

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 28 – ORIGINATING SUMMONS PROCEDURE

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

Remarks

1. Application (O. 28, r. 1)

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any written law; and subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as they apply in relation to other summonses.

1A. Affidavit evidence (O. 28, r. 1A)

(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the Court the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in the Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the Court and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in the Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

2. Fixing time for attendance of parties before Court (O. 28, r. 2)

(1) In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A, obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 12 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 10 in Appendix A, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

3. Notice of hearing (O. 28, r. 3)

(1) Not less than 14 days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 8 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party. (L.N. 404 of 1991)

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons which is in Form No. 10 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for the hearing.

(3) Where notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders of directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek. (L.N. 404 of 1991)

(4) If the hearing of an originating summons which is in Form No. 8 or 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, he must, not less than 7 days before the resumed hearing of the summons, serve on every other party a notice specifying those orders and directions. (L.N. 404 of 1991)

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on “every other party” he must –

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby. (L.N. 404 of 1991)

3A. Originating summons to be heard in open court (O. 28, r. 3A)

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Rec 15

An originating summons must be heard in open court unless the Court otherwise directs.

4. Directions, etc., by Court (O. 28, r. 4)

(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or order the cause or matter begun by it to be transferred to a District Court or some other court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it

may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a ~~summons for directions~~ case management summons under that Order.

Rule 146
Consequential

(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matters stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings. (L.N. 404 of 1991)

5. Adjournment of summons (O. 28, r. 5)

(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party and rule 3(4) shall apply in relation to any such adjourned hearing. (L.N. 404 of 1991)

6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6)

Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service of the summons, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

7. Counterclaim by defendant (O. 28, r. 7)

(1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

8. Continuation of proceedings as if cause or matter begun by writ

(O. 28, r. 8)

(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a ~~summons for directions~~ **case management summons** in the proceedings and that order were one of the orders to be made thereon.

Rule 147
Consequential

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

9. Order for hearing or trial (O. 28, r. 9)

(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a District Court or some other court or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.

(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2) and Order 34, rules 1 to 8, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under

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this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with any necessary modifications and with the further modification that for references therein to the ~~summons for directions~~ **case management summons** there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

Rule 148
Consequential

10. Failure to prosecute proceedings with despatch (O. 28, r. 10)

(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

11. Abatement, etc., of action (O. 28, r. 11)

Order 34, rule 9, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

(Enacted 1988)