not ordinarily be necessary to make them parties to the suit, unless the Court otherwise directs.

**Section 113. Joinder of Trustees**

Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them; *provided that*, the executors who have not proved their testator's will, trustees, executors or administrators outside Southern Sudan, shall not be made parties, unless the Court otherwise directs.

#### **Section 114. Representation of Minor by Guardian ad Litem**

In every suit in which a minor is either plaintiff or defendant, he or she shall be represented by a guardian ad litem appointed by the Court.

#### **Section 115. Guardian of the Property shall be Appointed Guardian Ad Litem**

Where a guardian of the property of a minor has been appointed by a Court of competent jurisdiction, such guardian shall be appointed to be the guardian ad litem unless the Court for sufficient reasons, directs otherwise.

#### **Section 116. Retirement and Removal of Guardian**

Where the guardian ad litem desires to retire or does not do his or her duty or where other sufficient grounds appear, the Court may permit the guardian ad litem to retire or may remove him or her, and in such case, shall appoint a new guardian ad litem in his or her place.

#### **Section 117. Execution Against Minors**

- (1) Where the execution of a decree is applied for against the heir or representative, who is a minor, a guardian ad litem shall be appointed and notice of the application shall be served on such guardian.
- (2) The provisions of section 116 above, shall apply to the guardian ad litem in the execution.

#### **Section 118. Guardian not to Compromise without Leave of the Court**

No guardian ad litem shall, without the leave of the Court, enter into an agreement, settlement or compromise on behalf of a minor with reference to the suit in which he or she acts as a guardian, and any such agreement, settlement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

#### **Section 119. Extend of Application of Provisions of this Chapter**

The provisions contained in this Chapter, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who, though not so adjudged, are found by the Court by reason of mental or physical infirmity, to be incapable of protecting their interests when suing or being sued.



## **Chapter XVII**

### **Suits Relating to Mortgages of Immovable Property**

#### **Section 120. Institution of Suit for Redemption**

- (1) A mortgagee may institute a suit for redemption:
  - (a) at any time after the principal money secured by the mortgage becomes due and payable; or
  - (b) when the time for payment of the principal money is not specified in the mortgage deed, at any time after the expiration of one year from the date of the mortgage.
- (2) Any person who has a genuine interest in the mortgaged property or in the mortgage, shall be joined as a party.

#### **Section 121. Conditions for Initiation of Suit for Redemption**

Where a time for the payment of the principal money is not specified in the mortgage deed or where the mortgagee has not exercised his or her right to redeem within a reasonable period of time, the mortgagee shall not be entitled to redeem except in the following cases.

- (a) if the property mortgaged is agricultural land and the mortgagor has entered into possession in accordance with the terms of the mortgage deed, unless the mortgagee has given notice to the mortgagor of his or her intention to redeem and until the mortgagee has had sufficient time to harvest any crop under cultivation at the time of such notice;
- (b) if the property mortgaged is land other than agricultural land and the mortgagor has entered into possession in accordance with the terms of mortgage deed, unless the mortgagee has given the mortgagor three months notice of his or her intention to redeem; and,
- (c) in any other case, until the mortgagee has given to the mortgagor three months notice of his or her intention to redeem or has paid or tendered to the mortgagee three months' interest in lieu of such notice.

#### **Section 122. Condition for Initiation of a Suit for Sale or Foreclosure**

- (1) Where payment of the principal, the interest or of any other periodical payment secured by a mortgage has been in default for a period of one month, the mortgagee may, after giving notice in writing to the mortgagor of his or her intention to do so, institute a suit for the sale or foreclosure of the mortgaged property.

- (2) No such suit shall be instituted before the expiration of one month from the service of the notice provided for in subsection (1) above.

### **Section 123. Where Mortgagee is not Entitled to a Decree for Foreclosure**

The mortgagee shall not be entitled to a decree for foreclosure:

- (a) where the time for payment of the principal money is not specified in the mortgage deed and the mortgagor has entered into possession of the mortgaged property in accordance with the terms of the mortgage deed; or
- (b) in any other case, until the Court has made an order for the sale of the mortgaged property and no sale has been effected.

### **Section 124. Discharge of debt on Foreclosure**

Where the Court has passed a decree for foreclosure the debt secured by the mortgage shall be extinguished.

### **Section 125. Account between the Mortgagor and Mortgagee**

- (1) Where during the continuance of the mortgage, the mortgagor takes possession of the mortgaged property, the Court shall take an account between the mortgagor and the mortgagee in the following manner:
  - (a) the mortgagor shall be debited with the rents and profits which he or she has received from the mortgaged property or which, but for his or her willful default, neglect or mismanagement, he or she would have received or with fair occupation rent, whichever is the greater in respect thereof;
  - (b) the mortgagee shall be credited with any sum spent by him or her on the preservation, maintenance and management of the mortgaged property and with any payment of taxation or any other expenses of the mortgaged property which the mortgagor is bound to pay;
  - (c) the mortgagee shall be credited with an interest not exceeding ten percent per annum or such amount as the Court may think fit where no payment of interest or any periodical payment in lieu of interest is provided for in the mortgage deed;
  - (d) where the amount of rents and profits mentioned in paragraph (a) above, is received by the mortgagee and it exceeds the aggregate of the amounts mentioned in paragraphs (b) and (c) above, the excess shall be deemed to be in reduction firstly of the amount periodically paid in lieu of interest (if any), and then in reduction of the mortgage money.

- (3) The provisions of this section shall not apply to customary mortgages of agricultural land where both the mortgagor and mortgagee are Southern Sudanese.

### **Section 126. Decree in Suit for Sale or Foreclosure**

- (1) In a suit for sale or foreclosure, if the plaintiff succeeds, the Court shall make a preliminary decree determining the sum due to the plaintiff, interest and the costs, and directing that:
  - (a) the defendant shall pay to the Court the amount so due on a date to be fixed by the Court and not to exceed six months from the date of the preliminary decree;
  - (b) if the defendant pays to the Court the amount so due, the plaintiff shall, if so required, retransfer the property to the defendant free from the mortgage and from all encumbrances and shall deliver to the defendant all documents in his or her possession or power relating to the mortgaged property;
  - (c) if such payment is not made on or before the date fixed by the Court, the Court shall order that the mortgaged property or a sufficient part thereof, be sold by public auction, and the proceeds of the sale after defraying the expenses of the sale be paid to the Court and applied in payment of what is decreed due to the plaintiff as aforesaid, together with subsequent interest and costs and that the balance, if any, be paid to the defendant or other person entitled to receive it.
- (2) Where payment is not made in accordance with subsection (1) above, the Court shall on application made by or on behalf of the plaintiff, pass a final decree that the mortgaged property or a sufficient part thereof, be sold and that the proceeds of the sale be dealt with as mentioned in the preliminary decree.

### **Section 127. Condition of Sale of Land**

The provisions relating to the sale of land in execution of a decree shall, so far as may be, applied to a sale under this Chapter.

### **Section 128. Application for Foreclosure**

If no sale is effected, the plaintiff may apply to the Court for foreclosure.

### **Section 129. Procedure Under Application for Foreclosure**

- (1) Where an application for foreclosure is made under section 128 above, the Court shall cause notice to be served upon the defendant that it will pass a decree for foreclosure unless a sufficient sum has been paid into Court within one month from

the date of such notice to satisfy the amount found due as aforesaid and any further interest, costs and expenses then due including the costs of abortive sale.

- (2) If such sum has not been paid into Court within such time, the Court shall pass a decree for foreclosure.

### **Section 130. Decree for Foreclosure**

The decree for foreclosure shall direct that the defendant and all persons claiming through or under him or her be debarred from all right to redeem the mortgaged property.

### **Section 131. Right of Subsequent Mortgagee to Redeem and Foreclose**

Where property is mortgaged for successive debts to successive mortgagees, any mortgagee may institute a suit to redeem the interest of prior mortgagees and to foreclose the rights of those who are posterior to himself or herself and of the mortgagor.

## **Chapter XVIII**

### **Suits for the Partition of Immovable Property**

#### **Section 132. Who may Institute Partition Suit**

Where immovable property is held by co-owners in undivided shares, a suit for the partition of such property may be instituted by:

- (a) any one or more of the co-owners; or
- (b) any person in whose favour an order for the sale of an undivided share in such property in execution of a decree has been made.

#### **Section 133. Where Partition May be Refused**

Where the property sought to be partitioned is land which in accordance with local custom is cultivated as a single unit, the Court may, if it is satisfied that a partition would be detrimental to the interest of the co-owners generally, refuse to make a partition.

#### **Section 134. Where Court may Order Sale**

- (1) Where the Court under section 133 above, refuses to make a partition, or where owing to the number of co-owners or for any other reason the property sought to be partitioned is incapable of partition, and one or more of the co-owners or the person initiating the suit demand that his, her or their share be sold, or that such property be sold, the Court shall in the absence of any agreement between the co-owners, value

the shares of the co-owners who demand the sale, and offer such shares at such valuation to any or all of the other co-owners in such proportion as it deems appropriate.

- (2) If the other co-owners are not willing to purchase the shares offered, the Court may order the sale of such property or the separation and sale of such shares, or make such other order for the disposal of the suit as it deems appropriate.
- (3) Where the Court orders a sale under subsection (2) above, such sale shall be carried out, so far as possible, in the manner prescribed for the sale of immovable property in the execution of a decree.

**Section 135. Where a Share of a Co-Owner is to be added to the Share of another Co-Owner**

- (1) Where the property sought to be partitioned is capable of a partition generally, but the share when partitioned of any particular co-owner is less in area than any minimum laid down by any enactment then in effect, the Court shall add such share to the share of any other co-owner or distribute such share amongst two or more co-owners in such manner and in such proportions, in the absence of an agreement, as the Court deems appropriate.
- (2) Where the Court proceeds under subsection (1) above, it shall assess the value of such share and shall, in the final decree, order to be paid to the owner of such share by any person who has received in addition to his or her share, the value of such addition.

**Section 136. Provisions as to Payment**

Where any sum is payable under section 134 or 135 above, by a co-owner to another co-owner, the Court may allow such time as it thinks reasonable for payment and such sum shall be reflected as a charge on the share of the persons liable to pay it until such sum has been paid.

## **Chapter XIX**

### **Arbitration**

**Section 137. Reference to Arbitration**

At any time before judgement is pronounced, the interested parties in a suit may agree that any matter in issue between them, shall be referred to arbitration, and apply in writing to the Court for an order of reference.

**Section 138. Contents of the Order of Reference**

- (1) The order of reference shall specify the names of the arbitrators, the precise matter or matters submitted to arbitration and such period as the Court deems reasonable for the making of the award.
- (2) The Court may include provisions in the order of reference for the remuneration of the arbitrators.

**Section 139. Appointment of Arbitrators**

- (1) The arbitrators shall be appointed in such manner as may be agreed upon by the parties to the suit.
- (2) Where the parties have agreed upon an even number of arbitrators, the Court shall appoint one additional arbitrator.
- (3) Where the parties cannot agree with respect to the appointment of the arbitrator or arbitrators, each party shall nominate one or more arbitrators as the Court may decide; *provided that*, each party shall nominate the same number, and the Court shall appoint one additional arbitrator.

**Section 140. Appointment of Alternative Arbitrators**

- (1) Where the arbitrator refuses to accept the office or dies before or after appointment or refuses to act or becomes incapable of acting or if he or she retires or is dismissed, or leaves Southern Sudan in circumstances showing that he or she will probably not return within a reasonable time, the Court shall call upon the party who nominated such arbitrator or, if such arbitrator was appointed by agreement, upon the parties, to nominate a new arbitrator.
- (2) If no arbitrator is nominated within the period fixed by the Court, the Court may, after giving the parties an opportunity of being heard, appoint an arbitrator or make an order superseding the arbitration; and in such a case the Court shall proceed with the suit.

**Section 141. Summoning Witnesses and Parties**

- (1) The Court shall issue the same processes it issues in suits tried before it to the parties and witnesses whom the arbitrator desires to examine.
- (2) Persons not attending in accordance with such process or making any other default or refusing to give their evidence or who are otherwise guilty of any form of contempt to the arbitrator during the investigation of the matters referred, shall be subject, by order of the Court on the representation of the arbitrator, to the like disadvantages, penalties

and punishments as they would incur for the like offences in an suit tried before the Court.

**Section 142. Failure to Issue an Award Within the Specified Period**

- (1) The arbitrators shall issue an award within the period specified in the order of reference; *provided that*, the Court may extend such period from time to time as it deems appropriate.
- (2) Where the arbitrators cannot, without sufficient reasons, issue an award within the period specified, the Court may make an order superseding the arbitration, and in such case shall proceed with the suit.

**Section 143. Award**

- (1) The arbitrators shall make an award separately upon each matter referred to in the order of reference unless an award on one or more of such matters is sufficient for the determination of the dispute.
- (2) The award shall be determined by consensus of the majority of the arbitrators.
- (3) The award shall be in writing and shall be signed by the persons who made it and it shall be regarded as valid if signed by the majority of the arbitrators.
- (4) The award shall be submitted to the Court together with any depositions and documents.
- (5) The Court shall cause notice to be served on the parties to attend and hear the award.

**Section 144. Opinion of the Court**

The arbitrators may, with the leave of the Court, request the opinion of the Court as to any of the matters referred to arbitration and such opinion shall form part of the award.

**Section 145. Power to Modify or Correct Award**

The Court may modify or correct an award:

- (a) where it appears that part of the award is based upon issues or matters not referred to arbitration, and such part can be separated from the other part and does not affect the decision on the matter referred;
- (b) where the award is imperfect in form, or containing any obvious error which can be amended without affecting such decision; and,

- (c) where the award contains clerical or arithmetical mistakes.

**Section 146. Where Award is Remitted**

- (1) The Court may remit the award or any matter referred to arbitration for reconsideration of the same by arbitrators upon such terms as it deems appropriate in the following circumstances:
  - (a) where the award:
    - (i) has left undetermined any of the matters referred to arbitration, or
    - (ii) where it determines that any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;
  - (b) where the award is so indefinite as to be incapable of execution; and,
  - (c) where the award clearly contravenes the law.

**Section 147. Grounds for Setting Aside an Award**

- (1) An award remitted under section 146 above, becomes void on failure of the arbitrators to reconsider it within the time fixed by the Court.
- (2) The parties may apply to have the award set aside on one of the following grounds:
  - (a) corruption or misconduct of one or more of the arbitrators;
  - (b) either party having been guilty of fraudulent concealment of any matter which he or she ought to have disclosed, or of willfully misleading or deceiving the arbitrators;
  - (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit, in accordance with section 142(2) of this Act; or,
  - (d) the award having been made after the expiration of the period allowed by the Court, or being otherwise invalid.
- (4) Any application to set aside an award shall be made within ten days after the date on which the parties were notified of the award.

**Section 148. Superseding Arbitration and Proceeding with the Suit**

Where an award becomes void under section 147(1) above, or is otherwise set aside under section 147(2), the Court shall make an order superseding the arbitration, and in such case, shall proceed with the suit.

**Section 149. Judgement According to Award**

Where the Court did not remit the award to the arbitrators for reconsideration or where the time fixed by section 147(3) of this Act has expired and no application has been made to set aside the award or an application having been made was refused, the Court shall proceed to pronounce judgement in accordance with the award.



### **Section 150. Order as to Cost of Arbitration**

Where any question arises regarding the payment of arbitration cost, and the award contains no provision concerning them, the Court shall make an order regarding such cost.

### **Section 151. Application to File Agreement to Refer to Arbitration**

- (1) Persons may agree in writing that any dispute between them shall be referred to arbitration. In such a case, one or any of the parties to the agreement, may apply to the Court having jurisdiction in the matter to which the agreement relates, to file the agreement in the Court.
- (2) The application to file the agreement in the Court shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and any of them as defendants or defendant, if the application has been presented by all the parties, if otherwise, between the applicant as plaintiff and other parties as defendants.
- (3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.
- (4) Where no sufficient cause preventing the agreement from being filed is shown, the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator or arbitrators appointed in accordance with the provisions of the agreement or if there is no such provision and the parties cannot agree, the Court shall appoint the arbitrators in the manner provided in section 139 of this Act.

### **Section 152. Stay of Suit Where There is an Agreement to Refer to Arbitration**

- (1) Where any party to any agreement to refer to arbitration or any person claiming under him or her, institutes any suit against any party to the agreement, or any person claiming under him or her, in respect of any matter agreed to be referred, any party to such suit at the earliest possible opportunity and before the hearing has started, may apply to the Court to stay the suit.
- (2) If the Court is satisfied that there is no sufficient reason why the matter should not be referred, in accordance with the agreement, to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, it may make an order staying the suit.

### **Section 153. Application of Foregoing Proceedings to Disputes not before the Court**

The provisions of sections 137 through 150 of this Act, inclusive shall be applicable so far as practicable to all proceedings under the order of reference in case of disputes not raised before the Courts.

**Section 154. Arbitration without the Intervention of the Court**

- (1) Where any matter has been referred to arbitration without the intervention of a Court and an award has been made thereon, any person interested in the award may apply to the Court having jurisdiction over the subject matter of the award, that the award be filed in Court.
- (2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.
- (3) The Court shall direct that notice to be given to the parties to the arbitration requiring them to show cause why the award should not be filed and where the Court is satisfied that there is no ground for objection to the award and that it is valid according to the agreement of reference, the Court shall order the award to be filed and shall proceed to pronounce judgement according to the award.

## **Chapter XX**

### **Provisional Remedies**

**Section 155. Power to Arrest Defendant**

- (1) Where at any stage of hearing of any suit of the value of SP50 or more, the plaintiff satisfies the Court by affidavit or otherwise of any one or more of the matters set forth in subsection (2), below, the Court may, subject to the provisions of section 171 of this Act, issue a warrant for the arrest of the defendant and bring him or her before the Court to show cause why he or she should not give security for his or her appearance.
- (2) The matters referred to in subsection (1) above are:
  - (a) the defendant, with intent to delay the plaintiff or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him or her:
    - (i) has absconded or left the local limits of jurisdiction of the Court;
    - (ii) is about to abscond or to leave the local limits of jurisdiction of the Court; or,
    - (iii) has disposed of or removed from the local limits of jurisdiction of the Court his or her property or any part thereof; or
  - (b) that the defendant is about to leave Southern Sudan in circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed

against the defendant in the suit; *provided that*, the defendant shall not be arrested if he or she pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court as a trust until the suit is disposed of or until further order of the Court; *provided also that*, the defendant shall not be arrested if he or she furnishes such security as the Court which issued the warrant may direct.

**Section 156. Order Against Defendant to Furnish Security to Answer Claim or to Appear**

- (1) Where the defendant fails to show such cause referred to in section 155 above, the Court shall order him or her either to deposit in Court, money or other property sufficient to answer the claim against him or her, or to furnish security for his or her appearance at any time when called upon while the suit is pending and until execution or satisfaction of any decree that may be passed against him or her in the suit, and may make such order as it deems appropriate in regard to the sum which might have been paid by the defendant under the provisions of section 155 above.
- (2) A surety for such appearance of a defendant upon default of such appearance shall be bound to pay any sum of money which the defendant may be ordered to pay in the suit.

**Section 157. Application by Surety for Discharge**

- (1) The surety for the appearance of the defendant may at any time apply to the Court in which he or she became such surety to be discharged from his or her obligation.
- (2) On such application being made, the Court shall summon the defendant to appear, or, if it deems appropriate, may issue a warrant for his or her arrest in the first instance.
- (3) On the appearance of the defendant in pursuance of the summons or warrant or on his or her voluntary surrender, the Court shall direct the surety to be discharged from his or her obligation and shall call upon the defendant to find a new surety.

**Section 158. Power of Attachment of Property**

Where the defendant fails to comply with any order under sections 155 or 157 above, the Court may, subject to the provisions of section 171 of this Act, either make an order forbidding him or her to leave Southern Sudan or commit him or her to prison until decision of the suit, or where a decree is passed against the defendant until the decree has been satisfied; *provided that*, no person shall be imprisoned or have his or her liberty restricted under this section in any suit for a period not exceeding three months; and the period shall not exceed six weeks when the amount or value of the subject matter of the suit does not exceed SP100; *provided also that*, no person shall be detained under this section after he or she has complied with the order made under either section 155 or section 157 of this Act.

**Section 159. Where Defendant may be Required to Furnish Security**

- (1) Where at any stage of a suit, the Court is satisfied by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him or her:
  - (a) is about to dispose of the whole or any part of his or her property or to remove the same from the local limits of jurisdiction of the Court; or
  - (b) has quitted the local limits of jurisdiction of the Court leaving therein property belonging to him or her,the Court may require the defendant, within a time to be fixed by the Court, to furnish security in such sum as may be specified in the order, or to produce and place at the disposal of the Court when required, the said property or its value or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he or she should not furnish security.
- (2) The plaintiff shall in his or her application, unless the Court otherwise directs, specify the property required to be attached, where it is situated and the estimated value thereof.
- (3) The Court may also in the order direct the immediate attachment of the whole or any part of the property specified in the application provisionally until the defendant has furnished such security as is specified in the order or until the defendant has appeared and shown cause why he or she should not furnish such security.

**Section 160. Power of Attachment of Property**

- (1) Where the defendant fails to show cause why he or she should not furnish security, or fails to furnish the security required within the time fixed by the Court, the Court may order that the property specified in the application of the plaintiff or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit shall be attached.
- (2) Where the defendant shows such cause or furnishes the required security and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

**Section 161. Claim by Third Party to Attached Property**

If before judgement is passed any claim is made to the property attached, such claim shall be investigated in the manner herein provided for the investigation of claims to property attached in execution of a decree.

**Section 162. Removal of Order of Attachment**

Where an order is made for attachment before judgement, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required together with security for the costs of the attachment or when the suit is dismissed.

**Section 163. Attachment not to Affect Rights of Third Party nor Prevent the Property from being Sold in Execution**

Attachment before judgement shall not affect the rights of third parties existing prior to the attachment of persons who are not parties to the suit, nor prevent the property from being sold in execution of any decree against the defendant whether such decree has been obtained in a suit instituted either before or after the attachment.

**Section 164. Manner of Making Order of Attachment**

Except as otherwise expressly provided in this Act, the attachment shall be made in the manner provided for the attachment in execution of a decree.

**Section 165. Order Against the Damage or Alienation of Property in Dispute**

Where at any stage of a suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, the Court may, by order, grant temporary injunction to restrain such act or make such other order as it deems appropriate for the purpose of staying and preventing the wasting, damaging or alienation of the property until the disposal of the suit or until further order.

**Section 166. Injunction Against Breach of Contract or other Injury**

At any stage in a suit for restraining the defendant from committing a breach of contract or other injury, the Court may, upon the application of the plaintiff by order grant such temporary injunction as it deems appropriate to restrain the defendant from committing the breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

**Section 167. Notice to the Opposing Party**

The Court shall in all cases, before granting an injunction, direct notice of the application for it to be given to the opposing party. This section shall not apply in those cases where it appears that the objection against granting the injunction would be defeated by delay.

**Section 168. Order for Injunction may be Discharged, Varied or Set Aside**

Any order for an injunction may be discharged, varied or set aside by the Court on application by any party dissatisfied with or negatively affected by such order.

**Section 169. Injunction to a Corporation**

An injunction directed to a corporation is binding not only on the corporation itself, but also on all directors, members and officers of the corporation whose personal action it seeks to restrain.

### **Section 170. Appointment of Receiver**

Whenever it appears to the Court that it is necessary for the realization, preservation, protection or management of any property, movable or immovable, which is the subject matter of a suit and under attachment, the Court may by order appoint a receiver for such property and may pay such receiver a fee or commission, and entrust him or her with the powers of a receiver, subject to such conditions as the Court deems appropriate.

### **Section 171. Conditions Subject to which Orders are Made**

- (1) The Court may direct that no warrant of arrest shall be issued under section 155 of this Act unless and until the plaintiff pays to the Court such sum as the Court thinks sufficient to cover the cost of arresting the defendant and bringing him or her before the Court.
- (2) No order shall be made by the Court under section 155 of this Act unless and until the plaintiff pays into Court such sum as the Court thinks sufficient for the subsistence of the defendant during the period of his or her detention.
- (3) Any order made under any of the sections of this Chapter may be made upon such terms as to keeping an account, giving security or otherwise, as regards the person in whose favour it is made as the Court deems appropriate.

### **Section 172. Compensation for Obtaining Warrant of Arrest, Attachment or Injunction on Insufficient Grounds**

- (1) In any suit in which a warrant of arrest or order of attachment has been effected, or a temporary injunction has been granted, the defendant may apply to the Court and the Court may upon such application award by its order against the plaintiff such amount not exceeding SP100 or as it deems a reasonable compensation to the defendant, for the expenses or injury caused to him or her as a result of the arrest or attachment; *provided that*, a Court shall not award under this section an amount exceeding the limits of its pecuniary jurisdiction.
- (2) The Court may award compensation under this section, if and when it appears to the Court that:
  - (a) such arrest, attachment or injunction was applied for on insufficient grounds; or,
  - (b) the suit of the plaintiff fails, and there was no reasonable or probable grounds for initiating it.

- (3) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

## **Chapter XXI**

### **Right of Objection**

#### **Section 173. Right to Objection Against a Decree or Order**

No right of objection against a decree or order shall lie except with the party against whom such decree or order is passed. The right to object does not lie with any party who accepted the decree or order, or whose claim has been fully granted.

#### **Section 174. Where no Right of Objection Exists**

No right of objection exists against an interlocutory order before final judgement except in the following cases:

- (1) an order from which an appeal is expressly allowed by law;
- (2) an order staying or suspending the suit;
- (3) assumption of jurisdiction;
- (4) an order capable of instantaneous execution;
- (5) an order superseding an order of reference where the arbitration award has not been complied with within the time allowed by Court;
- (6) an order on an award stated in the form of a request of the opinion of the Court;
- (7) an order modifying or correcting an award;
- (8) an order filing or refusing to file an agreement to refer to arbitration;
- (9) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration; and,
- (10) an order refusing to set aside the arbitration or to remit it to the arbitrators.

#### **Section 175. Time for Objection**

- (1) Time for objection commences from the date of the communication of the judgement or order to the parties unless otherwise provided by law.
- (2) Nevertheless the time for objection commences from the date of pronouncement of the judgement where the person against whom the decree has been passed was present in Court when the judgement was pronounced or was summoned to attend and he or she failed to do so.

#### **Section 176. Effect of Failure to Observe Time**

Failure to observe the time for the submission of an objection shall result in the loss of the right thereto, and the Court on its own motion, may pass an order accordingly.

### **Section 177. Effect of Objection**

- (1) An objection is operative only in favour of or against the parties to the decree; *provided that*, where a decree is in respect of an indivisible interest or a joint obligation or in respect of a suit in which the law necessitates the joinder of certain persons, any person against whom a decree is passed and who fails to object within the time prescribed or otherwise accepts the decree, may object to the decree while an objection submitted by any other party affected by the decree is pending, within the prescribed time by joining with the objector in his or her claim.
- (2) If such person referred to in subsection (1) above, fails to apply to be joined, the Court shall order the objector to join him or her as a party to the objection.
- (3) Where the objection is directed against one of several decree-holders and was made in time the others shall be joined even though the time for objection has expired.

### **Section 178. Stay of Execution**

The Court to which an objection is submitted may, on the application of any interested party, order the stay of execution of the decree or order if it is satisfied that substantial loss may result there from or for any other reason as the Court may think fit. The Court may make an order of stay pending the final disposal of the application to stay execution.

### **Section 179. Protection of the Rights of Parties**

The Court staying execution under section 178, above, may order security to be furnished or make any other order as it deems fit for the protection of the interests of the decree-holder. Where the Court refuses to stay execution it may make such order as it deems necessary for the protection of the interests of the judgement debtor.

### **Section 180. Modifying or Setting Aside a Decree**

- (1) The Court to which an objection is submitted shall not set aside or modify a decree unless due notice of the objection and opportunity to answer orally or in writing is given to the other party.
- (2) No decree or order on objection shall be reversed or varied nor, in any case, be sent back for retrial on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit unless it affects the merits of the case or the jurisdiction of the Court.

### **Section 181. Where Objection Considered Submitted**



An objection is considered submitted on the date when fees are paid or on the date of the presentation of the memorandum where the objector is excused from payment of fees by law or order of the Court.

**Section 182. Memorandum of Objection and its Content**

- (1) Every objection shall be drawn up and submitted to the Court in the form of a memorandum, and shall include, in addition to the general contents of the plaint, the order or decree objected to, the date of the order or decree, the grounds on which the objection is based and the applicant's claim.
- (2) The memorandum shall be accompanied by a copy of the order or decree against which the objection is raised.
- (3) The memorandum may be submitted to the Court which passed the order or decree against which the objection is raised, and the Court shall then send to the appellate Court the memorandum, the record of the suit and any document showing that, the prescribed fees have been paid.

**Section 183. Judge not to Participate in Objection Against his or her own Judgement**

The Judge, who passed or participated in passing the judgement against which an objection is raised, shall not hear or participate in hearing the objection.

**Section 184. Summary Dismissal of Objections**

The Court before which an objection is raised, after perusal of the record, may summarily dismiss the objection without hearing the party against whom the objection is raised, if in its opinion the objection is without merit.

**Section 185. Contents of Judgement and Decree**

- (1) The judgement shall include the reasons on which it is based and shall also contain the following additional information:
  - (a) the points for determination;
  - (b) the decision thereon;
  - (c) the reasons for the decision; and,
  - (d) where the decree is amended or set aside, the relief granted-to the party raising the objection.

- (2) The decree shall bear the same date as the judgement and shall contain the number of the suit, the names of the parties, the decision, costs and by whom payable, and shall be signed by the judge or President of the Court.

**Section 186. New Claims**

No new claims may be allowed on the objection, but may be rejected by the Court on its own motion.

**Section 187. Judgement on Objection**

The judgement shall be pronounced in an open Court to which the parties shall be summoned and it may also be communicated to the parties in writing.

## **Chapter XXII**

### **Appeals**

**Section 188. Appeals**

- (1) Appeals against judgements of a Payam Court shall lie with a County Court of the First Grade Judge. Appeals against judgements of a County Court of the First or Second Grade Judge shall lie with the High Court.
- (2) Appeals against judgements of a High Court Judge shall lie with the Court of Appeal.
- (3) Appeals against judgements of a Court of Appeal shall lie with the Supreme Court.

**Section 189. Cross Subsidiary Appeal**

- (1) The respondent may, at any stage before final judgement, submit a cross subsidiary appeal in the manner prescribed herein for presenting appeals, or by a memorandum containing the grounds thereof.
- (2) Where the original appeal has been withdrawn or dismissed, the Court may proceed to hear and determine the cross subsidiary appeal after serving notice on the original appellants.
- (3) Where the respondent has accepted the judgement appealed against, before the appeal was submitted or where the time for appeal has lapsed, such cross subsidiary appeal shall be deemed as a cross subsidiary appeal incidental to the original appeal and shall lapse with it.

### **Section 190. Time for Appeal**

An appeal shall be submitted within fifteen days from the date of the commencement of the time for objection specified in section 175 of this Act.

### **Section 191. Grounds which may be Asserted on Appeal**

- (1) The appellant shall not, except by leave of the Court, assert any ground of objection not set forth in the memorandum of appeal; *provided that*, the Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum or taken by leave of the Court.
- (2) Where the Court passes its verdict in favour of the appellant on any grounds not asserted in the memorandum, it shall give notice to the respondent and allow him or her to contest such grounds.

### **Section 192. Reversal of Decree on a Ground Common to all the Parties**

Where there are more than one plaintiff or more than one defendant in a suit, and the decree appealed against proceeds on any ground common to each of the plaintiffs or to each of the defendants, subsequently any one of the plaintiffs or any one of the defendants may appeal against the whole decree, and thereupon the Court may reverse or vary the whole decree, in favour of each of the plaintiffs or defendants, as the case may be.

### **Section 193. Hearing of Appeal**

- (1) If the appeal is not summarily dismissed under section 184 of this Act, the Court may decide the appeal on written submissions and the parties are not entitled to address the Court in person or by counsel except with the leave of the Court.
- (2) If the appeal is not decided on written submissions, the Court shall fix a day for hearing to which the parties shall be summoned.
- (3) On the day fixed for hearing, the appellant shall be heard in support of the appeal and the respondent shall be heard in reply, and in such a case the appellant shall be entitled to reply.

### **Section 194. Failure to Appear by Appellant or Respondent**

- (1) Where on the day fixed for hearing, the appellant does not appear, the Court may make an order that the appeal be dismissed.
- (2) Where the appellant appears but the respondent does not, the appeal shall be heard in the respondent's absence.

### **Section 195. Re-admission or Re-hearing of Appeal**

- (1) Where an appeal is dismissed under section 194(1) above, the appellant may apply to the Court for re-admission of the appeal; and where it is proven that he or she was prevented by a sufficient cause from appearing on the date fixed, the Court shall re-admit the appeal on such terms as to costs or as it deems appropriate.
- (2) Where the appeal is heard in the absence of the respondent under section 194(2) above, and judgement is pronounced against him or her, he or she may apply to the Court to re-hear the appeal; and where it is proven that he or she was prevented by any sufficient cause from appearing, the Court shall re-hear the appeal on such terms as to costs or as it deems appropriate.

**Section 196. Court may Direct Interested Party to be made Respondent**

Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal was submitted but who has not been made a party to the appeal is interested in the result of the appeal, the Court may adjourn the hearing and direct that such person be made a respondent.

**Section 197. Where the Court may Frame the Issues and Refer them for Re-trial**

- (1) Where the Court against whose decree the appeal is submitted has omitted to frame or retry any issue or to determine any point of fact which appears to the Court essential to the right decision of the suit, the Court may, if necessary, frame issues and refer them for retrial by the Court against whose decree the appeal is submitted and in such case shall direct such Court to take such additional evidence required.
- (2) The Court to whom the new issues have been referred for retrial, shall proceed to retry such issues and shall return them to the appellate Court, accompanied with minutes of hearing, its decision and reasons thereof.

**Section 198. Objection to Findings**

- (1) Such evidence and findings as are referred to in section 196 of this Act, shall form part of the record of the suit, and either party may within a time to be fixed by the Court, present a memorandum of objection to any findings.
- (2) After the expiration of the period so fixed for presenting such memorandum, the Court shall proceed to determine the appeal.

**Section 199. Production of New Evidence**

Generally, the parties to an appeal shall not be entitled to produce new evidence, but the Court may allow the production of new evidence in the following cases.

- (a) where the Court from whose decree the appeal is referred has refused to admit evidence which ought to have been admitted; and,

- (b) where the Court to which the appeal is referred requires any evidence to be produced to enable it to pronounce judgement or for any other reasonable cause.

### **Section 200. Mode of Taking New Evidence**

Where new evidence is allowed to be produced pursuant to section 199 above, the appellate Court may either take such evidence or direct any other Court to take it.

### **Section 201. Powers of Appellate Court**

The appellate Court shall have the following powers:

- (a) to confirm, amend, or set aside the decree appealed against;
- (b) to pass a new judgement;
- (c) to send back the case for retrial;
- (d) to frame issues and refer them for retrial;
- (e) to resettle the issues and, if it is of the opinion that the evidence on the record is sufficient to enable it to pronounce judgement, to determine the suit; and,
- (f) to take additional evidence or to require such evidence to be taken.

### **Section 202. Application of the Provisions of this Chapter**

The provisions of this Chapter shall apply to appeals submitted to the Supreme Court, Court of Appeal, the High Court and the County Court Judge of the First Grade.

## **Chapter XXIII**

### **Cassation**

#### **Section 203. Cases of Objection by way of Cassation**

- (1) Parties may object before the Supreme Court against judgements made by the Court of Appeal in the following cases:
  - (a) where the judgement objected against is based upon inconsistency with the law or a mistake as to its application or interpretation;
  - (b) where the judgement has been affected by the occurrence of an invalidity in the judgement or procedure;
- (2) Objection relating to the ownership of immovable property, shall lie before the Supreme Court.
- (3) The Court shall cause notice of the objection to be served on all the parties to the suit who were not originally joined in the objection.

#### **Section 204. Determination of Objection**

The Court shall determine the objection upon the record; *provided that*, the Court may give leave to the parties to the supplementary submissions in support of or in reply to the objection or may summon them to make statements or give explanations.

#### **Section 205. Grounds which may not be Argued on Cassation**

No party shall assert, or be heard in support of, any grounds not set forth in the memorandum; *provided that*, grounds of public policy may be urged at any stage by a party or the Court on its own motion.

#### **Section 206. Judgement of the Supreme Court**

- (1) Where the objection is allowed the Court may:
  - (a) set aside the decree;
  - (b) modify the decree;
  - (c) render a new judgement; or
  - (d) return the suit to the Court which passed the decree objected to or to the trial Court, for retrial.
  
- (2) Where the decree is in conformity with **the** law, the Court shall reject the objection.

#### **Section 207. Review of Judgements**

Judgements of the Supreme Court shall be subject to review once by the same court.

## **Chapter XXIV**

### **Review of Final Judgement**

#### **Section 208. Application of the Provisions of this Chapter**

The provisions of this Chapter shall not apply to Payam Courts, County Courts, High Courts or Courts of Appeal.

### **Section 209. Grounds for Review**

The parties to a suit may apply for the review of final judgement on any of the following grounds:

- (a) if the judgement is affected by the fraud of the other party;
- (b) on the discovery of new and important evidence which affects the result of the judgement which, despite the exercise of due diligence, was not within the knowledge of or could not be produced by the applicant prior to the pronouncement of judgement;
- (c) on account of an error or mistake apparent on the face of the record; and,
- (d) for any other sufficient reason.

### **Section 210. Time for Review**

An application for review shall be made within thirty days from the date of the pronouncement of the judgement, *provided that*, in the case provided for by section 209(a) above, time shall run from the date of discovery of such fraud.

### **Section 211. Form of Application**

The application for review shall be in writing and submitted to the Court and shall set forth, in addition to the particulars required in the plaint, the decree, its date, and the grounds for the application.

### **Section 212. Disposal of the Application**

The Court in considering the application for review may:

- (a) dismiss the application summarily; or
- (b) dispose of the application on written submissions or after a hearing on a date fixed and notified to the parties.

## **Chapter XXV**

### **Correction**

#### **Section 213. Form and Extent of Correction**

- (1) The Court may on its own motion, or on the application of any party, correct any clerical or arithmetical mistake.
- (2) The Court shall notify the parties of the intended corrections if it deems it necessary and shall hear the party who appears.
- (3) Corrections made shall be set in the margin to the judgement and notified to the party who did not appear.

**Section 214. Objection Against Correction**

- (1) Any correction is subject to objection independently by any one of the ways of objection available against the decree itself in a case where the Court exceeds its powers of correction.
- (2) A decision refusing to make such corrections is not subject to such objection independently.

## **Chapter XXVI**

### **Execution of Decrees**

**Section 215. Application of the Provisions on Decrees**

The provisions of this Chapter shall not apply to Payam Courts, but the President of the Supreme Court may provide otherwise in the warrant of establishment of any of the Payam Courts.

**Section 216. Application for Execution**

- (1) Decrees shall be executed on the application of the decree holders to the Court which passed the decree and the application shall contain the following particulars:
  - (a) the number of the suit;
  - (b) the names of the parties;
  - (c) the date of the decree;
  - (d) whether any payment or other adjustment of the matter in controversy has been made between the parties subsequent to the decree;
  - (e) sufficient particulars of the subject-matter of the execution;
  - (f) the name of the person against whom execution of the decree is sought; and,
  - (g) the mode in which it is sought to execute the decree.
- (2) If the decree is for the delivery of specific property or where the application is for the attachment and sale of movable or immovable property, the application shall contain a description of the property sufficient to identify it, its place and the person



in possession of it and if the property is immovable, an official certificate of registration.

**Section 217. Satisfying Requirements and Admission of Application**

- (1) If an application is not drawn up in accordance with section 216, above, the Court may, there and then and with the assistance of the applicant amend it or order its amendment within a fixed time. If the applicant fails to amend it within the time fixed it shall be considered a nullity.
- (2) Where the application is admitted, the Court shall itself execute the decree or send it for execution by any other Court in accordance with the provisions contained herein.

**Section 218. Notice to the Judgement Debtor**

- (1) The Court, on application, shall proceed with the execution without giving notice to the judgement debtor except in the following cases:
  - (a) where the application for execution is made more than six months after the date of the decree or last measure taken in the execution; or
  - (b) where the execution is sought against the heirs or the legal representative of the judgement debtor.
- (2) The notice referred to in subsection (1) above, shall require the person against whom the execution is sought to show cause on a date to be fixed by the Court why the decree should not be executed against him or her.
- (3) Notwithstanding the provisions of subsection (1) above, the Court may issue any process in execution without notice if it is satisfied that the issue of such notice would cause unreasonable delay or defeat the ends of justice.

**Section 219. Procedure where a decree is Sent to Another Court for Execution**

Where a Court sends a decree for execution to another Court, it shall send the following to that Court:

- (a) a copy of the decree;
- (b) a certificate setting forth the part of the decree which still remains unsatisfied and requires execution; and,
- (c) all necessary particulars and documents.

**Section 220. Acceptance of Copies without Proof**

The Court to which a decree is sent shall accept such copy and certificate without any further proof of the decree or order for execution, unless the Court, for any special reasons to be recorded, requires such proof.

### **Section 221. Result of Execution to be Communicated to the Competent Court**

The Court to which a decree is sent for execution shall notify the Court which passed it, of the steps taken in the execution and in case of failure the reasons thereof.

### **Section 222. Enforcement of Liability of Surety**

- (1) Where any person has become liable as a surety the decree or order may be executed against him or her, to the extent to which he or she has been rendered personally liable, in the manner herein provided for the execution of decrees, such person shall, for the purpose of appeal, be deemed a party to the execution; *provided that*, sufficient notice has been given to the surety.
- (2) Surety responsibilities may include:
  - (a) the execution of any decree or part thereof;
  - (b) the institution of any property taken in execution of a decree;
  - (c) the payment of any money, or,
  - (d) the fulfillment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereto.

### **Section 223. Execution of Decrees Against GoSS Institutions**

- (1) Where the decree is against a GoSS Institution or a public servant in respect of any such act as aforesaid in section 33(2) of this Act, a period shall be specified in the decree within which it shall be satisfied and if the decree remained unsatisfied, at the expiration of such period the Court shall report the case to the President of the Supreme Court.
- (2) Execution shall not be issued on any such decree unless it remained unsatisfied for a period of three months from the date of such report.

### **Section 224. Order of the Court in Execution**

Where the conditions prescribed by law are satisfied, the Court shall order the execution of the decree by any of the following ways:

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale of any property;
- (c) by arrest and detention in prison of the judgement debtor pending execution of the decree;
- (d) by appointing a receiver; or,
- (e) in such other manner as the nature of the relief granted may require.

### **Section 225. Payment into Court of the Judgement Debt**

- (1) Any person whose property has been attached in execution, may apply at any stage of the proceedings before sale, for permission to deposit in Court a sum equal to the

judgement debt, interest and costs for the satisfaction thereof and on such deposit the property attached shall be released and the attachment transferred to the sum deposited.

- (2) Any subsequent attachment shall not affect the rights of the creditors in whose favour the deposit was made.

#### **Section 226. Execution to Start with Movables**

Execution shall first proceed against the movable property of the judgement debtor and shall not proceed against his or her immovable property unless the Court is satisfied that the proceeds of the movable property shall not satisfy the judgement debt.

#### **Section 227. Disputes Relating to Execution**

- (1) The Court executing a decree shall be competent to determine all disputes relating to the execution irrespective of the value and whether the dispute is between the parties to the execution themselves or between such parties and other persons.
- (2) Any dispute relating to the execution shall not stay execution unless the Court otherwise directs.

#### **Section 228. Stay of Execution**

Subject to the provisions of sections 179 and 180 of this Act, and the limitations laid down therein, the judgement debtor, if he or she has appealed against the decree or if the time of appeal has not yet expired, may apply to the Court conducting the execution to stay the execution of the decree for a reasonable period to enable him or her to obtain an order of stay from the Court which passed the decree or from the Court hearing the appeal, as the case may be.

#### **Section 229. Death of Judgement Debtor**

- (1) Where a judgement debtor dies before a decree is fully satisfied, the holder of the decree may apply to the Court which passed it to execute it against the legal heirs or representative of the deceased.
- (2) Where the decree is executed against such heir or representative, he or she shall be liable only for the property of the deceased which has come into his or her hands and has not been duly disposed of and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree holder, compel such legal heir or representative to produce such accounts as it deems appropriate.

#### **Section 230. Enforcement of Decree Against Legal Heir or Representative**

- (1) Where a decree is passed against a party as the legal heir or representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by attachment and sale of any such property.
- (3) Where no such property is in the possession of such legal representative and he or she fails to satisfy the Court that he or she has duly applied such property of the deceased as is proved to have come into his or her possession, the decree may be executed against such legal representative to the extent of the property in respect of which he or she has so failed to satisfy the Court in the same manner as if the decree has been against him or her personally.

### **Section 231. Decree for Delivery of Specific Movable Property**

Where the decree is for the delivery of a specific movable property, or for any share in a specific movable property, it may be executed by the seizure, if practicable, of the movable property or share, and by the delivery thereof to the party to whom it has been adjudged or to such person as he or she appoints to receive delivery on his or her behalf, or by the detention in prison of the judgement debtor, or by attachment of his or her property or by both.

### **Section 232. Decree for Delivery of Immovable Property**

- (1) If in any suit, a decree is issued for the delivery of any immovable property, the Court, unless in the special case it deems it unnecessary, shall appoint an official to see that the boundaries of the property are marked out with permanent land marks at the expense of the owner or owners. Further, the official shall deliver possession thereof to the person to whom it has been adjudged or to such person as he or she appoints to receive delivery on his or her behalf.
- (2) If the immovable property is occupied by a tenant or other person entitled to occupy it, who is not bound by the decree to relinquish such occupancy, a notice in writing containing the substance of the decree in regard to the property shall be served upon him or her if he or she can be found, and if he or she cannot be found a copy of the said notice shall be posted on or near the said property.

### **Section 233. Decree for Specific Performance Injunction**

- (1) Where a decree orders any person to do any act other than the payment of money or to abstain from doing anything, and the person had an opportunity to execute the decree and has willfully failed to execute it, the decree may, save as otherwise expressly provided in this Act, be enforced by the detention of such person in prison or by the attachment of his or her property or by both.

- (2) Where the person against whom such decree as mentioned in subsection (1) above, has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or by the detention in prison, of the directors or other principal officers thereof, or by both attachment and detention.
- (3) Where a decree for the specific performance of a contract or for an injunction has not been executed, the Court may, in lieu of or in addition to any or all of the processes aforesaid, direct that the act required to be done, be done so far as practicable by the decree holder or some other person appointed by the Court, at the cost of the judgement debtor, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

#### **Section 234. Order to Sell Attached Property**

- (1) Where any attachment under sections 230 or 232 of this Act has remained in force for six months, and the judgement debtor has not executed the decree and the decree holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree holder such compensation as it deems appropriate, and shall pay the balance, if any, to the judgement debtor.
- (2) Where the judgement debtor has executed the decree and paid all costs of execution which he or she is bound to pay, or where at the end of six months from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

#### **Section 235. Arrest and Detention in Prison of A Judgement debtor**

- (1) Where a decree for the payment of money remains wholly or in part unsatisfied, the Court may upon the application of the decree holder, summon the judgement debtor to be examined as to his or her ability to pay. The Court may for sufficient reasons instead of issuing a summons issue a warrant for the arrest of the judgement debtor.
- (2) The Court may commit the judgement debtor to prison where it appears to it by the examination of the judgement debtor or other evidence that:
  - (a) the judgement debtor has refused or neglected to pay the amount of the decree or some part thereof when he or she had the means to pay;
  - (b) he or she has, knowing himself or herself to be unable to pay his or her debts in full, recklessly contracted debts or given an unfair preference to any of his or her creditors; or
  - (c) he or she has transferred, concealed or removed any part of his or her property after the date of the initiation of the suit, in bad faith, with the object or effect of obstructing or delaying the decree holder in the execution of the decree.

**Section 236. Period of Detention and Release**

- (1) Where a judgement debtor is committed to prison in execution of a decree, the order of commitment shall state the period during which he or she is to be detained in prison or shall state that he or she is to be detained until the decree is satisfied; *provided that*, no person shall be so detained for a period exceeding six weeks if the decree is for the payment of a sum of money not exceeding SP50 or its equivalent and for a period not exceeding six months in any other case.
- (2) Notwithstanding the provisions of subsection (1) above, the Court shall order the release of a person so detained:
  - (a) on the amount mentioned in the order for his or her commitment being paid;  
or
  - (b) on the decree against him or her being otherwise satisfied.
- (3) A judgement debtor released under subsection (2) above, or on completion of the terms stated in the order of commitment shall not, by reason of his or her release, be discharged from his or her debt, but he or she shall not be liable to be re-arrested or re-committed to prison in execution of the same decree unless a further sum of money other than interest or costs that become payable under such decree after the date on which he or she was released from prison.

## **Chapter XXVII**

### **Attachment**

**Section 237. Attachment of Movable Property**

- (1) An order to attach the movable property of a judgement debtor shall be issued by the Court conducting the execution, and the property seized shall be kept in such custody as the Court may direct.
- (2) Where the property to be attached consists of any share or interest of the judgement debtor in movable property belonging to him or her and another as co-owners, the attachment shall be made by notice to the judgement debtor prohibiting him or her from transferring the share or interest or charging it in any way.

**Section 238. Attachment of Part of Property**

- (1) Except as otherwise provided by this section, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in their capacities as partners.
- (2) The Court may, on the application of the decree-holder against a partner, make an order charging the interest of such partner in the partnership property and profits

with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may be coming to him or her in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge has been made in favour of the decree holder by such partner, or as the circumstances of the case may require.

- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase it.
- (4) Every application for an order under subsection (2) above, shall be served on the judgement debtor and on his or her partners who are within Southern Sudan.
- (5) Every application made by any partner of the judgement debtor under the provisions of this section shall be served on the judgement debtor, and on the other partners who did not join the application and are within Southern Sudan.

#### **Section 239. Attachment of Property not in the Possession of Judgement Debtor**

- (1) Where the property to be attached is a debt not secured by a negotiable instrument; a share in the capital of a corporation; or other movable property not in the possession of judgement debtor, except property deposited in or in the custody of any Court, the attachment shall be made by a written order prohibiting the following:
  - (a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof, until further order of the Court;
  - (b) in the case of a share of stock, the person in whose name the share may be held from transferring it or receiving any dividend thereon;
  - (c) in the case of the other movable property, except as aforesaid, the person in possession of it from disposing of it until further order of the Court.
- (2) A copy of such order shall be sent in the case of the debt, to the debtor, in the case of the share, to the appropriate officer of the corporation, and in the case of any other movable property except as aforesaid, to the person in possession of it.
- (3) A debtor prohibited under subsection (1) above, may pay the amount of his or her debt into Court, and such payment shall discharge him or her as effectually as payment to the party entitled to receive it.

#### **Section 240. Property Liable to Attachment and Sale**

- (1) The following properties are liable to attachment and sale in execution of a decree namely: lands, houses or other buildings, goods, money, bank notes, cheques, Acts of exchange, promissory notes, government securities, bonds or other securities for money, debts, shares in a corporation and, except as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgement debtor, or

over which, or the profits of which, he or she has a power of disposal which he or she may exercise for his or her own benefit, whether the same be held in the name of the judgement debtor or by another person in trust for him or her or on his or her behalf.

- (2) The following things shall not be liable to such attachment or sale:
- (a) the necessary wearing apparel, cooking utensils, beds, beddings, food stuffs necessary for one month's feeding of the judgement debtor, the judgement debtor's spouse and children and his or her relatives whether by blood or marriage who are legally dependent on and resident with the judgement debtor;
  - (b) such tools, implements and stock of the judgement debtor's trade or calling which, in the opinion of the Court are necessary to enable him or her to earn his or her livelihood, unless the attachment is for the satisfaction of the price of the same or their maintenance;
  - (c) books of account;
  - (d) a mere right to sue for damages;
  - (e) any right of personal service;
  - (f) the wages of labourers and domestic servants whether payable in money or in kind;
  - (g) a right to further maintenance;
  - (h) any pay, salary, allowance, sum of money or any thing expressly exempted from liability to attachment or sale by any enactment for the time being in force, save as provided by such enactment;
  - (i) the installations, machinery or other instrument specified or meant for the use of public utilities is undertaken by the management itself or entrusted to any person natural or corporate.

#### **Section 241. Attachments by More than one Court**

- (1) Where property, not in the custody of any Court, is under decrees of attachment from more than one Court, the Court of the highest grade or, where there is no difference in grade, the Court by whose decree the property was first attached shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof.
- (2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court under this section for the execution of any one of such decrees.

#### **Section 242. Warrant of Attachment**



- (1) The warrant of attachment shall contain, in addition to the general information as to the names of the parties, their description, and place of residence, the following particulars:
  - (a) the place where the attachment was made and the action taken and the difficulties and opposition encountered by the bailiff and the steps taken to overcome such difficulties; and,
  - (b) a detailed inventory of the property attached, its kind, description, quantity or weight or measure, and a statement of its approximate value.
- (2) The warrant shall be signed by the bailiff and the person in whose possession the property was attached if he or she was present.
- (3) The valuation of precious articles such as gold, silver, jewels, and precious stones shall be undertaken by an expert appointed by the Court.

#### **Section 243. Restriction on Attachment**

No attachment shall be carried out in the presence of the person applying for execution except in cases of necessity and by permission of the Court.

#### **Section 244. Breaking Open of Locks and Doors**

The bailiff shall not break open any lock or door for the purpose of attachment except in the presence of a policeman or policewoman the Chief who shall sign the warrant.

#### **Section 245. Attachment of Growing Crops**

- (1) Where the property to be attached is a growing crop the attachment shall be made in the manner provided by this section.
- (2) Subject to such conditions as may be imposed by the Court either in the order of attachment or in any subsequent order, the judgement debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it.
- (3) In the event that the judgement debtor fails to do all or any of such acts, the decree holder may, with the permission of the Court and subject to the like conditions, may do all or any of them, or appoint a person to do so on his or her behalf.
- (4) The costs incurred by the decree holder in connection with the undertaking of activities as provided for in section 250(2) of this Act, shall be recoverable from the judgement debtor as if they were included in and formed part of the decree.
- (5) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment merely because it has been severed from the soil.

#### **Section 246. Attachment of Movable Property**

Where the property attached is a movable property, the bailiff shall specify in the record its description and value and deposit the same in Court within 24 hours at most from the time of attachment.

**Section 247. Attachment of Immovable Property**

- (1) Attachment of immovable property shall be made by an order of a competent Court, on the application of the decree holder, prohibiting the judgement debtor from transferring or charging the property in any way, and all persons from receiving it from him or her by purchase, gift or otherwise.
- (2) A copy of the order shall be fixed up in a conspicuous place on or near the property and on the Court notice board.

**Section 248. Content of Warrant of Attachment of Immovable Property**

The warrant for the attachment of immovable property shall contain in addition to general information as to the names of the parties, description and place of residence, the following particulars:

- (a) the amount of the execution debt;
- (b) a detailed description of the immovable property, and its position, area, and boundaries;
- (c) notice to the judgement debtor to the effect that unless he or she pays the execution debt, the property shall be sold in satisfaction thereof.

**Section 249. Registration of Warrant**

A warrant of attachment of immovable property shall be registered in the Office of the Registrar of Lands.

**Section 250. Custody of Attached Property**

- (1) Where the judgement debtor is present, he or she shall be appointed a custodian of such property unless there are reasonable grounds to be recorded in writing, for apprehension that the property will be wasted and in such a case, the Court will appoint any other person or make any such orders as it deems appropriate for the custody of the property.
- (2) Where the custodian is not the judgement debtor or the person in possession of the property, he or she shall be entitled to such remuneration as is fixed by the Court.

**Section 251. Restrictions on Property Attachment**

- (1) Where an attachment has been made, any transfer or delivery of the property attached or of any interest therein and any payment to the judgement debtor of any debt, dividend or other funds contrary to such attachment, shall be void as against all claims enforceable under the attachment.
- (2) For the purpose of subsection (1) above, claims enforceable under an attachment order include claims for the ratable distribution of assets.

## **Chapter XXVIII**

### **Sale of Attached Movable Property**

#### **Section 252. Order for Sale**

- (1) An order for the sale of the attached movable property shall be issued by the Court conducting the execution on the application of the judgement creditor.
- (2) The judgement debtor shall be given notice of the order and the place of sale.

#### **Section 253. Conduct of Sale**

Sale in execution of a decree shall be made by public auction and shall be conducted by the bailiff or by any other person whom the Court may appoint and the immediate payment of the price shall be a condition of such sale.

#### **Section 254. Restriction on Bidding**

No official or other person having any duty to perform in connection with any sale shall bid for the property being sold.

#### **Section 255. Notice of Sale**

Any sale of property in an execution shall be preceded by notice. Such notice shall contain the following particulars:

- (a) the time and place of sale;
- (b) the property to be sold;
- (c) the amount for the recovery of which the sale is ordered; and,
- (d) any other thing which the Court considers material for the proper evaluation of the property offered for sale.

#### **Section 256. Advertisement of Sale**

- (1) An advertisement of a sale shall be made by posting a copy of the notice of sale on the spot where the property offered for sale is kept and on the notice board of the Court.
- (2) The Court may order the posting up of notices in the market area and other public places and the publication thereof in the press.

**Section 257. Time and Place of Sale**

- (1) The sale shall take place on the spot where the attached property is kept or in the nearest market or at any place to be decided by the Court, on the application of the interested parties.
- (2) No sale shall take place before the expiry of at least fifteen days from the date of the posting up or publication of the notice of sale; *provided that*, the Court may order an earlier sale if the judgement debtor consents or where the property offered for sale is perishable or liable to fluctuation of price.

**Section 258. Adjournment of Sale**

- (1) The Court may adjourn any sale and the official conducting the sale may adjourn such a sale for a reason to be recorded and he or she shall in such event present the matter to the Court to make such order as it deems appropriate.
- (2) Where a sale is adjourned for a longer period than one month a new notice shall be posted up or published.

**Section 259. Resale**

- (1) Where the person to whom the property is sold fails to pay the price forthwith, the property shall be resold at his or her peril at any price and in the manner provided in this Chapter and the record of sale shall have the force of a Court decree with respect to the deficiency in price and the cost of resale.
- (2) The deficiency in price and cost of resale shall be recoverable from the defaulting purchaser at the instance of either the judgement creditor or judgement debtor in accordance with the provisions of this Chapter.

**Section 260. Bidding by Decree Holder**

- (1) The decree holder shall not bid for nor purchase the property without the permission of the Court.
- (2) Where no reasonable bid is made at the auction the Court shall inform the decree holder and ask him or her to make an offer.

- (3) If the decree holder makes a reasonable offer, the Court shall order the property to be put up for sale again. If no higher bid is received, the property, subject to the approval of the Court, shall be knocked down to the decree holder at his or her offer.
- (4) Where a decree holder purchases the property without such permission, the Court may, on the application of any interested party, by order, set aside the sale, and the costs, expenses and any deficiency in price on resale shall be paid by the decree holder.

#### **Section 261. Stoppage of Sale**

The bailiff shall stop the sale in any of the following cases:

- (a) if the judgement debtor pays the amount and costs for which the sale is ordered;
- (b) if the bailiff is satisfied that such amount has been deposited in Court; and,
- (c) if the sale realizes an amount sufficient to satisfy the judgement debt.

#### **Section 262. Record of Sale**

The bailiff shall prepare a record which shall show the procedure followed and the difficulties encountered in the conduct of the sale. It shall also specify the name of the purchaser, price and the mode of payment, and the presence or absence of the judgement debtor at the place of sale.

#### **Section 263. Sale of Shares and Other Stocks**

Shares and other stocks shall be sold through a bank or a stockbroker or by such other mode as the Court deems appropriate.

## **Chapter XXIX**

### **Sale of Attached Immovable Property**

#### **Section 264. Warrant of Sale**

- (1) The warrant for the sale of an attached immovable property shall be issued by the Court conducting the execution on the application of the judgement creditor.
- (2) Notice of the order of sale and of the time and place of sale shall be given to the judgement debtor, the person in possession of the attached property and to all holders of registered charges.

#### **Section 265. Content of Warrant of Sale**

Warrant of sale shall contain, in addition to the general information in respect of the names, descriptions and place of residence of the parties, the following particulars:

- (a) a detailed description of the immovable property to be sold;
- (b) the amount for the recovery of which the sale is ordered;
- (c) the conditions of the sale and the reserve price;
- (d) the rates and taxes due and the encumbrances to which the property is liable;
- (e) the time and place of sale; and,
- (f) any other particulars which the Court considers material.

**Section 266. Advertisement of Sale**

- (1) Any sale shall be advertised by posting copies of the warrant of sale in a conspicuous place of the immovable property or a place nearby and on the Court notice board and in such other public places as the Court may direct.
- (2) The sale may be published in the press on the application of the interested parties.

**Section 267. Time of Sale**

No sale of immovable property shall take place until the expiry of at least thirty days from the date of the publication of the notice of sale except with a written consent of the judgement debtor.

**Section 268. Place of Sale**

The Court shall exercise its discretion as to the place of sale with a view to obtaining the best price.

**Section 269. Adjournment of Sale**

The Court may for sufficient reasons and on the application of any interested party adjourn the sale.

**Section 270. Postponement of Sale**

- (1) The Court may, in the circumstances specified hereunder and on the application of the judgement debtor, postpone the sale for such period as it deems appropriate to enable him or her to raise the amount for the recovery of which the sale was ordered:
  - (a) if the Court is satisfied that the net income from the property offered for sale in one year is sufficient to satisfy all the claims of the parties to the execution;
  - (b) if the Court is satisfied that the judgement debtor can raise an amount sufficient to satisfy the claims of the parties to the execution referred to in subparagraph (a) above, by the mortgage of the property or part thereof; such a mortgage shall require a certificate from the Court authorizing the judgement debtor to mortgage the property and to deposit the proceeds in its

custody and shall not become absolute until it has been confirmed by the Court; and,

- (c) if the Court is satisfied that the judgement debtor can raise the amount of the execution debt by the private sale of such property; such sale shall require a certificate from the Court authorizing the sale and deposit of the proceeds in its custody and shall not become absolute until it has been confirmed by the Court.

- (2) The Court shall fix the date on which the sale shall take place in case of failure to raise the amount required, taking into consideration the time necessary to enable the judgement debtor to raise the amount.

### **Section 271. Auction**

The auction begins on the declaration of the reserve price and costs by the bailiff or the person appointed by the Court for that purpose.

### **Section 272. When no Bids Received**

If no bid is received for the reserve price or more, the sale shall be adjourned to a date to be published. On such date the property shall be offered without its reserve price but the Court, in such case shall not be bound to accept the highest bid.

### **Section 273. Deposit by the Purchaser**

- (1) The person declared to be the purchaser shall pay immediately by way of a deposit at least twenty per cent of the purchase price.
- (2) If the purchaser defaults, the property shall be resold forthwith at his or her peril.
- (3) Where the decree holder is the purchaser the Court may dispense with the deposit.

### **Section 274. Payment of Price in Full**

- (1) The full amount of purchase money payable shall be paid within fifteen days from the date of sale.
- (2) Where the decree holder is the purchaser the Court may allow him or her to take into account any amount which is due to him or her in execution.

### **Section 275. Default of Payment**

In default of payment of the purchase money within the time fixed, the Court may order the forfeiture of the deposit and the resale of the property after publication at the defaulting purchaser's expense, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

### **Section 276. Bid of Co-owner**

Where the property sold is a share in an undivided immovable property, and two or more persons, of whom one is a co-owner, respectively bid the same sum for such property, the bid shall be deemed to be the bid of the co-owner.

### **Section 277. Setting Aside the Sale on Deposit**

- (1) Where immovable property has been sold in execution, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply within thirty days of the date of sale to set aside the sale.
- (2) To set aside the sale, such person must deposit with the Court:
  - (a) an amount to pay the purchaser a sum equal to fifteen percent of the purchase price; and,
  - (b) for payment to the decree holder the amount for the recovery of which the sale was ordered and the costs.
- (3) Where a person applies under this section to set aside the sale of his or her immovable property, he or she shall not, unless he or she withdraws his or her application, be entitled to make or prosecute an application under this section.
- (4) Nothing in this section shall relieve the judgement debtor from any liability he or she may be under in respect of costs and interest not covered by the notice of sale.

### **Section 278. Setting Aside Sale on Ground of Irregularity of Sale**

Where any immovable property is sold in execution, the judgement creditor or the judgement debtor or any other person whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of fraud or material irregularity in conducting such sale, which in turn, has caused grievous loss to his or her rights.

### **Section 279. Confirmation of Sale**

- (1) Where thirty days have passed since the date of sale and no application is made to set it aside under section 277 or 278 above, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.
- (2) Where an application under section 278 above, is made and allowed or where the deposit is made under section 277 above, within thirty days from the date of sale, the Court shall make an order setting aside the sale; *provided that*, no order shall be made unless notice of the application has been given to all persons affected thereby.



- (3) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

**Section 280. Return of Purchase Price**

Where a sale of immovable property is set aside under section 278 of this Act, the purchaser may apply to the Court to order repayment of his or her purchase money, with or without interest as the Court may direct, against any person to whom it has been paid.

**Section 281. Certificate of Sale**

Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the purchaser. Such certificate shall bear the date of the day on which the sale became absolute.

**Section 282. Delivery of the Property Sold**

- (1) The Court after marking out the boundaries, if necessary, shall deliver the possession of the immovable property sold to the purchaser.
- (2) If the immovable property is in the occupancy of a person not bound by the decree to relinquish such occupancy, a notice in writing containing the substance of the decree in regards to the property shall be served upon him or her.

## **Chapter XXX**

### **Distribution of Assets**

**Section 283. The Method of Distribution of Assets**

- (1) Where the assets are insufficient to satisfy the claims of all the judgement creditors, the assets of the judgement debtor shall be distributed in accordance with the following rules:
  - (a) where an order for sale of any property has been made by a Court in execution, the proceeds of the sale, after the deduction of the expenses of sale, shall be distributed pro-ratably amongst all the judgement creditors who have applied for execution at any time before the date on which the order for sale of such property was made;
  - (b) where money is received by a Court in satisfaction of execution, otherwise than by way of sale, it shall be distributed pro-ratably amongst all judgement creditors who have applied for execution before the money was received by the Court;

- (c) where any property is sold subject to a mortgage or charge, the mortgagor or encumbrance shall not be entitled to share in any or be entitled to share in any surplus arising from such sale;
  - (d) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagor or encumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagor or encumbrancer the same interest in the proceeds of the sale as he or she had in the property sold;
  - (e) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an encumbrance thereon, the proceeds of sale shall be applied:
    - (i) to defray the expenses of the sale;
    - (ii) to discharge the amount due under the decree;
    - (iii) to discharge the interest and principal moneys due on subsequent encumbrances (if any); and,
    - (iv) pro-ratably among the holders of decrees for the payment of money against the judgement debtor in accordance with the provisions of subsection (1)(a) above.
- (2) Where all or any of the assets liable to be pro-ratably distributed under this section are paid to a person not entitled to receive them, any person so entitled may sue such a person to compel him or her to refund the assets.
- (3) Nothing in this section affects any rights of the GoSS or any other level of government or person who by any law has a right to be paid in priority to other creditors.

#### **Section 284. Payment by Installments**

- (1) After the attachment of the property of the judgement debtor, or before such attachment upon the judgement debtor furnishing such security as the Court deems appropriate, the Court which is carrying out the execution may, on the application of the judgement debtor, and with the consent of the decree holder order that payment of the amount decreed shall be made by installments upon such terms as it deems appropriate.
- (2) Where the Court has made an order under subsection (1) above, and default is made in execution of the order, the Court shall set aside the order for payment by installments and shall on the application of the decree holder issue process for the recovery of the whole amount of the judgement debt remaining unpaid.

#### **Section 285. Execution Deemed Satisfied**

Where no application is made to the Court within six months of the date of the last order made in an execution, the execution shall be deemed to have been satisfied and the records

thereof shall be closed; *provided that*, the judgement creditor shall be entitled to apply on payment of the prescribed fee to have the execution re-opened.

#### **Section 286. Decrees of Other Courts**

The provisions of this Chapter shall apply to the decrees and orders of other Courts sent to the Civil Courts for execution.

## **Chapter XXXI**

### **Foreign Judgements**

#### **Section 287. Effect of Foreign Judgement**

A foreign judgement, decree or order shall not be executed by a Court in Southern Sudan unless it satisfies the following conditions:

- (a) the judgement, decree or order is made by a competent judicial tribunal in accordance with the rules of international law relating to jurisdiction which are applicable in the country where the judgement or order was made and which became final in accordance with that law;
- (b) the parties to the suit were duly summoned and duly represented;
- (c) the decree or order does not conflict with a prior decree or order made by Courts of Southern Sudan;
- (d) the decree or order is not contrary to public order or morality in Southern Sudan;
- (e) the decree or order has not been obtained by fraud; and,
- (f) the decree or order does not contain a claim founded on a breach of any law in force in Southern Sudan.

#### **Section 288. Presumption as to Foreign Judgement**

The Court shall presume, on the production of any document purporting to be a certified copy of a foreign judgement, that such judgement was pronounced by a foreign Court of competent jurisdiction, unless the contrary appears on the face of the record, but such presumption may be rebutted by proving want of jurisdiction.

#### **Section 289. Action on a Foreign Judgement**

Where a person is entitled to the benefit of a foreign judgement as against any other person who is resident in Southern Sudan or has property therein, he or she may, if such judgement is executory in the country in which it was given, institute a suit for the enforcement of such judgement.

## Chapter XXXII

### Judicial Review of Administrative Decisions

#### Section 290. Procedure on Application

- (1) An application to review an administrative decision shall lie with the High Court and shall be made in the form of a petition which includes, in addition to the general particulars required in the plaint, a statement of the nature of the decision subject to review and the grounds thereof.
- (2) Where the decision required to be reviewed may be appealed to a competent administrative authority the application shall specify the result of such appeal and the date thereof.
- (3) The application shall be accompanied by a copy of the decision required to be reviewed.

#### Section 291. Time for Review

- (1) An application for review shall be made within sixty days from the publication of the decision in the Gazette or in departmental circulars, or from the date of communication of the decision to the interested parties whichever is earlier.
- (2) Where the decision may be appealed to a competent administrative authority, time commences from the date of final disposal of the appeal.
- (3) The time specified in subsections (1) and (2) above, shall not begin to run where a notice under section 33(2) of this Act, was given to the Minister of Legal Affairs and Constitutional Development.

#### Section 292. Stay of Execution

- (1) The submission of an appeal to the Court shall not operate to stay the execution of the decision appealed against; *provided that*, the Court may, on application of the parties concerned, order the stay of execution if it is of the opinion that the results of the execution may be irreparable.
- (2) Notwithstanding the provisions of subsection (1) above, no stay of execution shall be made in respect of any decision or order made under any legislation aiming at the protection of public interest.

#### Section 293. Condition for Accepting the Application

An application for review shall not be accepted in the following circumstances:

- (a) where the applicant has no personal interest;

- (b) where the applicant has not exhausted all the modes of redress available to him or her by law;
- (c) unless the application is based on incompetence of the body issuing it or is based on an abuse of authority or a defect in form or a departure from the law or a mistake in the application or interpretation of law.

#### **Section 294. Claims for Compensation**

The High Courts are competent to decide upon claims for compensation for damages arising out of administrative decisions without limit as to value and whether the claim was submitted as an original claim or incidental to a claim for setting aside the administrative decision.

#### **Section 295. Procedure in Hearing the Application**

In the submission, hearing and disposal of the application, the same rules and procedure shall apply as in a civil suit except the sections provided for in Chapter XX of this Act.

#### **Section 296. Execution of the Decree**

No decree setting aside an administrative decision or the award of damages arising out of such action shall be executed until it becomes final, in the exhaustion of available modes of objection or where the time for such objection has expired.

## **Chapter XXXIII**

### **Conflict of Jurisdiction**

#### **Section 297. Authority of the Supreme Court**

The Supreme Court shall be competent to determine the issue of jurisdiction where a conflict arises between two levels of Courts or where such Courts refuse to assume jurisdiction.

#### **Section 298. Procedure on Application**

An application under section 297 above, shall be made to the Supreme Court which shall include in addition to the general particulars required in the plaint, a statement of the subject matter, and sufficient particulars as to the suit in respect of which conflict of jurisdiction or the refusal to assume jurisdiction has taken place.

### **Section 299. Effect of Application**

On the presentation of the application to the Supreme Court, the suit in respect of which the conflict of jurisdiction has arisen shall be stayed.

### **Section 300. Disposal of the Application**

The Court shall dispose of the application on the documents contained in the record of the application; nevertheless, the Court may give leave to the parties to file written statements or may summon them to make statements or give explanations.

## **Chapter XXXIV**

### **Interpretation of the Constitution and Other Statutory Laws**

#### **Section 301. The Application for Interpretation**

- (1) The Supreme Court is competent to interpret the ICSS, State Constitutions and any laws on the application of the Minister.
- (2) The Minister may, of his or her own motion or on the application of the interested parties, submit an application for interpretation, if he or she is satisfied that the nature and importance of the provisions submitted require such interpretation to ensure consistency in their application.

#### **Section 302. Contents of the Application**

The application shall contain a statement as to the provisions submitted for interpretation and the grounds which necessitate such interpretation.

#### **Section 303. Disposal of the Application**

The Court shall hear and determine the application on the documents contained in the record; *provided that*, the Court may call on the Minister to file further statements or explanations.

## **Chapter XXXV**

### **Objection Against the Constitutionality of Laws Constitutional Remedies**

#### **Section 304. Suit Regarding Constitutionality**

A suit to determine the constitutionality of any law or subsidiary legislation may be instituted in the Supreme Court by a petition which shall include in addition to the general particulars required in the plaint, a statement of the law or subsidiary legislation which is the subject matter of the petition, the grounds for alleging its contravention of the ICSS, and the right or interest of the petitioner which is directly affected thereby.

#### **Section 305. The Plea of Unconstitutionality**

- (1) If an assertion of the unconstitutionality of any law or subsidiary legislation is raised before any Court, and such Court is satisfied of the genuineness of the plea, it shall fix a time within which the party interested may institute a suit in the Supreme Court.
- (2) If a suit is instituted within the time so fixed, the Court before which the plea is raised shall stay the proceedings pending the final disposal of the suit in the Supreme Court and if no suit is instituted within the time so fixed the plea shall be considered void.

#### **Section 306. Constitutional Remedy**

An application for a constitutional remedy shall lie with the Supreme Court and shall be in the form of a petition which includes, in addition to the general particulars required in the plaint, the following additional information:

- (a) a statement of the right alleged to have been infringed and of the facts alleged to constitute the infringement;
- (b) a statement as to the time and place of such facts;
- (c) a declaration that the applicant to the best of his or her knowledge and belief, has no other sufficient remedy whether by way of appeal or other civil or criminal proceedings and a short statement of the grounds for such belief; and,
- (d) a statement of the value of the relief claimed.

#### **Section 307. Amendment and Rejection of Petition**

- (1) Where the petition is not drawn up in the manner prescribed, the Court may reject or return it for amendment within such time as may be fixed by the Court.
- (4) If the petition is not amended within the time fixed by the Court in accordance with subsection (1) above, the petition shall be rejected.

### **Section 308. Dismissal of Petition**

The Court shall dismiss the application, and record the reasons for such dismissal, where it appears to the Court that:

- (a) that the applicant has no right or direct interest in initiating the suit;
- (b) that the petition does not contain any justifiable issue to be decided;
- (c) that the petition does not disclose any clear infringement of any constitutional right or that the applicant has not exhausted all the remedies available to him or her.

### **Section 309. Admitting the Suit**

Where the petition is presented in the proper form, the Court shall make an order allowing it and directing payment of the prescribed fees unless the applicant is excused from payment by a Court order.

### **Section 310. Notices**

The GoSS shall be regarded as an interested party in any constitutional suit or petition. Notices of such suits shall be served on the Minister of Legal Affairs and Constitutional Development.

### **Section 311. Joinder of Other Persons**

Where it appears to the Court that a person or group of persons has a right or a direct interest in the result of the suit or petition, the Court may, at any stage of the suit or petition, direct that such person or group of persons be joined as a defendant or defendants.

### **Section 312. Procedure**

In a suit for declaration of the unconstitutionality or for the protection of constitutional rights, the same procedure as provided in this Act for hearing and determining a civil suit, shall be followed except with respect to the notice provided for in section 33(2) of this Act.

### **Section 313. Disposal of the Suit**

Where it appears to the Court that the matter in issue can be determined on the written submissions of the parties, the Court may decide the matter based on such submissions unless one of the parties applies to be heard in person or by an advocate.

### **Section 314. Reference of Questions of Facts to Trial Courts**

- (1) If a suit is instituted under section 305(2) of this Act, and it appears to the Court that the parties are at issue on any question which can be determined in the trial Court, it may refer such question to such Court for hearing and determination.



- (2) The Court to which any question of fact has been referred under subsection (1) above, shall hear and determine such question and return the record to the Supreme Court.
- (3) On receiving the proceedings, the Supreme Court shall proceed to hear and determine the constitutional question and any other questions not referred to the trial Court.

### **Section 315. Judgement**

The judgement shall contain the decision of the Court on the constitutional question, the relief awarded, if any, and other orders made by the Court.

### **Section 316. Effect of Judgement**

The judgement of the Supreme Court on questions of constitutionality of laws shall be published and shall be binding.

### **Section 317. Procedure for Determination of Some Objections**

The procedure set out in this Chapter, save the exception provided for in section 316 above, shall be adapted to such extent as may be appropriate in determining objections based on the allegation that subsidiary legislations are ultra vires.

## **Chapter XXXVI**

### **Rules Committee**

#### **Section 318. Formation and Powers of Rules Committee**

- (1) A committee to be known as the “Rules Committee,” shall be established consisting of the President of Supreme Court, the Minister of Legal Affairs and Constitutional Development, and Deputies to the President of the Supreme Court, and two Judges of Court of Appeal to be nominated by the President of Supreme Court.
- (2) The Rules Committee may from time to time make rules regulating the procedures of the Courts.
- (3) The Rules Committee may from time to time make any procedural rules not provided for in this Act if the ends of justice so demand.
- (4) Rules relating to assessment and payment of fees shall require the consent of the Minister of Finance and Economic Planning.

### **Section 319. Matters for which Rules may be Provided**

- (1) Rules shall not be inconsistent with the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1) above, the Rules Committee may regulate all or any of the following matters:
  - (a) the serving of summons, notices and other processes by post or in any other manner and proof of such service;
  - (b) security for costs;
  - (c) the valuation of suits, appeals and other proceedings for the purpose of this Act;
  - (d) the taking of evidence on oath in proceedings before arbitrators;
  - (e) the assessment and payment of fees payable with reference to any suit, proceedings, appeal, order, notice or others or any business conducted by or before the Court or an official of the Court;
  - (f) the costs, charges and expenses to be allowed to parties, witnesses, experts, arbitrators, agents, advocates and others;
  - (g) the administration of oaths, legal notifications, certification, attestation and record by or before a Court or an official of the Court;
  - (h) the proof of any matter by affidavit; and,
  - (i) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

## **Chapter XXXVII**

### **Miscellaneous Provisions**

#### **Section 320. Payment to an Agent**

The Court shall not deliver to an agent or an advocate, on behalf of another person or client any sum of money unless he or she produces an authenticated authority which empowers him or her to receive such payment.

#### **Section 321. General Authority**

An authority to represent another person as agent or advocate in any legal proceedings does not of itself authorize the agent or advocate to receive payment of money on behalf of his or her principal or client.

#### **Section 322. Authority Made Outside Southern Sudan**

Where the authority is made in a foreign country, it shall conform to the authentication proceedings of that country and shall be certified by Southern Sudan liaison office in that country.

**Section 323. Costs of Proceedings**

- (1) Where any expense is incurred by an official of the Court in the execution of any process ordered by the Court, such expense shall be borne in the first instance by the party on whose behalf the process is carried out, unless the Court otherwise directs.
- (2) The Court may before issuing any process, require the deposit of a sum of money sufficient to cover the expense of the execution of the process.

**Section 324. Sale of Perishable Property**

- (1) The Court may on such terms as it deems appropriate, order the sale of any movable property, which is perishable, being the subject matter of a suit or subject of an attachment or in the execution of a decree or which, for any other similarly compelling reason, it may be desirable to have it sold.
- (2) Before such order is made, notice of the application, if any, shall be given to any party who may be affected by the order, unless the Court otherwise directs.

**Section 325. Inter-Pleader Suit**

Where two or more persons claim adversely to one another the same debt, sum of money or right to movable or immovable property, which is in the possession of or under control of another person who claims no interest therein other than for charges and costs, and the possessor of the property is ready to pay or deliver such property to the rightful claimant, the possessor of the property may institute a suit of inter-pleader against all the claimants 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 or herself. The possessor of the property may pay such sum of money into Court or place such property at the disposal of the Court; *provided that*, where any suit is pending in which the rights of all parties can properly be decided, no such suit of inter-pleader shall be instituted.

**Section 326. Power of Court to Inspect**

The Court may at any stage of a suit inspect any property or thing which is in dispute before it.

**Section 327. Proceedings other than in a Suit**

Subject to the provisions of Chapters XXI and XXIII, herein, the Court before which the objection lies shall have the same powers as the Court of original jurisdiction in respect of suits instituted before it.

**Section 328. Saving of the Inherent Power of the Court**

- (1) The Court may, at any time correct any procedural error, take any measures or make any amendments as may be reasonable for the purpose of the determination of any question in controversy between the parties.
- (4) Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such order as may be necessary, for the ends of justice, or to prevent abuse of the process of the Court.

**THE RULES SCHEDULE**

- Rule 1. Affidavits**
- Rule 2. Commissions**
- Rule 3. Attestation of Documents**
- Rule 4. Protest**
- Rule 5. Documents**
- Rule 6. Fees**

The Rules

**Rule 1. Affidavit**

**(1) Admission of Affidavits**

- (a) Any Court may at any time for sufficient reasons to be recorded in the trial of the suit, order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be admitted at the hearing.
- (b) Where it appears to the Court that either party desires the production of a witness for cross-examination and that such witness can be produced, an order may not be made authorizing the evidence of such witness by affidavit.
- (c) Where evidence is given by affidavit, the Court may, at the instance of either party, order the attendance for cross-examination of the witness.

**(2) Matters to which the Affidavit Should be Confined**

Affidavits shall be confined to such facts as the witness is able of his or her own knowledge to prove, except in interlocutory application, in which case statement of his or her belief may be admitted; *provided that*, the grounds thereof are stated.

**(3) Oath or Affirmation**

- (a) Where any person desires to swear or affirm any matter he or she shall produce to the Court such matter in writing.
- (b) The form of oath or affirmation shall be that in use in the Court
- (c) After the oath has been taken or the affirmation made the writing shall be read through by the person producing it or in his or her hearing and shall be signed by him or her.

**(4) Certificate by the Court**

- (a) The Judge shall endorse upon the writing a certificate under his or her hand and the seal of the Court that the matter therein was sworn to or affirmed, as the case may be, in his or her presence and subscribed by the person taking the oath or making the affirmation upon the date of such oath or affirmation.
- (b) Where the certificate is required to be made in special form for use abroad, the Judge may make the certificate in that form.

**(5) Commissioner of Oaths**

- (a) The President of Supreme Court may from time to time by commission signed by him or her appoint any person being a practicing Advocate to be a Commissioner for Oaths and may revoke any such appointment.
- (b) For the purposes of this Rule, oath includes customary evidential oath.
- (c) Every Commissioner for Oaths shall, by virtue of his or her commission be deemed for all purposes of administration of oath, taking of affidavits and attestation of documents to be an official of the Court and for such purpose may exercise all the powers of any Court in the same manner as a Judge thereof; *provided that*,
  - (i) a Commissioner for Oaths shall not affix the seal of any Court but shall instead where necessary affix a seal approved by the Chief Justice;
  - (ii) fees prescribed for the administration of an oath, taking of an affidavit or attestation of documents shall be paid to and be retainable by a Commissioner for Oaths in respect of any oath administered, affidavit taken or document attested by him or her.

## **Rule 2. Commissions**

### **(1) Power of Court to Issue Commission**

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

- (a) examine any person;
- (b) make local investigations and valuation,
- (c) examine or adjust accounts, and/or,
- (d) make partitions.

### **(2) Where Court may Issue Commission to Examine Witnesses**

- (a) The Court may at any time before passing a decree issue a commission for the examination of:
  - (i) any person resident, within the local limits of its jurisdiction who is from sickness or infirmity unable to attend;
  - (ii) any person resident beyond such local limits; and/or,
  - (iii) any public servant who cannot in the opinion of the Court attend without detriment to the public service.
- (b) A commission for the examination of any person may be issued to any Court having jurisdiction in the place in which the person to be examined resides and the Court receiving a commission for the examination of any person shall examine such person or cause such person to be examined and when the commission has been duly executed it shall be returned together with evidence taken under it to the Court from which it was issued, unless the commission otherwise directs
- (c) Where on the application of any party evidence is taken on commission the opposing party shall, if it is practicable, be afforded an opportunity of cross-examining the witness giving the evidence, and such evidence shall subject to all just exceptions, be read as evidence in the suit and shall form part of the record.
- (d) When such party has not had the opportunity of cross-examining the witness, the evidence shall not, except for any special reasons to be recorded by the Court, be read as evidence in the suit or form part of the record.
- (e) In lieu of issuing a commission, the Court may issue a letter of request to examine a witness not within the Southern Sudan.

### **(3) Commission to make Local Investigations**

In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property or the amount of any profits or damages, the Court may issue a commission to such person as it deems appropriate directing him or her to make such investigation and to report thereon to the Court.

**(4) Commission to Examine or Adjust Accounts**

In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it deems appropriate directing him or her to make such examination or adjustment.

**(5) Court to give Commissioner Necessary Instructions**

The Court shall give to the Commissioner such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he or she may hold on the inquiry, or also to report to the Court his or her own opinion on the point referred for his or her examination.

**(6) Commission to Make Partition**

- (a) Where a preliminary decree for partition of immovable property has been passed the Court may issue a commission to such person as it deems appropriate to report to the best method of effecting a partition and what sum of money, if any, ought to be paid for equality of partition by a co-owner to any other co-owner.
- (b) The Commissioner shall, after considering the proposals for partition, if any, made by the parties, submit his or her report in writing to the Court.
- (c) The Court after hearing any objections which the parties may make to the report, shall confirm, vary or set aside the report.
- (d) Where the Court confirms or varies the report it shall pass a decree in accordance with the report as confirmed or varied. Where the Court sets aside the report it shall either issue a new commission or make such other order as it thinks fit.

**(7) Weight of Evidence Taken by Commission**

- (a) If a commission is issued under rule 3, 4 or 6 the proceedings and report of the Commissioner shall be evidence in the suit and shall form part of the record but if the Court has reason to be dissatisfied with them, it may direct further inquiry as it deems appropriate.

- (b) The Court either of its own motion or on the application of any of the parties may examine the Commissioner in a closed Court, touching any of the matters mentioned in his or her report or as to the manner in which he or she has made the investigation.

**(8) Power to Appoint more than one Commissioner**

The Court may, in the cases provided for in rule 3,4 or 6, issue a commission to more than one person, and in that event, if the Commissioners cannot agree, they shall prepare and sign separate reports.

**(9) Expenses of Commission**

Before issuing any commission under this Rule, the Court may order such sum as it thinks reasonable towards the expenses of the commission and the remuneration of the Commissioner to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

**(10) Parties to Appear before Commissioner**

- (a) Where a commission is issued, the Court shall direct that the parties to the suit shall appear before the Commissioner and, subject to the provisions of this Act, may direct that a summons be issued to any person to appear as a witness or to produce any document before the Commissioner.
- (b) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

*Explanation* - In this Rule, the term "Commissioner" means the person to whom a Commission is issued by a Court.

**Rule 3. Attestation of Documents**

**(1) Witness Requirement**

The attestation of a document shall be made by the judge in the presence of two witnesses who shall be adults, resident in Southern Sudan, having no interest in the document and neither of them being the father, mother, son, daughter, husband or wife of any party to the documents.

**(2) Establishing Identity**

Where the judge does not know the person whose signature is to be attested such person shall be accompanied by the Chief or other credible witness for the purpose of establishing



his or her identity. The same person may be a witness of identity and a witness of the attestation.

**(3) Understanding Document**

The judge shall satisfy himself or herself that the person whose signature is attested fully understands the purpose of the document.

**(4) Copies of Documents**

Where any person desires to have a certificate that any document is an exact copy of another document he or she shall produce the two documents to the Court, and the judge shall satisfy himself or herself that the two documents are exact copies of one another, and shall write upon each, a certificate to that effect under his or her signature; and one of the copies shall be filed in the Court and the other shall be returned to the person producing the document.

**Rule 4. Protests**

**(1) Appointment of Protest Clerk.**

The High Court judge shall appoint in such Courts of the Circuit as he or she thinks necessary a person to act as protest clerk for the purpose of presenting protesting and registering protests of Acts.

**(2) Application for Protest**

Where the holder desires to protest a Act for non-acceptance or non-payment he or she shall deliver it to the Court within whose local limits of jurisdiction where the Act is payable to the person against whom the protest is to be made has a dwelling place or a place of business and the Court shall not, if the prescribed formalities have been complied with, refuse to make the protest, except where the holder applies for protest for non-payment when the Act is not then due.

**(3) Manner and Place of Presentment.**

- (a) Presentment for protest for non-acceptance shall be made at the dwelling place or place of business of the drawer or other person against whom the protest is to be made;
- (b) Presentment for protest for non-payment shall be made:
  - (i) at the place of payment specified in the Act; or

- (ii) where no such place is specified or, where such place is specified but the person against whom the protest is to be made cannot be found at the dwelling place or place of business of the drawer, acceptor for honour or other person charged with the duty of payment.
- (c) If the person against whom the protest is to be made is not found at his or her dwelling place or place of business the protest clerk shall take appropriate measures to find him or her.

**(4) Time at which Protest to be Made**

- (a) The protest clerk shall present the Act to the person against whom the protest is to be made within twenty-four hours against the delivery of the Act to the Court, this is exclusive of any non-business day or part of a non-business day.
- (b) Where the presentment for protest is required to be made at a place outside the town in which the Court is situated, the judge shall allow such further time as is necessary for the journey to such place and may appoint some person other than the protest clerk to present and protest the Act. Where such other person is so appointed his or her appointment shall be recorded in the instrument of protest under the hand of the judge and seal of the Court.
- (c) The presentment for protest shall be made at a reasonable time on a business day.

**(5) Where Acts are to be Protested**

- (a) Protest shall be made only in consequence of refusal to accept or pay by the person to whom the presentment is made.
- (b) If such a person consents to accept or tenders payment but refuses to pay the protest fees, the Act shall be protested only after reference to the holder and on the holder's directions, and if the protest is made the offer to accept the tender of payment shall be noted by the protest clerk in the instrument of protest.

**(6) Contents of Instrument of Protest**

The instrument of protest shall contain a literal transcript of the Act, of the acceptance, of the endorsement and of the directions, if any, thereon and summons to accept or pay. It shall set forth the presence or the absence of the party to whom the Act was presented, the grounds of refusal to accept or pay, the inability or refusal to sign and the declaration of protest by the protest clerk.

**(7) Copy to be Handed to Holder**

The instrument of protest shall be made in duplicate; one copy shall be handed to the holder, and the other filed in the Court.

**(8) Procedure Where the Person Cannot be Found**

Where the person against whom protest is to be made cannot be found, and neither his or her dwelling place nor place of business is known, the Act shall be treated as dishonoured and a copy of the instrument of protest shall be posted on the Court notice-board for thirty consecutive days.

**(9) Application to Promissory Notes**

The provisions of this Rule shall apply so far as possible to the protest of promissory notes for non-payment

**Rule 5. Documents**

**(1) Notice to Admit Documents**

Either party with the consent of the Court may by notice in writing call upon the other party to admit any document other than those excepted by law and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs.

**(2) Notice to Admit Facts**

(a) Any party with the consent of the Court may by notice in writing call upon any other party to admit, for the purposes of the suit only, any specific fact or facts, mentioned within a time fixed in such notice, and in case of refusal or neglect to admit within such time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs.

(b) The admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit.

**(3) Submission of Interrogatories**

(a) In any suit the plaintiff or defendant may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties.

(b) No party shall deliver more than one set of interrogatories to the same party without an order for the purpose.

(c) Interrogatories which do not relate to any matter in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the cross-examination of a witness.

- (d) Interrogatories proposed to be delivered shall be submitted to the Court for leave, and leave shall be given only to consider such interrogatories necessary either for fair disposal of the suit or for saving of costs.

**(4) Affidavit in Answer**

- (a) Interrogatories shall be answered by affidavit to be filed within fourteen days or within such other period as the Court may allow.
- (b) Any objection to answering any interrogatory may be taken in the affidavit in answer.

**(5) Using Answers to Interrogatories**

Any party may, at the trial of the suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others part or the whole of such answer. If answers not put in are so connected with those put in the last mentioned answers which ought not to be used without them, the Court may direct them to be put in.

**(6) Application for Discovery of Documents**

- (a) Any party may apply to the Court for an order directing any other party to any suit to make discovery on oath of all the documents which are or have been in his or her possession or power relating to any matters in question therein, where necessary either for disposing of the suit or for saving costs.
- (b) If the party from whom production of any document is sought objects, the objection may be taken with the reasons relied upon.

**(7) Inspection or Discovery**

Where the party from whom discovery of any document or inspection is sought objects the Court may, if satisfied that the decision on the objection depends on the determination of any issue or question in dispute in the suit, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

**(8) Non-compliance with Order for Discovery of Inspection**

Where any party fails to comply with the order to answer interrogatories, or for discovery or inspection of documents the Court may on the application of the other party:

- (a) dismiss the suit for want of prosecution where the defaulting party is the plaintiff;
- (b) strike out the defense where the defaulting party is the defendant.

**(9) Documentary Evidence**

- (a) Every document admitted in evidence shall be in the record and read and given a distinguishing number or mark, endorsed with the number of the suit, name of the person producing it, and the date on which it was produced and shall be signed by the judge.
- (b) Where a document relied on as evidence is considered by the Court to be inadmissible in evidence there shall be endorsed thereon the particulars mentioned in sub-rule (1) together with a statement of the reasons relied upon for rejection.

**(10) Impounding of Documents**

The Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in custody of the Court for such period and subject to such conditions as it deems appropriate.

**(11) Return of Document**

Any person, whether a party to the suit or not, desirous of receiving back any document produced by him or her in the suit shall, unless the document is impounded under sub rule 10, be entitled to receive back such document where a judgement which is not appeal-able is delivered or where the period during which an appeal ought to be lodged has lapsed.

**(12) Material Objects other than Documents**

The provisions of sub rules 9, 10, and 11, shall, so far as may be, apply to all other material objects produceable as evidence.

**Rule 6. Fees**

**(1) Fee Schedule and Payment**

- (a) In suits and proceedings before Civil Courts the fees set out in the schedule of fees shall be payable.
- (b) In suits such part of the fee as is specified in the aforesaid schedule shall be paid upon the admission of the plaint and the balance shall be paid on hearing provided that the total fees payable on plaint and hearing shall not exceed ten percent of the value of the suit.

**(2) Valuation of Suit**

- (a) For application of the provisions of this Act the value of a suit shall be calculated in accordance with section 56 herein.
- (b) Where the amount of the value of suit contains a fraction of a pound such fraction shall be treated as a pound.
- (c) The provisions of this sub rule shall apply so far as may be to the valuation of other proceedings under this Act or referred to in this Rule; provided that in appeals and reviews the amount of any costs adjudged shall not be taken into consideration.

**(3) Fees Where there is no Hearing**

Where the claim is not disputed and there is no formal hearing no fee shall be charged other than the fee upon plaint.

**(4) Fees in Suits Where Part of the Claim is Abandoned or Admitted**

Where in any suit part of the claim is abandoned or admitted after payment of the fee payable upon plaint, but before the fee payable on hearing has been paid, the total fee payable in the suit shall be the aggregate of half the percentage fee on the value of the original claim and half the percentage fee on the value of that part of the suit which is disputed; *provided that*, in suits for the sale or foreclosure of immovable property, the total fee payable shall be the scale percentage on the value of that party of the suit which is disputed and not as above stated in this rule.

**(5) Fees Where the Value of the Decree Exceeds amount Claimed**

Where in any suit or appeal the value of the decree exceeds the amount claimed or the amount that at which the relief was valued, further fees payable in accordance with this Rule shall be paid by the plaintiff or appellant as the case may be and the decree shall not be executed until such fees have been paid.

**(6) Who Should Pay Fees**

- (a) The fees payable upon any proceeding shall, unless the Court otherwise directs, be paid in the first instance by the person on whose behalf the proceedings are taken; provided that:
  - (i) where an application under this Act, to set aside a decree has been granted, the Court shall direct whether the plaintiff or the defendant shall pay the balance of the fees (if any) payable on hearing;
  - (ii) in bankruptcy and winding-up proceedings the Court may direct that payment of fees other than the fees payable on a petition for adjudication or winding-up shall be postponed until there are assets available in the hands of the receiver or liquidator for the payment of such fees.

- (b) Fees paid in issues in bankruptcy and winding-up proceedings and fees paid by a creditor on whose petition an order of adjudication or winding-up is made shall, unless the Court otherwise directs, form part of the cost of administration.

**(7) Receipts to be Given**

- (1) A receipt shall be given for every fee paid.
- (2) Where a fee is paid in respect of any document a note shall be endorsed on the document stating that such fee has been paid quoting the receipt number.
- (3) Where a fee is paid in respect of any suit, appeal, or execution, a statement to that effect shall be endorsed on the record.

**(8) Power to Remit or Postpone Payment of Fees**

Subject to the provisions of this Act the Court may remit or postpone the payment of any fees upon proof of indigence of the person by whom such fees are payable.

**(9) Power to Return Fees**

The appellate Court may, if it considers that the objection was occasioned by the mistake of the Court from which the objection was made, in its discretion order a return of all or part of the fee paid upon such objection.

**(10) Enforcement of Payment**

The payment of any fee may be enforced in like manner as a decree for the payment of money.

**(11) Maximum Fee of Suit of Objection**

The maximum fee payable in any suit or objection shall be ten percent of the value.

**(12) Suits and Objections by Paupers**

- (a) Subject to the following sub rules any suit or objection may be brought by a pauper.

- (b) For the purposes of this Rule, a pauper is a person who is not possessed of sufficient means to enable him or her to pay the fees prescribed for the hearing of the suit or objection as the case may be.

**(13) Contents of Application to Sue as Pauper**

- (a) The application for permission to sue as a pauper shall be in writing and shall be accompanied by:
  - (i) list of any movable or immovable property belonging to the petitioner with its estimated value;
  - (ii) a certificate signed by two persons and authenticated in such manner as the Court may require that the petitioner is a pauper; and,
  - (iii) his or her plaint or memorandum of objection as the case may be.
- (b) The Court may require the petitioner to make a declaration on oath or an affirmation as to the property which he or she possesses or as to his or her inability to pay the prescribed fees.
- (c) If the Court is satisfied that the petitioner is not a pauper it shall reject the application.

**(14) Rejection of Application**

Where the application is in the proper form and is not rejected under rule 13(c) above, the Court shall summon the defendant to appear and show cause why the petitioner should not be allowed to sue as a pauper.

**(15) Examination of Petitioner and Defendant**

Upon the day fixed for the defendant to appear and show cause, the Court shall examine the petitioner and the defendant with regard to the application and as to the prospect of success in the suit.

**(16) Decision on Application**

After examination mentioned in rule 15 is concluded, the Court shall make its order allowing or rejecting the application.

The Court shall reject the application.

- (a) where the applicant is not a pauper; or
- (b) where he or she has been guilty of any act of bad faith in the matter of the application; or,
- (c) where his or her allegations do not show that he or she has a reasonable prospect of success in the suit.

**(17) Dispaupering**



The Court may on the application of the defendant or of its own motion after giving notice to the plaintiff order the plaintiff to be dispaupered:

- (a) if he or she is guilty of vexations or improper conduct in the course of the suit;
- (b) if it appears that his or her means are such that he or she ought not to continue to sue as a pauper; or,
- (c) if he or she has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject matter.

**(18) Time for Payment of Fees**

Where the Court orders the plaintiff to be dispaupered it shall fix a time within which the plaintiff shall pay the prescribed fees, and if such fees are not paid within such time, the Court shall dismiss the suit.

**(20) Objection by Pauper**

Any person entitled to prefer an appeal may present an application to the appellate Court for permission to appeal as a pauper, and the foregoing sub rules of this Rule shall so far as may be, apply; provided that the Court shall reject the application, if, upon a perusal thereof and of the judgement and decree appealed from, it sees reasons to think that the decree is contrary to law or is otherwise erroneous or unjust.

**(21) Inquiry into Pauperism**

When there is an application to object as a pauper, the inquiry into the pauperism of the applicant may be made either by the appellate Court or under the order of the appellate Court by the Court from whose decision the objection is preferred; *provided that*, if the applicant was allowed to sue as a pauper in the Court from whose decree the objection is preferred, no further inquiry in respect of his or her pauperism shall be necessary, unless the appellate Court otherwise directs.

**Note:**

Where the fee payable is stated to be a percentage, such percentage shall be calculated on the value of the suit or proceeding unless it is otherwise stated.