

Rules of the High Court (Amendment) Rules 2008

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

Order 42 – JUDGMENTS AND ORDERS

Remarks:

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

Remarks

JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES

1. Form of judgment and interest thereon, etc. (O. 42, r. 1)

(1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form. (See App. A, Forms No. 39-46, 48, 49)

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) An order other than a consent order to which rule 5A applies must be marked with the name of the judge or master by whom it was made and must be sealed.

1A. Judgment in favour of reversioner for detention of goods (O. 42, r. 1A)

(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph “partial owner” (部分擁有人) means one of two or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

2. Judgment, etc. requiring act to be done: time for doing it (O. 42, r. 2)

(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order

accordingly.

3. Date from which judgment or order takes effect (O. 42, r. 3)

- (1) A judgment or order of the Court takes effect from the day of its date.
- (2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.
- (3) A judgment or order shall take effect for the purposes of this rule notwithstanding that the reasons therefor may not be given until a later date.

4. Orders required to be drawn up (O. 42, r. 4)

- (1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.
- (2) An order –
 - (a) which –
 - (i) extends the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act; or
 - (ii) grants leave for the doing of any of the acts mentioned in paragraph (3); and
 - (b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,need not be drawn up unless the Court otherwise directs.
- (3) The acts referred to in paragraph (2)(a)(ii) are –
 - (a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;
 - (b) the amendment of a writ of summons or other originating process or a pleading;
 - (c) the filing of any document;
 - (d) any act to be done by an officer of the Court other than a solicitor;
 - (HK)(e) the extension of the validity of a writ;
 - (HK)(f) the abridgement of time for service of a summons;
 - (HK)(g) the adjournment of the hearing of a summons;
 - (HK)(h) the adjournment of the trial of an action;
 - (HK)(i) an order made by a Judge ordering that an application or summons shall be heard by a master or a similar order made by a master that an application or summons shall be heard by a Judge;
 - (HK)(j) leave to inspect and take copies of documents filed in the Registry;
 - (HK)(k) the transfer of an action from one list to another;
 - (HK)(l) the vacation or variation of the dates upon which an action has been set down to be heard; and

(HK)(m) the admission of a person as a solicitor or a barrister of the High Court under the Legal practitioners Ordinance (Cap. 159), and any order made under rule 13 of the Admission and Registration Rules (Cap. 159 sub. leg.). (25 of 1998 s. 2)

5. Drawing up and entry of judgments and orders (O. 42, r. 5)

(1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered in the book kept for the purpose by the Registrar.

(2) The party seeking to have such a judgment entered must draw up the judgment and present it to the Registrar for entry.

(3) A party presenting a judgment for entry must produce any certificate, order or other document needed to satisfy the Registrar that he is entitled to have the judgment entered.

(4) On entering any such judgment the Registrar shall file the judgment.

(5) Every order made and required to be drawn up must be drawn up by the party initiating the application upon which the order was made and if that party fails to draw up the order within 7 days after it is made any other party affected by the order may draw it up. (L.N. 103 of 1994)

(6) The order referred to in paragraph (5) must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the Registrar the order, after it has been sealed, shall be returned to the party producing it and the copy shall be lodged in the Registry.

5A. Consent judgment and orders (O. 42, r. 5A)

(1) Subject to paragraphs (2), (3), (4) and (5), where all the parties to a cause or matter are agreed upon the terms in which a judgment should be given, or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5.

(2) This rule applies to any judgment or order which consists of one or more of the following –

(a) any judgment or order for –

- (i) the payment of a liquidated sum, or damages to be assessed, or the value of goods to be assessed;
- (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or the agreed value;
- (iii) the possession of land where the claim does not relate to a dwelling-house;

- (b) any order for –
 - (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;
 - (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
 - (iii) the stay of proceedings upon terms which are scheduled to the order but which are not otherwise part of it (a “Tomlin order”);
 - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that the money due under judgment is paid by instalments specified in the order;
 - (v) the setting aside of a judgment in default;
 - (vi) the transfer of any proceedings to the District Court **or the Lands Tribunal**;
 - (vii) the payment out of money in court;
 - (viii) the discharge from liability of any party;
 - (ix) the payment, taxation or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding sub-paragraphs apply, for –
 - (i) the extension of the period required for the service or filing of any pleading or other document;
 - (ii) the withdrawal of the record;
 - (iii) liberty to apply, or to restore.

Rule 268
Consequential
Amendment

(3) Before any judgment, or order to which this rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as “By Consent” and it must be indorsed by solicitors acting for each of the parties.

(4) This rule shall not apply to any judgment or order in proceedings which are pending in the Admiralty jurisdiction or in the Commercial List.

(5) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a litigant in person or a person under a disability.

5B. Reasons for judgment or order (O. 42, r. 5B)

(HK)(1) A Court shall give the reasons for any decision either at the time the judgment or order is pronounced or, where it is at that time announced that the reasons will be given at a later date, at such later date as may be fixed.

(2) Where the judgment or order is not pronounced on the day on which the hearing is concluded or where a decision is pronounced but it is announced in accordance with paragraph (1) that reasons therefor will be given at a later date, the Court may state that the judgment or order and the reasons therefor, as the case may be, will be recorded in writing.

(3) Where a date has been fixed for delivery of a written decision or of written reasons notice shall be given to the parties, but it shall not be necessary for them to appear by counsel or in person.

(4) Where it has been announced that a judgment or order and reasons therefor or the reasons for a judgment or order previously pronounced will be recorded in writing, the Court may on the date fixed, instead of reading in full the judgment or order and reasons therefor or the reasons, as the case may be, supply copies thereof in accordance with paragraph (5). Thereupon any judgment or order contained in the writing shall be deemed to have been pronounced for the purposes of rule 3.

(5) Where the judgment or order and reasons therefor or the reasons are given at a later date and, being recorded in writing, are not read in full, the Court shall –

- (a) hand down a copy thereof for each of the parties and endorse the record accordingly;
- (b) lodge a copy thereof in the High Court Library; and (25 of 1998 s. 2)
- (c) make a copy thereof available for public inspection in the Registry.

(6) Where a written decision is given pursuant to this rule the Court may make therein an order nisi as to costs and, unless an application has been made to vary that order, that order shall become absolute 14 days after the decision is pronounced.

(7) Where a court consisting of more than one judge sits to deliver pursuant to this rule a decision and reasons for a decision previously pronounced, it shall be sufficient if at least one of the judges who conducted the hearing is present.

(8) Nothing in this rule shall affect the provisions of Order 63 rule 4.

(Enacted 1988)