

Rules of the High Court (Amendment) Rules 2008

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

Order 78 – DISTRICT COURT PROCEEDINGS TRANSFERRED OR REMOVED TO COURT OF FIRST INSTANCE

Remarks

1. Application and interpretation (O. 78, r. 1)

(1) This Order applies where an order has been made under section 41 or 42 of the District Court Ordinance (Cap. 336), for the transfer, or under section 15 of the Crown Proceedings Ordinance (Cap. 300), for the removal, of proceedings from ~~a district court~~ the District Court to the Court of First Instance. (25 of 1998 s. 2; 28 of 2000 s. 45)

Rule 276
Consequential
Amendment

(2) Where only the proceedings on a counterclaim are transferred, this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.

(3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the ~~district court~~ District Court otherwise than by writ, be construed as references to the applicant and the respondent respectively.

Rule 276
Consequential
Amendment

2. Duties of officer (O. 78, r. 2)

On receipt by the Registrar of the documents ~~referred to in section 44 of the District Court Ordinance (Cap. 336)~~ relating to the transfer or removal, the Registrar must forthwith – (L.N. 356 of 1988)

Rule 277
Clarification

- (a) file the said documents and make an entry of the filing thereof in the cause book,
- (c) give notice to all parties to the proceedings in the ~~district court~~ District Court that the action is proceeding in the Court of First Instance and that the defendant is required to acknowledge service of the notice in writing.

(25 of 1998 s. 2)

3. Acknowledgment of service (O. 78, r. 3)

(1) The defendant must, within 7 days after receipt of the notice referred to in rule 2, acknowledge service ~~thereof in accordance with Order 12, rules 1 to 4, and Order 12, rules 1 and 4, shall apply as if the proceedings transferred or removed were an action begun by writ~~ in writing of the notice of transfer or removal.

Rule 278

Remarks

(2) Where the defendant has not, before the proceedings are transferred or removed to the Court, acknowledged service of the writ or the originating summons by which the proceedings were begun in the District Court, he shall file an acknowledgement of service in accordance with Order 12, rules 1, 3, 5 and 9 within 14 days after receipt of the notice referred to in rule 2.

Rule 278
Clarification

4. Judgment on failure to give notice of intention to defend (O. 78, r. 4)

(1) If the defendant fails, or all the defendants (if more than one) fail, to give notice of intention to defend within the period prescribed by ~~rule 3~~ **rule 3(2)**, the plaintiff, after having caused an address for service to be entered in the cause book, may, with the leave of the Court, enter judgment against the defendant or defendants, as the case may be, with costs.

Rule 279
Consequential
Amendment

(2) An application for leave under this rule must be made by summons which must, notwithstanding anything in Order 65, rule 9, be served on the defendant, and the address for service of the defendant shall be his address for service in the proceedings in the ~~district court~~ **District Court**.

Rule 279
Consequential
Amendment

5. ~~Summons for directions~~ Case management summons or summary judgment (O. 78, r. 5)

Rule 167
Consequential
Amendment

(1) ~~Where a defendant gives notice of intention to defend in the action the plaintiff must, within 7 days after such notice is given~~ **Unless the plaintiff has entered judgment against a defendant under rule 4(1) or has entered judgment (final or interlocutory) or applied for judgment against a defendant under Order 19, the plaintiff must, within 7 days after a notice under rule 2 is given,** cause an address for service to be entered in the cause book and either –

Rule 280

- (a) take out and serve on the defendant a ~~summons for directions~~ **case management summons** returnable in not less than 21 days, or
- (b) except where the defendant is the Crown, make an application under Order 14, rule 1, for judgment against the defendant;

Rule 167

and where a summons is served on the defendant under sub-paragraph (a) Order 25, rules 2 to 7, shall, with any necessary modifications, apply as if that summons were a ~~summons for directions~~ **case management summons** under that Order.

(2) If the plaintiff fails either to take out such a summons, or make such an application, as is referred to in paragraph (1) within the period prescribed thereby the defendant or any defendant may take out such a summons or may apply for an order dismissing the action.

(3) On the hearing of an application to dismiss the action the Court may either dismiss the action on such terms as may be just or may deal with the application as if it were a ~~summons for directions~~ **case management summons**.

(Enacted 1988)