

## HIGH COURT RULES 1916

- 1 These are the High Court Rules 1916.
- 2 Every civil proceeding shall be instituted either by way of action, or by way of petition, or by way of motion, in accordance with the following Rules.
- 3 The following proceedings shall be instituted by way of action:
  - (a) Every proceeding for the recovery of debt or damages;
  - (b) Every proceeding for the recovery of land or chattels;
  - (c) Every proceeding for injunction, prohibition, or mandamus;
  - (d) [Repealed by SR 1962/72]
  - (e) Every proceeding which by the law for the time being in force in New Zealand must, if instituted in the High Court, be commenced by writ of summons or originating summons.
- 4 Every proceeding against the Crown shall be commenced by way of petition.
- 5 All other civil proceedings not being proceedings for a decree of divorce or nullity of marriage may be commenced by way of motion.

### *Actions*

- 6 Every action shall be commenced by filing with a Registrar of the Court a statement of claim intituled "In the High Court of Niue" setting forth the names and descriptions of the plaintiff and defendant, the nature of the cause of action, and the relief claimed. Forms similar to those in Schedule 1 may be used.
- 7 On the filing of the statement of claim the Registrar shall thereupon issue, under the seal of the Court, a summons to the defendant in form 1 of Schedule 2, requiring the defendant to appear at the trial of the action at the time and place mentioned in the summons. A copy of the statement of claim shall be annexed to the summons.
- 8 –
- 9 The time and place of the trial of the action shall be determined by the Registrar as he thinks fit, and shall be stated in the summons accordingly.
- 10 As against any defendant who consents to trial without summons, an action duly commenced by the filing of a statement of claim may be tried and determined without the issue or service of any summons.
- 11 No pleadings other than the statement of claim shall be required in any action.
- 12 The Court may require a plaintiff at or before the trial of the action to file a fuller and more explicit statement of his claim, and may stay further proceedings in the action until this has been done.
- 13 A plaintiff may at any time before or during the trial amend his statement of claim with the leave of the Court.

**14** (1) The summons to a defendant may, as the Registrar thinks fit, be served either by an officer of the Court or by the plaintiff or his agent.

(2) Proof of service may be made either by affidavit or by a witness at the trial.

**15** (1) The summons shall be served on the defendant in person.

(2) Where there are more defendants than one, a separate summons shall, except in the case of a firm of partners, be issued and served on each defendant.

**16** The summons may be served upon a corporation by leaving the same at any place of business of the corporation.

**17** When partners are sued as partners they may be sued either in the firm name or in the names of the partners, and in either case the summons may be served by delivering it to any one of the partners or by leaving it at any place of business of the firm.

**18** When a defendant is not in Niue but has an attorney or agent authorised to defend actions on his behalf, the summons may by leave of the Court be served upon such attorney or agent.

**19** The summons may be served anywhere in Niue but not elsewhere except in accordance with the provisions of these Rules for service outside Niue.

**20** If it appears to the Court that reasonable efforts have been made to effect service of the summons, and either that the summons has come to the knowledge of the defendant or that prompt personal service thereof cannot be effected, the Court may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Court thinks fit to impose.

**21** A summons may be served out of Niue by leave of the Court –

- (a) Where the cause of action or some material part thereof has arisen in Niue;
- (b) Where the subject-matter of the action is property situated in Niue;
- (c) Where it is sought to compel or restrain the performance of any act in Niue.

**22** Every application for an order for leave to serve a summons out of Niue shall be supported by evidence by affidavit or otherwise, showing in what place or country the defendant is or probably may be found, and whether the defendant is a New Zealand subject or not, and the grounds on which the application is made.

**23** If in any action a summons has become inoperative by reason of not being served in due time, or if for any other reason it is considered expedient to issue a further summons to the same defendant, a further summons may be issued accordingly in the same manner as if no previous summons had been issued.

**24** No action shall be deemed improperly constituted because of the joinder of plaintiffs or defendants or of different causes of action; but the Court may, in any case in which such joinder is considered embarrassing or otherwise expedient order any party or cause of action to be struck out.

25 Where there are numerous persons having the same interest in an action one or more of them may sue or be sued, or may be authorised by the Court to defend in such action, on behalf of or for the benefit of all persons so interested.

26 The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the Court to be just, order that the name of any party, whether a plaintiff or a defendant, improperly joined be struck out, and that the name of any person who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added, whether as plaintiff or defendant.

27 No person shall be added as a plaintiff without his own consent.

28 Infants and lunatics may sue and be sued by a guardian *ad litem* admitted for that purpose by the Court.

29 A guardian *ad litem* may be removed by the Court upon sufficient cause being shown.

30 In the case of the death, retirement, or removal of an *ad litem* a fresh guardian shall be appointed by the Court.

31 A guardian *ad litem* shall not be permitted to retire without the leave of the Court.

32 The guardian *ad litem* shall be liable for the costs of the action.

33 In an action against an infant or a lunatic the statement of claim may be filed before the appointment of a guardian *ad litem*, but no further steps in the action shall be taken until such appointment has been made.

34 A summons to a witness in any civil proceeding may be in form 2 in Schedule 2.

35 Any such summons may be served either by the proper officer of the Court or by the party at whose instance the witness is summoned or his agent.

36 Without the leave of the Court no such summons shall be issued requiring any witness to attend at any place outside the island in which he is resident or present at the date of the issue of the summons.

37 Witnesses in civil proceedings, whether summoned or not, shall be entitled to such payment in respect of their expenses and loss of time as the Court awards.

38 If the claim in any action is for a sum of money the defendant may, before trial of the action, pay into Court a sum of money by way of satisfaction, and give notice of such payment to the plaintiff.

39 Any money paid into Court as aforesaid may be paid out to the plaintiff or his duly authorised agent, but the receipt thereof shall not affect the right of the plaintiff to proceed with the action for the recovery of any further sum claimed and not so paid into Court.

40 The fact that money has been so paid into Court shall be taken into consideration in the award of costs as between the plaintiff and defendant.

41 The plaintiff may at any time before trial discontinue his action, either wholly or as to any cause of action, by filing in Court a memorandum of discontinuance.

42 A copy of such memorandum shall be served upon the defendant.

43 On any such discontinuance the Court may award to the defendant such costs of the action as it thinks fit.

44 The discontinuance of an action shall not be a defence to any subsequent action on the cause of action discontinued, provided that the costs of the previous action so awarded have been paid.

45 No judgment shall be given in any action by default, and every action shall be heard and determined in the ordinary course whether the defendant appears on the trial or not.

46 If on the trial of any action the plaintiff does not appear, the Court may either adjourn the trial, or give judgment for the defendant, or nonsuit the plaintiff.

47 The plaintiff in any action may at any time before judgment elect to be nonsuited, and the Court may nonsuit the plaintiff without his consent.

48 After a nonsuit the plaintiff shall not be debarred from commencing a further action on the same cause of action, all the costs of the first action having been first paid.

49 No action shall be tried by a jury.

50 The parties to any action may concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court.

51 Every such special case shall concisely state such facts and documents as may be necessary for the decision of the questions raised therein.

52 On the argument of the special case the Court shall be at liberty to draw from the facts and documents so stated any inference of fact which might have been drawn therefrom if proved at the trial.

53 On the argument of the questions of law raised in such special case the Court may give judgment in the action, or may order the issues of fact or any of them to be tried before giving judgment.

54 Every judgment debt in excess of \$200 shall carry interest at the rate of 6 per cent per annum from the time of judgment being given until the same is satisfied, and such interest may be levied under any writ of execution upon such judgment.

*Executions*

- 55 A writ of sale may be in form 3 in Schedule 2.
- 56 A writ of possession may be in form 4 in Schedule 2.
- 57 A charging order under section 92 of the Niue Act 1966 may be made by the Court *ex parte* on the application of the judgment creditor, and shall specify the property to which it relates.
- 58 So long as any such order remains in force the amount of the judgment debt shall constitute an equitable charge upon the property specified in the order.
- 59 For the purpose of enforcing any such charge the Court may, and either on the making of the charging order or any time thereafter, on the *ex parte* application of the judgment creditor, make such order or orders as it thinks fit against all persons concerned –
- (a) For the appointment of a receiver of the rents, profits, or revenues of any property so charged; or
  - (b) For the payment into Court in satisfaction of the judgment of any such rents, profits, or revenues, or of any moneys subject to the charge; or
  - (c) For the sale of any such property by an officer of the Court, disobedience to any order so made shall constitute a contempt of Court.
- 60 Any charging order, or any order so made in pursuance of a charging order, may be at any time cancelled or varied on the application either of the judgment debtor or the judgment creditor, or of any other person concerned.
- 61 An application for an order against a judgment debtor under section 94 of the Niue Act 1966 may be in form 5 in Schedule 2.
- 62 A judgment summons under section 95 of the Niue Act 1966 may be in form 6 in Schedule 2.
- 63 Every such judgment summons shall be served in the same manner as a summons to a defendant on the commencement of an action, and all the provisions of these Rules as to the place and time of the hearing of an action shall apply also to the hearing of the application in respect of which such judgment summons is issued.

*Motions*

- 64 Every civil proceeding not required to be commenced by way of action or petition may be commenced by way of motion.
- 65 Every interlocutory motion may be made either verbally in open Court or by filing with a Registrar an application setting forth briefly the nature and grounds of the relief sought by the applicant.
- 66 Every originating motion shall be made by filing with a Registrar an application setting forth briefly the nature and grounds of the relief sought by the applicant.

67 Motions may be made in the forms set forth in Schedule 3 or in forms to the like effect.

68 (1) Except where otherwise provided, or where the Court is satisfied that the nature of the motion is such that it may properly be made and determined *ex parte*, every motion shall be heard and determined only after due notice has been given to such persons as the Court may consider entitled thereto.

(2) All persons to whom notice has been given by the direction of the Court, or who appear on the hearing of the motion, shall be deemed to be parties to the proceeding.

69 Every proceeding which may be commenced by originating motion may, if the applicant thinks fit, be commenced by way of action instead.

70 Applications under section 13 of the Niue Amendment Act (No 2) 1968 for the assessment of compensation shall be made by motion of the Cabinet or by any person claiming such compensation or any share thereof, and notice of such application shall be given to such persons interested as the Court directs.

71 Applications under Part 23 of the Niue Act 1966 for an affiliation order or maintenance order may be made by motion, with notice thereof to the defendant, except in cases in which the Court is authorised to hear the application *ex parte* under section 563 of the Niue Act 1966.

*Probate and Letters of Administration*

72 Probate of any will may be granted by the Court in form 7 in Schedule 2.

73 Letters of administration of the estate of an intestate may be granted by the Court in form 8 in Schedule 2.

74 Letters of administration with the will annexed may be granted by the Court in form 9 in Schedule 2.

75 The security to be given by an administrator may be in form 10 in Schedule 2.

76 In the case of a person residing out of Niue, administration, with or without a will annexed, may be granted to his attorney acting under a power of attorney.

77 (1) Every executor or administrator shall, within 12 months after the grant of probate or letters of administration, or within such further period as the Court on application may direct, lodge with the Registrar a full and distinct account in writing of his administration of the estate.

(2) The account shall be verified by affidavit.

78 If an executor or administrator makes default in filing such an account within the time aforesaid, or if any account so filed is insufficient, the Court may on the application of any person interested, or on the application of the Registrar, order the executor or administrator to file an account or a further account within such time as the Court in such order appoints, and disobedience to such order shall be a contempt of Court.

*Proceedings Under the Customs Act 1966*

- 79
- (a) Every penalty imposed by the Customs Act 1966 and recoverable in the High Court may be recovered by action in the name and on behalf of the Government of Niue as a debt due to the Crown.
  - (b) The High Court may give leave to serve out of Niue the summons in any action for the recovery of any such penalty or any duty under the Customs Acts.
  - (c) The judgment in an action for the recovery of any such penalty may be enforced by way of proceedings for contempt of the Court, and the failure of the defendant to satisfy such judgment shall constitute a contempt of Court accordingly.
  - (d) Any person imprisoned for such contempt shall be released from custody on satisfaction of the judgment.
  - (e) Proceedings for contempt shall not preclude any other method of execution which would otherwise be available.

80 Every prosecution in the High Court for an offence against the Customs Act 1966 shall be commenced by an information laid by an officer of Customs in accordance with the ordinary criminal procedure of the High Court.

81 Every person arrested in Niue for an offence against the Customs Act 1966 under section 267 of that Act shall be brought before a Judge or Commissioner of the High Court.

- 82
- (a) Proceedings in the Court under the Customs Act 1966 for the condemnation of goods seized as forfeited shall be instituted by way of motion by an officer of customs, anything in the Customs Act 1966 to the contrary notwithstanding.
  - (b) Notice of the proceedings shall be given to such persons and in such manner as the Court directs, and it shall be sufficient if public notice is given by advertisement or otherwise at or near the place of seizure.
  - (c) Any person claiming to be interested in the goods may appear to oppose the application, and shall thereby become a party to the proceedings.
  - (d) If any person appears to oppose the application the Court shall hear and determine the matter and acquit or condemn the goods, but if no person so appears judgment of condemnation shall be given.
  - (e) In this regulation "goods" includes any boat, vehicle, or other thing forfeited under the Customs Acts.

*Jurisdiction of Commissioners*

- 83 A Commissioner of the High Court shall have jurisdiction –
- (a) In actions for the recovery of any debt or damages not exceeding \$1,500 in amount;
  - (b) In actions for the recovery of chattels not exceeding \$1,500 in value;
  - (c) In criminal proceedings for any offence punishable by fine only;
  - (d) In criminal proceedings for any offence specified in Schedule 6;
  - (e) In civil proceedings under Part 23 of the Niue Act 1966.

**84** A Commissioner of the High Court shall not have power to impose any fine exceeding 2 penalty units or to impose any term of imprisonment exceeding one year, whatever may be the maximum fine or term of imprisonment provided by law for the offence.

**84A** (1) A Commissioner and two Justices of the Peace sitting together shall have jurisdiction for the purpose of entering a conviction and imposing sentence only in criminal proceedings in charges, other than those specified in rule 83 (c) and (d) punishable by imprisonment for terms not exceeding ten years and in respect of which a plea of guilty has been entered by any defendant.

(2) No such sentence imposed shall have any effect unless and until the same is either confirmed or varied by the Chief Justice under rule 84B.

**84B** (1) The Chief Justice shall within one month of the receipt by him of a copy of the sentence imposed under rule 84A duly verified by the Registrar of the seal of the Court together with such information as he may require –

- (a) Confirm the sentences as imposed; or
- (b) Vary the sentence either by reducing or increasing the same in which case the sentence as varied shall become the sentence of the Court; or
- (c) Order a rehearing of the proceedings in respect of which the sentence has been imposed.

(2) The Chief Justice shall report in writing his decision on the certified copy of the sentence and transmit the same to the court of origin which will either cause the sentence as so confirmed or varied to be executed or grant a hearing if so ordered.

(3) Any sentence fixed under this rule shall be deemed to be a final judgment of the High Court for the purposes of article 55A of the Constitution.

**84C** (1) Pending sentence by the Court under rule 84A, the Court may remand the defendant at liberty or release him on bail subject to such conditions as it deems fit to appear for sentence when called upon by notice given not earlier than 48 hours of the date fixed for such purpose or remand him in custody pending sentence.

(2) Any period of remand in custody shall not be greater than 2 months.

**85** Save as aforesaid, a Commissioner or a Commissioner and two Justices of the Peace sitting together shall not exercise any of the powers or functions, whether judicial or administrative, of a Judge of the Court.

**86** In these Rules “Judge” includes a Commissioner of the High Court in respect of all matters within the jurisdiction of a Commissioner.

#### *Criminal Proceedings*

**87** An information of a criminal offence may be in form 1 in Schedule 4.

**88** The summons to the defendant in a criminal proceeding may be in form 2 in Schedule 4.

**89** The summons to a witness in a criminal proceeding may be in form 3 in Schedule 4.

- 90** A warrant issued by a Judge for the arrest of any person suspected of a criminal offence may be in form 4 in Schedule 4.
- 91** A warrant issued by a Judge of the Court for the arrest of an accused person may be in form 5 in Schedule 4.
- 92** A Judge's warrant for the committal for trial or the release on bail of a person arrested on suspicion of a criminal offence may be in form 6 in Schedule 4.
- 93** The recognisance to be entered into by a prisoner admitted to bail by a Judge may be in form 7 in Schedule 4.
- 94** Assessors in a criminal trial may be appointed by warrant in form 8 in Schedule 4.
- 95** A conviction may be formally drawn up and sealed in form 9 in Schedule 4.
- 96** A warrant of commitment to prison for default in the payment of a fine may be in form 10 in Schedule 4.
- 97** A search warrant may be in form 11 in Schedule 4.
- 98** The remuneration and allowances payable to an assessor in a criminal trial shall be such as the Court in each case thinks fit and directs, but shall not exceed \$3 per day in addition to travelling expenses actually incurred and paid.
- 99** The expenses of a witness at a criminal trial, to be certified by the Judge for payment out of Treasury, shall be such as the Judge thinks fit, not exceed \$3 a day in addition to travelling expenses actually incurred and paid.

*Miscellaneous*

- 100** There shall be payable in respect of proceedings in the Court the fees set forth in Schedule 5.
- 101** If it appears to the satisfaction of the Court that any party is unable or ought not to be called upon to pay any of the fees mentioned in Schedule 5, the Court may dispense with the payment or may reduce the amount .
- 101A** In any appeal from the judgment of a Commissioner of the High Court to a Judge of the High Court –
- (a) If it appears to any Commissioner or Registrar of the Court, or to any Justices of the Peace acting together, that the appellant is unable to pay the fees payable in respect of the appeal, the Commissioner or Registrar or Justices of the Peace may dispense with the payment of the fees or may reduce the amount thereof;
  - (b) If the appellant succeeds in his appeal, the fees paid by him shall be returned to him.
- 102** The Court or the proper officer thereof may refuse to take any step in the course of any proceedings until the proper fee therefor, together with all other fees already due and unpaid in respect of the same proceedings, have been fully paid.

**103** Such variations in the forms prescribed in the Schedules may be made as the circumstances of any particular case may require.

**104** All documents filed in or issued from the Court may be either in English or in Niuean.

**105** Non-compliance with any of these Rules shall not render the proceedings void, but the proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court may deem just.

**106** The jurisdiction of the Court in any proceeding may be exercised from time to time by any of the Judges of the Court and at any time or place, notwithstanding that the proceeding may not have been duly continued by adjournment from time to time or from place to place.

**107** (1) If at the time and place of trial stated in any summons or notice to a defendant or other party in any civil or criminal proceeding, or in any summons to a witness, or at the time and place to which the trial or hearing of any action, prosecution, or other proceeding has been adjourned, a Judge of the High Court is not present, a Registrar, if present, may adjourn the Court to another time and to the same or any other place.

(2) If within one hour after the time so stated in any such summons or notice, or appointed by any adjournment, a Judge is not present and no adjournment by the Registrar has taken place, the Court shall be deemed to be adjourned to the same place on the next succeeding day at the hour stated in the summons or notice, or at any other hour so appointed by adjournment, and so on.

(3) On every such adjournment the summons or notice shall have the same effect as if the time and place to which the Court is adjourned had been set forth in the summons or notice.

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SCHEDULES

SCHEDULE 1

In the High Court of Niue

Between A.B., of Niue, Plaintiff,  
and  
C.D., of Niue,  
Defendant.

The plaintiff claims the sum of \$20 due to him as the price of goods sold and delivered by him to the defendant, particulars whereof are as follows:

[Or]

The plaintiff claims \$100 as damages for an assault committed against him by the defendant on the ..... day of .....20 ....., at .....

[Or]

The plaintiff claims possession of certain chattels wrongfully detained by the defendant – namely,

. . . . .

[Or]

The plaintiff claims the sum of \$200 as damages for a breach of contract committed by the defendant under the following circumstances: [Setting out the facts].

SCHEDULE 2

Form 1

SUMMONS TO A DEFENDANT

In the High Court of Niue

Between A.B., of.....,  
Plaintiff,  
and  
C.D., of.....  
Defendant.

You are hereby summoned to appear and defend this action at the trial thereof before the High Court on ....., the ..... day of ....., 20....., at .....o'clock in the .....noon, at [Place of trial]. A copy of the statement of claim is annexed.  
To the above-named defendant.

[SEAL]

.....  
Registrar.

Form 2

SUMMONS TO WITNESS

In the High Court of Niue

Between A.B., of .....,  
Plaintiff,  
and  
C.D., of .....,  
Defendant.

You are hereby summoned to appear before the High Court at .....on ....., the ..... day of ....., 20....., at ..... o'clock in the .....noon, there to give evidence as to the matters in question in this action; and you are further required to bring with you and produce to the Court the following documents, namely:  
Herein fail not at your peril.

[SEAL]

.....  
Registrar.

To.....

Form 3  
WRIT OF SALE

In the High Court of Niue

Between A.B., of .....  
Plaintiff,  
and  
C.D., of.....,  
Defendant.

You are hereby directed to make of the chattels of ....., the above-named defendant, the sum of ....., which the above-named plaintiff has recovered against him in this Court by virtue of a judgment given on the ..... day of ....., 20....., (together with interest upon the said sum at the rate of \$12 for every \$200 by the year from the said ..... day of ....., 20.....), and cause that money (with such interest as aforesaid) immediately after the execution hereof to be rendered to the said plaintiff.

Dated this.....day of ....., 20.....

[Seal]  
To [*Officer of the Court or a constable*].

.....  
Registrar.

Form 4  
WRIT OF POSSESSION

In the High Court of Niue

Between A.B., of .....  
Plaintiff,  
and  
C.D., of .....  
Defendant.

You are hereby directed to deliver to ....., the above-named plaintiff, possession of all that parcel of land being [*Here describe the land so as to identify it*], in pursuance of a judgment obtained in this Court by the said plaintiff against the said defendant on the ..... day of ....., 20.....

Dated the .....day of ....., 20 .....

[Seal]  
To [*Officer of the Court or a constable*]

.....  
Registrar.

Form 5  
MOTION FOR ORDER FOR PAYMENT OF JUDGEMENT DEBT

In the High Court of Niue

Between A.B., of .....  
Judgment creditor,  
and  
C.D., of.....  
Judgment debtor.

The above-named judgment creditor makes application for an order under section 94 of the Niue Act 1966 for the payment by the above-named judgment debtor of the sum of ....., for which judgment was obtained in this Court on the .....day of ....., 20....., and which is still unpaid.

Form 6  
JUDGMENT SUMMONS

In the High Court of Niue

Between A.B., of .....  
Judgment creditor,  
and  
C.D., of .....  
Judgment debtor.

Take notice that you are hereby summoned to appear before this Court at .....on  
....., the .....day of ....., 20....., at  
.....o'clock in the .....noon, to show cause why an order under  
section 94 of the Niue Act 1966 should not be made against you for the payment of the  
sum of ..... due by you to the above-named judgment creditor under a  
judgment obtained against you in this Court on the .....day of .....,  
20.....

For disobedience to any order which may be so made against you you will be liable to  
imprisonment.

[SEAL]  
To the above-named judgment debtor.

.....  
Registrar

Form 7  
PROBATE

In the High Court of the Niue

In the matter of the will of ....., deceased.

Be it known to all men that on this .....day of ....., in the year  
20....., the last will and testament of ....., deceased, a copy of which is hereunto  
annexed; has been exhibited, read, and proved before this Court and administration of  
the estate of the deceased has been and is hereby granted to ....., the executor  
in the said will and testament named, being first sworn faithfully to execute the same.

Given under the seal of the High Court of Niue at ....., this .....  
day of .....20 .....

[SEAL]

.....  
Registrar.

Form 8  
LETTERS OF ADMINISTRATION WITHOUT A WILL

In the High Court of Niue

In the matter of the estate of ....., deceased intestate.

To....., widow [or as the case may be] of deceased.

Whereas the said .....lately departed this life intestate: You are therefore by  
these presents constituted administrator of the estate of the said deceased, you having  
been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at ....., this .....day  
of ..... 20.....

[SEAL]

Form 9  
LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED

In the High Court of Niue

In the matter of the will ....., deceased.

To....., widow [or as the case may be] of deceased.

Whereas the said .....lately departed this life leaving a will which has been  
duly proved in this Court and a coy of which is annexed: and whereas no executor is  
named in that will [or the executors named in that will have not applied for probate]: you

are therefore by these presents constituted administrator with the will annexed of the estate of the said deceased, you having been first sworn well and faithfully to administer the same.

Given under the seal of the High Court of Niue at ....., this ..... day of ....., 20.....

[SEAL]

Form 10  
ADMINISTRATION BOND

In the High Court of Niue

In the matter of the estate of ....., deceased.

Know all men by these presents that we .....are held and firmly bound unto the Registrar of the High Court at Niue in the sum of ....., for which payment well and truly to be made to the said Registrar we do and each of us does bind ourselves and each of us, and the executors and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas by order of this Court of the ..... day of .....20....., it is ordered that letters of administration of the estate of ....., deceased, be granted to the said ..... on his giving security for the due administration thereof: and whereas .....has sworn that to the best of his knowledge and belief the said estate is under the value of \$.....

Now, the condition of the above-written bond is that if the above-bounden .....well and truly administers the said estate according to law and renders to this Court a true and just account of his administration on or before the .....day of .....20....., then this bond shall be void and of none effect, but otherwise shall remain in full force.

Signed the ..... day of ....., 20....., in the presence of -

.....

SCHEDULE 3  
FORMS OF MOTIONS

In the High Court of Niue

In the matter of the will of A.B., of ..... deceased.

The applicant, C.D., of ....., claims probate of the will of the above-named deceased, who died at .....on the .....day of ....., 20....., on the ground that he is the executor named in the said will.

[Or]

In the High Court of Niue

In the matter of A.B., a minor.

The applicant, C.D., of ....., claims the custody of A.B., a minor, on the ground that the minor is the child of the applicant and that possession of the minor is wrongfully detained by E.F. of .....

[Or]

In the High Court of Niue

In the matter of A.B., a prisoner.

The applicant, A.B., of ....., claims release from detention in the prison at ....., on the ground that he is there detained unlawfully under a warrant issued without jurisdiction.

[Or]

In the High Court of Niue

In the matter of A.B., a person of unsound mind.

The applicant, C.D., Chief Medical Officer of Niue, claims an order committing the said A.B. to medical custody on the ground that he is of unsound mind.

[Or]

The applicant, A.B. of ....., claims a maintenance order against the defendant in favour of the applicant and her children, on the ground that the defendant, being the husband of the applicant, has failed to provide her and her children with adequate maintenance.

SCHEDULE 4  
Form 1  
INFORMATION

In the High Court of Niue

Between A.B. Informant,  
and  
C.D., Defendant.

INFORMATION

A.B., of ....., comes before me ....., a Judge of this Court, and informs me (on oath) that he has just cause to suspect and does suspect that C.D., of ....., did on the ..... day of ....., 20....., at ....., steal [*Describe the article stolen*], being the property of E.F. and of a value not exceeding \$4 [or not exceeding \$100, or exceeding \$100]; and also that the said C.D. did, on the .....day of ....., 20....., at ....., break and enter the dwellinghouse of E.F. with intent to commit theft therein.

[*Signature of Informant.*]

Taken before me, at ..... this ..... day of ....., 20.....  
.....

A Judge of the High Court.

Form 2  
SUMMONS TO ACCUSED

In the High Court of Niue

Between A.B., Informant,  
and  
C.D., Defendant.

Whereas an information has been laid against you by the above-named informant that on the ..... day of ....., 20....., at ..... you did [*Setting our charge as stated in information*]:

You are therefore summoned to appear before this Court on ....., the ..... day of ....., 20....., at ..... o'clock in the ..... noon, at [*Place of trial*], there to answer the charge so made against you.

Dated this ..... day of ..... 20.....  
.....

[Seal]

Judge of the High Court.

To the above-named defendant.

Form 3  
SUMMONS TO WITNESS IN CRIMINAL PROCEEDINGS

In the High Court of Niue

Between A.B., Informant,  
and  
C.D., Defendant.

Whereas an information has been laid against the above-named defendant that on the ..... day of ....., 20....., at ....., he did [*Setting out charge as in information*]: And whereas it has been made to appear to me that you are able to give evidence relative to the charge so made.

You are therefore hereby summoned to appear before the High Court on ....., the ..... day of ....., 20....., at ..... o'clock in the ..... noon, at [*Place of trial*], there to testify what you know concerning the said charge [and you are hereby required to bring with you and produce to the Court the following documents, namely .....].

Herein fail not at your peril.

.....  
Judge [*or Registrar*] of the High Court.

[SEAL]

To [*Name and description of witness*]

Form 4  
MAGISTRATE'S WARRANT FOR ARREST OF ACCUSED

Whereas it has been made to appear to me that C.D., of ....., is justly suspected of the murder of E.F. [*or of having stolen the goods of E.F., or otherwise setting out the offence*]:

You are therefore hereby authorised and directed forthwith to arrest the said C.D. and bring him before a Judge of the High Court of Niue, there to be dealt with according to law; and for so doing this shall be your warrant.

Dated this..... day of ....., 20.....

.....  
Cabinet [*or Registrar*  
of the High Court, or Medical  
Officer, *or as the case may be*]

To all constables in Niue.

Form 5  
JUDGE'S WARRANT FOR ARREST OF ACCUSED

In the High Court of Niue  
Between A.B., Informant  
and  
C.D., Defendant

Whereas information has been laid against the above-named defendant that on the ..... day of ....., at....., he did [*Setting out charge as in information*]:

You are hereby required and authorised to arrest the said defendant and bring him forthwith before a Judge of this Court, there to answer the charge so made against him, and for so doing this shall be your warrant.

Dated this ..... day of ....., 20.....

[SEAL]

.....  
Judge of the High Court.

To all constables in Niue.

Form 6  
WARRANT FOR COMMITTAL TO PRISON OR RELEASE ON BAIL

Whereas A.B. has been brought before me in custody charged with the offence of stealing the goods of C.D. [*or as the case may be*]:

Now, therefore, I hereby commit the said A.B. to the prison at ....., there to await his trial for the said offence before the High Court of Niue.

[Or]

Now, therefore, I hereby admit the said A.B. to bail, with two sureties [*or as the case may be*] in the sum of \$..... to appear before the High Court of Niue at the next sitting of that Court held by a Judge thereof [*or by a Commissioner thereof*] in the place of..... for trial for the said offence.

Dated this ..... day of ....., 20.....

Cabinet [*or Registrar*  
of the High Court, or Medical  
Officer, *or as the case may be.*]

Form 7

RECOGNISANCE OF PRISONER ADMITTED TO BAIL

Know all men by these presents that we [*Defendant and his sureties*] are held and firmly bound unto the Government of Niue in the sum of \$....., for which payment to be well and truly made to the Government of Niue we do and each of us doth bind ourselves and each of us, and the executors and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas the above-named defendant has been arrested on a charge of ....., and has been admitted to bail to await his trial for that offence before the High Court of Niue.

Now, therefore, the condition of this bond is that if the said defendant appears before the said Court in due course for trial for the said offence at the next sitting of the said Court held by a Judge thereof [*or by a Commissioner thereof*] in the place of ....., then this bond shall be void and of no effect, but otherwise shall remain in full force.

Signed this .....day of ....., 20.....

[SEAL]

.....  
Judge.

Form 8

WARRANT OF APPOINTMENT OF ASSESSORS

In the High Court of Niue

Between A.B., Informant,  
and  
C.D., Defendant.

Whereas C.D. is accused in this Court of the murder of E.F. [*or as the case may be*]: And whereas (in pursuance of an order made by this Court in that behalf) the trial of the said accused must take place before assessors:

Now, therefore, I do hereby appoint as assessors for the said trial the persons following, being duly qualified by law in that behalf.....

Dated this .....day of ....., 20.....

.....

[SEAL]

.....  
Judge.

Form 9

CONVICTION

In the High Court of Niue

Between A.B., Informant,  
and  
C.D., Defendant.

Be it remembered that on the ..... day of ....., 20....., at ....., C.D., ....., is convicted before this Court ..... on the information of A.B., ....., for that on the ..... day of ....., 20....., at ....., he did [*Set out the offence*]; and it is adjudged that the said C.D. for his said offence shall be imprisoned in the prison at ..... for the space of .....

Given under my hand and the seal of the said Court, the day and year first above written.

[SEAL]

.....  
Judge of the High Court.

Form 10

WARRANT OF COMMITMENT FOR DEFAULT IN PAYMENT OF FINE

In the High Court of Niue

Between A.B., Informant,  
and  
C.D., Defendant.

Whereas on the ..... day of ....., 20....., the above-named defendant was convicted in this Court of the offence of ....., and sentenced to pay a fine of .....: And whereas the said fine remains unpaid:

It is ordered that the said defendant be imprisoned for the term of ..... from the date of this order, or until the said fine shall be sooner paid.

Dated this ..... day of ....., 20.....

[SEAL]

.....  
Judge.

Form 11

SEARCH WARRANT

Whereas it has been made to appear to me, on the oath of A.B., that there is reasonable ground for believing that there are in the dwellinghouse of C.D. (*or as the case may be*) at ..... certain goods in respect of which an offence has been committed against the Customs Act 1966 (*or as the case may be*):

Now therefore, I hereby authorise you to search such dwellinghouse for such goods and to seize the same and bring them before me; and for so doing this shall be your warrant.

Dated this ..... day of ....., 20.....

.....  
Officer of Customs [*or as the case may be*]

To E.F., Constable.

SCHEDULE 5

COURT FEES

*Civil Proceedings*

1 In Actions where a sum of money or any property is claimed—

	Sum of Money or Value of the Land or Chattel Claimed					
	Not Exceeding \$20	Not Exceeding \$40	Not Exceeding \$100	Not Exceeding \$200	Not Exceeding \$500	Not Exceeding \$500
(1) Filing statement of claim and issue of summons	0.30	0.50	1.00	1.50	2.00	2.00
(2) Filing counterclaim (on amount of counterclaim)	0.20	0.30	0.50	0.76	1.00	1.25
(3) Hearing or rehearing and judgment (on claim or counterclaim)	0.30	0.50	1.00	1.50	2.00	2.50

	\$
2 In all other actions and proceedings	
(1) Filing and hearing statement of claim and issue of summons	1.00
(2) Service of any summons, notice, or other process	0.20
(3) For each additional summons in any proceedings	0.20
(4) Sealing of any judgment, order, writ of execution, or other document (other than a summons)	0.30
(5) Copy of any document or notes of evidence – per folio of 72 words (minimum 3 folios)	0.10
(6) Filing of any notice or motion, affidavit, petition (other than a petition for divorce), or other document	0.30
(7) Hearing of any motion or petition (other than a petition for divorce)	0.50
(8) Filing petition for divorce or nullity of marriage and supporting affidavit	1.00

(9) Hearing of petition for divorce or nullity of marriage	2.00
(10) Stating case for High Court	2.00
(11) Hearing application for leave to appeal to High Court	1.00
(12) Sealing order granting leave to appeal to High Court	2.00
(13) Filing motion for probate or letters of administration	1.00
(14) Sealing any probate or letters or administration	
Where the net value of the estate does not exceed \$1,000	2.00
Where the net value of the estate exceeds \$1,000 but does not exceed \$2,000	2.10
Where the net value of the estate exceeds \$2,000	4.00
(15) Execution of any writ of execution or warrant	0.30
No fees shall be payable in proceedings under Part 23 of the Niue Act 1966	

*Criminal Proceedings*

No fees shall be payable in any criminal proceedings commenced by the information of a constable or any other employee of the Niue Public Service.

In all other cases a fee of \$1 shall be payable on the information. If the accused is convicted, the fee so paid shall be refunded to the informant.

*Appeals from Commissioners of the High Court (Whether in Civil or Criminal Proceedings)*

	\$
(1) Filing notice of appeal	0.50
(2) Hearing of appeal	1.00
No fees shall be payable in respect of appeals in proceedings commenced by a constable or any other employee of the Niue Public Service.	

SCHEDULE 6

Rule 83 (d)

Commissioners of the High Court shall have jurisdiction in all or any of the following criminal offences specified in the following sections of the Niue Act 1966:

130	188	223
150	192 (1) (a) and (b)	224
152	194	225
153	198	226
155	199	227
157	200	
160	201	
166	202	
167	203	
168	206	
173	210	
174	211	
175	213	
176	214	
177	215	
178	216	
179	217	
182	218	
183	219	
185	220	
186	221	
	222	

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**HIGH COURT RULES AMENDMENT NO. 2**

## APPEALS FROM COMMISSIONERS

**1** Any party to any proceedings, whether civil or criminal, before a Commissioner of the High Court may appeal from the judgment of the Commissioner to a Judge of the High Court.

**2** (1) Notice of appeal shall be filed in Court within 21 days after the delivery of the judgment appealed from.

(2) Any written notice which shows an intention or desire to appeal shall be sufficient.

**3** Upon the filing of such notice, the Commissioner shall, unless a Judge makes an order to the contrary, grant a stay of execution of the judgment appealed from, and if the appellant is in custody shall release him therefrom on bail pending the determination of the appeal.

**4** Any person so released on bail may at any time and for any reason that a Judge thinks sufficient be arrested by warrant and committed to prison there to undergo his sentence.

**5** Any period during which an appellant has been so at large on bail shall not be computed as part of any term of imprisonment to which he has been sentenced.

**6** Every such appeal shall be by way of rehearing.

**7** Before hearing any appeal a Judge may impose such conditions as he shall think fit as to security for costs of the appeal or for performance of the judgment thereon.

**8** If the appellant does not with due diligence prosecute his appeal, or perform or observe any of the conditions imposed by a Judge as mentioned in clause 7, a Judge may dismiss the appeal; and the costs thereof, and any security entered into by the appellant, shall be dealt with in such manner as the Judge directs.

**9** (1) The appellant may at any time before hearing discontinue his appeal, either wholly or as to any ground thereof, by filing in Court a notice of discontinuance.

(2) If the appeal is wholly discontinued, the judgment appealed from may immediately be carried into effect.

**10** The Commissioner may at any stage of the proceedings adjourn any case for hearing and determination by a Judge.

**HIGH COURT RULES AMENDMENT NO. 3**

**1** These are the High Court Rules 1916 Amendment No 3 and shall be read together with and deemed part of the High Court Rules 1916 (the principal rules).

**2** [Spent]

## PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

**3** In these Rules "respondent" includes all co-respondents so far as the provision in which the term occurs is applicable to them.

4 (1) Every proceeding for a decree of divorce or nullity of marriage shall be commenced by filing a petition in the Court.

(2) The petition shall be in accordance with form 1 in Schedule 1 and shall set out the grounds for divorce or nullity of marriage.

5 Every person seeking a decree of divorce or of nullity of marriage shall append to the petition an affidavit in form 2 in Schedule 1, verifying the same so far as the deponent is able to do so.

6 (1) There shall be annexed to every petition and every copy thereof a summons to the respondent in accordance with form 3 in Schedule 1 and the original shall be filed in the Court.

(2) (a) The summons shall specify, *inter alia*, the sitting of the Court fixed by the Registrar for the hearing of the petition.

(b) In making that fixture the Registrar shall take into account the distance of the place of residence of the respondent from the place where the petition is to be heard and all other relevant circumstances, and the sitting so fixed shall not without leave of the Court be on a date less than 21 days from the date of filing of the petition.

7 (1) Service of a petition shall be effected by personally delivering to each respondent a copy of the petition under seal of the Court with a copy, signed by the Registrar, of the summons to the respondent required by these Rules to be annexed to the petition.

(2) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when such service is effected.

(3) A petition for a decree of divorce or nullity of marriage may be served out of Niue by leave of the Court.

8 (1) Each respondent who resides within Niue may, within 14 days after service of the petition on him or her, file an answer thereto. Where a respondent resides beyond Niue, the time after service within which he or she may file an answer to the petition shall, on application by the petitioner, be fixed by the Court.

(2) An answer shall be in accordance with form 4 in Schedule 1.

9 A respondent who fails to file an answer within the time hereinbefore prescribed, or within any extended time allowed for that purpose, shall not be entitled to be heard on the petition, without leave of the Court, granted on such terms as the Court thinks fit, except on questions of costs, custody of children, or maintenance.

10 (1) Where a respondent intends to apply for relief, the answer of that respondent shall conclude with a prayer for the relief to which he or she claims to be entitled.

(2) An answer may be amended by leave of the Court, by adding such a prayer at or before the trial.

11 The Court may at any time order further particulars to be given of any matters pleaded.

12 (1) (a) Every application for custody of children or for maintenance shall be to the Court by notice under form 5 in Schedule 1.

(b) Any such application may be made by a respondent, whether or not he or she has filed or intends to file an answer to the original petition.

(2) An order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained, without the necessity of complying with the requirements of subclause (1).

(3) Where the parties are agreed upon the terms of any order granting custody of children or maintenance, the order may, by consent of the parties, be included in the decree, without the necessity of complying with the requirements of subclause (1).

13 Any application to the Court, or to a Judge, whether in Court or Chambers, not required to be made by petition or by notice of application for custody of children or for maintenance, may be made by motion.

14 In matters for which no specific provision is made in this Part in respect of matrimonial causes, the general provisions of the principal Rules providing for the conduct of actions before the High Court, as far as they are applicable and with the necessary modifications shall apply.

SCHEDULE

FORMS IN PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

Rule 4

Form 1

In the High Court of Niue

(In Divorce)  
Between A.B., of .....[Occupation], Petitioner,  
and C.D., of .....[Occupation], Respondent

PETITION

The petitioner prays for a divorce from the respondent on the following grounds:

[Here state the grounds for divorce.]

Dated this .....day of .....20.....

.....  
Signature of Petitioner

Rule 5

Form 2

In the High Court of Niue

(In Divorce)  
Between A.B., of .....[Occupation], Petitioner,  
and C.D., of .....[Occupation], Resondent.

I, A.B., of .....[Occupation], make oath and say –

- 1 I am applying for a divorce from my wife (husband) named: [Full name].
  - 2 We were married at ..... by ..... of the .....Church,  
on the .....day of .....19.....
  - 3 There are .....children of the marriage, namely: [Full names].
  - 4 The grounds upon which I am applying for the divorce are: [Set out grounds],  
and the following are the facts concerning the same: [Set out proof fully].
  - 5 I am a native of .....and the said .....is a native of .....
- Sworn at .....by the above-named A.B. this .....day of  
.....20.....

A Solicitor of the High Court  
(or A Registrar of the High Court.)  
(or A Postmaster.)  
(or A collector of customs.)  
(or A medical officer)

Rule 6 (1)

Form 3

In the High Court of Niue

(In Divorce)  
Between A.B., of ..... [Occupation], Petitioner,  
and C.D., of .....[Occupation], Respondent.

SUMMONS

You are hereby summoned, if you wish to defend these proceedings, to appear at the trial thereof before the High Court at .....at the first sitting of this Court for the trial of civil proceedings after the expiration of ..... days from but exclusive of the date of service upon you of the petition in these proceedings.

A copy of the petition and of the supporting affidavit in these proceedings is annexed hereto.

Dated this..... day of .....20.....

(SEAL)

.....  
Registrar.

To the above-named Respondent.

Rule 8 (2)

Form 4

In the High Court of Niue

(In Divorce)  
Between A.B., of .....[Occupation], Petitioner,  
and C.D., of .....[ Occupation], Respondent

Answer

I, C.D., .....of .....[Occupation], the above-named respondent, make oath and say –

- 1 I was this day served with a petition for divorce and affidavit in support thereof.
- 2 I admit (or deny) the charges made against me in the petition and affidavit. [*Or set out which are admitted or denied.*]
- 3 I (do not) object to a divorce being granted.
- 4 I wish the children to remain the custody of .....

Sworn at ..... by the above-named A.B. this ..... day of .....20.....

A Solicitor of the High Court  
(or A Registrar of the High Court).  
(or A Postmaster.)  
(or A collector of customs.)  
(or A medical officer.)

Form 5

In the High Court of Niue

(In Divorce)  
Between A.B., of .....[Occupation], Petitioner,  
and C.D., of .....[Occupation], Respondent.

Application for Custody of Children (or Maintenance)

Take notice that the Petitioner (Respondent) intends to apply to the Court for an order for the custody of the children of the marriage (or for a maintenance order against the Respondent (Petitioner)).

Dated this .....day of .....20.....

.....  
Petitioner (Respondent).

To the above-named Respondent (Petitioner).

**HIGH COURT RULES AMENDMENT No. 5**

**1** These are the High Court Rules 1916, Amendment No. 5 and shall be read together with and deemed part of the High Court Rules 1916 and its amendments.

**2** The Commissioner of the High Court shall have jurisdiction in all or any of the offences specified hereunder –

(1) The Niue Act 1966, s188 (in cases to which s192(1)(a) and (b) apply) and s193 (1);

(2) Section 39 of the Transport Act 1965;

(3) Any other offences contained in any law for which the maximum term of imprisonment provided does not exceed 3 years.

**3** (1) In any proceeding commenced before a Commissioner exercising jurisdiction conferred on him by rule 2 the Commissioner may, at any time before the defendants have been sentenced or otherwise dealt with, decline to deal further with the offence and require that it shall be dealt with by a Judge and may endorse on the information a certificate to that effect.

(2) If the defendant is being convicted or has pleaded guilty the Commissioner shall remand him for sentence by a Judge and for that purpose, if it is expedient and in the interest of justice so to do, may make an order accordingly under these Rules.

(3) In any other case, the Judge will deal with the case in all respects as a rehearing.