

NATIVE COURTS ENACTMENT 1992

NATIVE COURTS (PRACTICE AND PROCEDURE)

RULES 1995

In exercise of the powers conferred by section 30 of the Native Courts Enactment 1992 [En. No. 3 of 1992], the Yang di-Pertua Negeri makes the following Rules:

PART I PRELIMINARY

Short title and commencement.

1. These Rules may be cited as the Native Courts (Practice and Procedure) Rules 1995 and shall come into force on the date of its publication in the *Gazette*.

Interpretation.

2. In these Rules, unless the context otherwise requires -

“Court” means the Native Court or the District Native Court established under the Enactment, as the case may be;

“Enactment” means the Native Courts Enactment 1992 [En. No. 3 of 1992];

“Form” means a form set out in Schedule I to these Rules and a form referred to by a number means the form so numbered in that Schedule;

“judgment” includes any order, penalty, decree or decision;

“notice” means any written notice unless the Court in any case otherwise orders;

“Registry” means the office of any Court exercising jurisdiction under the Enactment;

“return day” means the day appointed in any summons or other proceedings for the appearance of the defendant or any other day fixed for the hearing of any proceedings.

Application of Rules.

3. (1) These Rules shall have effect in all proceedings in all Native Courts and District Native Courts, and shall regulate the customary practices and procedures of such Courts in the exercise of their jurisdiction under the Enactment.

(2) In any matter of procedure or customary practice not provided for under these Rules, the procedure and customary practice for the time being in force in the Native Courts which are not inconsistent with these Rules and the principles of natural justice shall apply.

Forms.

4. The Forms in Schedule I shall be construed as part of these Rules and shall be used where applicable with such modification as the circumstances of the particular case may require.

Language.

5. Every documentary record of proceedings in Court shall be in the Bahasa Malaysia or English language, but the conduct of the trial or hearing may be in Bahasa Malaysia, English or in any Native dialect as the circumstances of the particular case may require.

PART II
EFFECT OF NON-COMPLIANCE

Non-compliance.

6. (1) Where there has been a failure to comply with the requirements of these Rules, such failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, or judgment therein.

(2) The Court may, on the ground that there has been such a failure as is mentioned in subrule (1), and on such terms as to costs or otherwise it deems just -

- (a) set aside, either wholly or in part, the proceedings in which the failure occurred; or
- (b) set aside any step taken in such proceedings; or
- (c) set aside any document or judgment in such proceedings; or
- (d) exercise its power under these Rules to allow such amendments, if any, to be made and to make such order dealing with the proceedings generally as it deems fit.

PART III
PROCEEDINGS IN COURTS

Mode of beginning proceedings.

7. (1) Every proceedings in the Native Court shall be begun by summons.
- (2) Every summons shall be in Form 1.
- (3) Every summons shall be filed in 4 copies in the Registry upon payment of the prescribed fee.
- (4) The service of summons may be effected by personal service or by prepaid registered post addressed to the defendant's last known address.
- (5) Every summons shall be signed or thumb-printed by the plaintiff personally.
- (6) If the plaintiff is illiterate, the contents and the purpose of the summons shall be explained to the plaintiff by a next of kin.
- (7) If the plaintiff is under disability at the date of hearing, the plaintiff may be represented by a next of kin.

Defence.

8. (1) If the defendant who has been duly served with a summons disputes the claim, the defendant shall file a defence within 21 days commencing on the date of effective service of the summons.

(2) Every defence shall be in Form 2.

(3) Every defence shall be filed in 4 copies in the Registry upon payment of the prescribed fee.

(4) The defence shall contain particulars as to why the claim is disputed and the counterclaim, if any, shall state the particulars and amount counterclaimed.

(5) Every defence shall be signed or thumb-printed by the defendant personally.

(6) If the defendant is illiterate, the contents and the purpose of the defence shall be explained to the defendant by a next of kin.

(7) If the defendant is under disability at the date of hearing, the defendant may be represented by a next of kin.

(8) The service of defence may be effected by personal service or by prepaid registered post addressed to the plaintiff's last known address.

(9) If the defendant fails to file a defence in accordance with this rule, the Court may enter judgment in favour of the plaintiff on the return day or may, in its discretion in the interest of justice, adjourn the hearing to enable the defendant to file such defence.

Neither party appearing.

9. If neither party appears on the return day, the Court may strike out the action without prejudice to the restoration thereof on the direction of the Court.

Where defendant does not appear.

10. Where the defendant has filed a defence, but does not appear on the return day, the Court may enter judgment in favour of the plaintiff.

Where plaintiff does not appear.

11. Where the plaintiff does not appear on the return day, the Court may strike out the action and enter judgment in favour of the defendant.

Admission by defendant.

12. If the defendant admits the claim, the Court may enter judgment in favour of the plaintiff.

Court may advise parties.

13. (1) The Court may advise and assist the parties to settle their dispute amicably.

(2) If the parties do not agree to an amicable settlement, the Court shall proceed to hear the action and enter judgment thereon or may adjourn the hearing of the action to another date for final hearing.

Order of submission.

14. (1) The Court may give directions as to the party to begin and the order of submission at the hearing, and, subject to any such directions, the party to begin and the order of submission shall be that provided by these Rules.

(2) Subject to subrule (1), the plaintiff shall begin by opening his case.

Inspection by Court.

15. The Court may inspect any place or thing with respect to which any question arises in the proceedings and all expenses shall be costs in the proceedings.

Death of a party.

16. Where a party dies after the finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death.

Substituted service.

17. (1) Any party may apply to the Court for an order for substituted service of any document or summons if -

- (a) in the case of a document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court it is impractical for any reason to serve such summons personally on that person; or
- (b) in the case of a summons which is sent by prepaid registered post, such summons is returned undelivered for any reason.

(2) An order and form of advertisement for substituted service shall be in Form 3.

Court to fix time and date of hearing.

18. (1) The Court may of its own motion or on the application of any party to any proceedings, fix or vacate or alter the hearing of such proceedings or any part thereof having due regard to the precedence of other proceedings.

(2) Where the hearing of a proceedings is adjourned, any party may apply to have a day fixed for the hearing of it.

Duty to give all information at hearing.

19. (1) It shall be the duty of the parties to the action to give all information and to produce all documents on any hearing as the Court may reasonably require.

(2) The Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other party, but, in the absence of such authority, any information or document given or produced under this rule shall be given or produced to all the parties present or represented on the hearing as well as to the Court.

(3) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by any party otherwise than with the consent of that party.

Evidence.

20. (1) Any fact required to be proved at the hearing of any proceedings by evidence of witnesses shall be proved by the examination of the witnesses orally in open Court.

(2) The Court may, at or before the hearing of the proceedings, order that evidence of any particular fact may be given at the hearing in such manner as may be specified by the order, including -

- (a) statement on oath of information or belief; or
- (b) the production of documents or entries in books; or
- (c) copies of documents or entries in books.

(3) The Court shall record every evidence given by any party or witness in any proceedings.

Remarks on demeanour of witness.

21. The Court may record on the notes of evidence such remarks as it thinks material respecting the demeanour of any witness while under examination.

Subpoena.

22. (1) At any stage in any proceedings, the Court may order any person to attend the hearing of such proceedings to give evidence or produce any document which shall be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceedings.

(2) A subpoena shall contain the name of one person only.

(3) A subpoena shall be in Form 4.

(4) Any person, having been duly summoned by a subpoena to attend before the Court who refuses or fails to attend or refuses to be sworn for the purpose of examination or to answer any lawful question or to produce any document therein shall be liable to be committed.

(5) A warrant of arrest and for committal shall be in Forms 5 and 6 respectively.

List of exhibits.

23. (1) The Court shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

(2) In this rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(3) Any party may, on payment of the prescribed fee, have a copy of the list.

(4) The list of exhibits when completed must be filed and shall form part of the record of the action.

(5) The list of exhibits shall be in Form 7.

PART IV
JUDGMENT

Judgment to be pronounced in open Court.

24. (1) Every judgment after the trial shall be pronounced in open Court either immediately on the conclusion of the trial, or on some subsequent day of which due notice must be given to the parties.

(2) Every written judgment of the Court shall be signed by the presiding District Officer, District Chief or Native Chief, as the case may be, and shall be filed and kept in the Court Registry.

(3) The proper officer of the Court shall enter in the Cause Book in a minute of every judgment made by such Court.

Effective date of judgment.

25. (1) A judgment of the Court takes effect from the day of its date.

(2) Every judgment 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 earlier or later day, in which case it shall be dated as of that other day.

(3) Except where the Court enters judgment in default of appearance by both parties, the Courts shall, in every action heard before it, set out the reason for its decision.

(4) Every judgment shall be in Form 8.

Party entitled to copy of judgment.

26. Every party to the action shall be entitled to have a copy of the judgment of the Court.

Judgment of absent presiding District Officer, District Chief or Native Chief.

27. When a District Officer, District Chief or Native Chief who has presided over any proceedings is unable through death, illness, transfer, or other cause to pronounce judgment, the judgment written by him may be read by the succeeding District Officer or any other District Chief or Native Chief, as the case may be, in the district in which the Court is established.

Interest on judgment.

28. Every judgment debt shall carry an interest at a rate not exceeding 8 per centum per annum to be calculated from the date of the judgment until the judgment is satisfied.

PART V
ENFORCEMENT OF JUDGMENT

Enforcement of judgment.

29. (1) A judgment may be enforced in accordance with the Native customary laws of the Native community in the district in which such Court is established or as the Court may direct.

(2) Any judgment debtor may pay into Court any penalty in satisfaction of a judgment, and thereupon the Court shall notify the judgment creditor of such payment and to collect any compensation within such time as the Court may direct.

(3) If in default of any penalty or compensation payable in cash or in kind or of any instalment of the same when due, the Court may order that such penalty or compensation or instalment thereof, as the case may be, shall be levied by sale of any property belonging to the defaulter if such property is situated within the territorial jurisdiction of the Court.

(4) An order for sale shall be in Form 9.

(5) The Court shall have power to direct by its sentence that in default of payment of a penalty or compensation the defaulter shall suffer such period of imprisonment as will justify the justice of the case.

(6) An order by the Court to commit such defaulter to prison shall be in Form 10.

(7) The Court may order any judgment debtor to be orally examined in respect of his ability to satisfy the judgment and whether any and what other property to satisfy such judgment.

PART VI
APPEALS

Notice of appeal.

30. (1) An appeal to the appellate Court shall be brought by filling a notice of appeal in the subordinate Court appealed against which shall submit such notice to the appellate Court as soon as possible.

(2) An appellant may appeal from the whole or any part of a decision and the notice of appeal shall state whether the whole or part only, and what part, of the decision is complained of.

(3) A notice of appeal shall be in Form 11 or 12, as may be appropriate.

PART VII
WITHDRAWAL AND DISCONTINUANCE

Discontinuance of action by plaintiff.

31. (1) The plaintiff in an any action may discontinue the action or withdraw any particular claim against any or all of the defendants at any time by giving a written notice to the Court.

(2) A notice of discontinuance or withdrawal by the plaintiff shall be in Form 13.

Discontinuance of action by defendant.

32. (1) A defendant may at any time —

(a) withdraw his defence or any part of it;

(b) discontinue a counterclaim or withdraw any particular claim made by him therein against any or all of the parties against whom the counterclaim is made by giving a written notice to the Court.

(2) A notice of discontinuance or withdrawal by the defendant shall be in Form 14.

Withdrawal of appeal.

33. (1) An appellant may at any time discontinue or withdraw an appeal by giving a written notice to the appellant.

(2) A notice of discontinuance or withdrawal by an appellant shall be in Form 15 or 16, as may be appropriate.

PART VIII
COSTS, ALLOWANCES AND FEES

Costs.

34. (1) Subject to the following provisions of these Rules, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party except under an order of the court and the Court shall have absolute power to determine by whom and to what extent the costs are to be paid.

(2) In addition to costs provided under subrule (1), the successful party shall be entitled to-

- (a) the sum properly expended by him as Court fees;
- (b) any sum allowed to a witness or party under this rule;
- (c) any sum properly expended by him in effecting service of the summons or of any subpoena, notice or other process;
- (d) any sum properly expended in the preparation of any plan, drawing, chart, photograph or model and copies thereof for the proceedings; and
- (e) any sum actually expended by him in respect of any matter essential to the conduct of the proceedings.

Allowances.

35. Where on the hearing of any proceedings a person attends as Court witness of fact, or as a witness to produce a document, that person may be allowed as compensation for loss of time such sum as the Court thinks reasonable, but such sum shall not exceed the sum prescribed under Schedule II for a person of the class to which the witness or party belongs.

Expert witness.

36. (1) Where a person attends Court as an expert witness, such person may be allowed a fee for attending the Court, and in addition, if allowed by the Court, a fee for qualifying to give evidence as such expert:

Provided that no fee as an expert witness may be allowed in respect of a person attending Court only to prove the correctness of a plan, drawing, chart, photograph or model.

(2) The fee for attending Court shall be such sum as the Court thinks reasonable, not exceeding 100 ringgit nor less than the sum prescribed under Schedule II as compensation for loss of time for a person of the class to which the expert witness belongs.

(3) The fee for qualifying to give evidence shall be such sum as the Court thinks reasonable, not exceeding 200 ringgit:

Provided that if in any particular case the Court is satisfied for special reasons that the fee for qualifying to give evidence ought not to be so limited, the fee shall be such sum as the Court directs.

(4) The Court may, if it thinks just, allow the fee for qualifying to give evidence, notwithstanding that the expert witness does not attend the trial.

Witness not called.

37. Allowance may be paid to a witness whether he was called or not, if his attendance was necessary.

Court fee.

38. A Court fee shall be paid in all proceedings in accordance with the rates in Schedule III:

Provided that nothing herein shall affect any fee fixed by any other written law.

SCHEDULE 1
(Rule 4)

FORM 1
(Rule 7 (2))

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19.....

BETWEEN

Plaintiff/s:

AND

Defendant/s:

SUMMONS

YOU ARE HEREBY SUMMONED to appear either in person or by your representative

before the Native Court at to answer a claim against you by the above-named Plaintiff/s.

Date of hearing:

Time:

TAKE NOTICE that within 21 days of the service of this summons on you, inclusive of the date of such service, you may file a defence and counterclaim, if any, to this summons. The Defence form is appended with this summons for your use should you intend to file a defence.

AND TAKE NOTICE that if you fail to appear before the Court on the day and time appointed to hear this summons, judgment may be entered against you in your absence.

Dated the day of 19 .

.....
Plaintiff

.....
Registrar/Court Clerk

Name:

Note: *See overleaf for statement of claim and acknowledgment of service.*

STATEMENT OF CLAIM

The plaintiff claims:

Claim	...	RM (state amount)
<i>Sogit</i> (or other customary fine)	...	(state fine)
Land	...	(describe land)
Movable property	...	(describe movable property)
Restitution	...	(describe goods or proceeds to be restored)

ACKNOWLEDGMENT OF SERVICE

I/We, the undersigned acknowledge service of this summons.

Name of defendant/s

Signature/Thumb-print

Dated the day of 19 .

FORM 2
(Rule 8 (2))

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19

BETWEEN

Plaintiff/s:

AND

Defendant/s:

DEFENCE

TAKE NOTICE that I, the Defendant named hereinabove, do not admit the Plaintiff's claims. I deny each and every claim and allegation as follows:

AND TAKE NOTICE that I have a counterclaim against the Plaintiff as follows:

Dated the day of 19 .

.....
Defendant

.....
Registrar/Court Clerk

Name :

FORM 3
(Rule 17 (2))

(A)

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19

BETWEEN

Plaintiff/s:

AND

Defendant/s:

ORDER FOR SUBSTITUTED SERVICE

Upon the application of the plaintiff on the day of 19 it is

AND THAT it has been ordered that service of the summons in the action on you be effected by this advertisement.

IF YOU intend to defend the said action, you must file a defence within 21 days commencing on the date of this advertisement. In default of such filing a defence, judgment may be entered against you.

Dated the day of 19 .

.....

Plaintiff

FORM 4
(Rule 22 (3))

STATE OF SABAH

IN THE NATIVE COURT/DISTRICT NATIVE COURT AT

Native Court/District Native Court Case No. of 19

BETWEEN

Plaintiff/Appellant:

AND

Defendant /Respondent:

SUBPOENA

To:

(name and address of witness)

FORM 6
(Rule 22 (5))

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19

BETWEEN

Plaintiff/s:

AND

Defendant/s:

WARRANT FOR COMMITTAL

To the Police Officer in charge of the Police District of:

Whereas by an Order of this Court pronounced this day it was ordered that*
do stand committed to** Prison for his
contempt in the said Order mentioned.

These are therefore to command every Police Officer to apprehend the
said* and convey him safely to the above-mentioned Prison there
to be detained and kept in safe custody for a period of*** weeks/months.

Dated the day of 19 .

.....
Presiding District Chief/Native Chief

Name :

* *State name of person to be committed.*

** *State name of prison.*

*** *State duration.*

FORM 7
(Rule 23 (5))

STATE OF SABAH

IN THE NATIVE COURT/DISTRICT NATIVE COURT AT

Native Court/District Native Court Case No. of 19

BETWEEN

Plaintiff/Appellant:

AND

Defendant/Respondent:

LIST OF EXHIBITS

THE EXHIBITS listed herein are tendered and heard on the day
of 19 .. .

Number of Exhibit	Description of Exhibit	Party who tendered Exhibit	Witness who proved Exhibit	Notes
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Dated the day of 19 .. .

.....

Court Clerk

Name :

FORM 8
(Rule 25 (4))

STATE OF SABAH

IN THE NATIVE COURT/DISTRICT NATIVE COURT AT

Native Court/District Native Court Case No. of 19

BETWEEN

Plaintiff/Appellant:

AND

Defendant/Respondent:

JUDGMENT

Date:

In the presence of*:

Plaintiff/Appellant (if present):

Defendant/Respondent (if present):

Order:

Reasons for the Order**:

.....
Presiding District Officer/District Chief/Native Chief

Name :

* *State name of members of the Court.*

** *If space is not enough, use separate sheet.*

FORM 9
(RULE 29 (4))

STATE OF SABAH

IN THE NATIVE COURT/DISTRICT NATIVE COURT AT

native Court/District Native Court Case No. of 19

BETWEEN

Plaintiff/Appellant:

AND

Defendant/Respondent:

ORDER FOR SALE OF PROPERTY

Whereas it has been shown to the satisfaction of the Court that the Defendant has defaulted in satisfying the judgment delivered by the Court on the day of 19 and order that the following property be sold by public auction on the day of 19 at am/pm unless the amount to be levied and the fee and expenses of execution be sooner paid.

Dated the day of 19 .

.....

Court Clerk

Name :

FORM 11
(Rule 30 (3))

STATE OF SABAH

IN THE DISTRICT NATIVE COURT AT

District Native Court Case No. of 19

BETWEEN

Appellant/s:

AND

Respondent/s:

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the decision of the Native Court at given on the day of 19 appeals to the District Native Court against the whole of the said decision/such part of the said decision which decides that:

Dated the day of 19

.....
Appellant

Name :

FORM 12
(Rule 30 (3))

STATE OF SABAH

IN THE NATIVE COURT OF APPEAL

Native Court of Appeal Case No. of 19

BETWEEN

Appellant/s:

AND

Respondent/s:

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being satisfied with the decision of the District Native Court at given on the day of 19 appeals to the Native Court of Appeal against the whole of the said decision/such part of the said decision which decides that:

Dated the day of 19

.....

Appellant

Name :

FORM 13
(Rule 31 (2))

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19

BETWEEN

Plaintiff/s:

AND

Defendant/s:

NOTICE OF DISCONTINUANCE BY PLAINTIFF

TAKE NOTICE that the Plaintiff wholly (or specify the part) discontinues/withdraws this action against the Defendant.

Dated the day of 19 .

.....
Plaintiff

To:

- (1) The Registrar,
Native Court,
(District)

.....

- (2) (Defendant)

FORM 14
(Rule 32 (2))

STATE OF SABAH

IN THE NATIVE COURT AT

Native Court Case No. of 19

BETWEEN

Plaintiff/s:

AND

Defendant/s:

NOTICE OF DISCONTINUANCE BY DEFENDANT

TAKE NOTICE that the Defendant wholly (or specify the part) discontinues/withdraws the defence and/or counterclaim.

Dated the day of 19 .

.....

Defendant

To:

- (1) The Registrar,
Native Court,
(District)

.....

- (2) (Plaintiff)

SCHEDULE II

(Rule 35)

SCALE OF ALLOWANCES

<i>Class of Persons</i>	<i>Maximum sum per day</i>
A. Professional persons, Government officers, directors and managers of corporate bodies, and persons in respect of a gross salary or income which exceeds 1,000 ringgit per month ...	RM50
B. Persons whose gross salary or income per month is between 200 ringgit and 1,000 ringgit ...	RM25
C. Other persons ...	RM20

Note:

In granting an allowance to a witness, the Court shall consider:

- (i) the witness' salary or income, actual or estimated, or circumstances;
- (ii) the time during which the witness was absent from ordinary occupation while required to attend Court.

SCHEDULE III
(Rule 38)

COURT FEES

<i>No.</i>	<i>Description</i>	<i>Fees</i>
1.	Filing and sealing a summons for the commencement of an action	RM2.00
2.	Filing and sealing defence and/or counterclaim	RM2.00
3.	Filing and sealing amended summons	RM2.00
4.	Filing and sealing notice of appeal	RM10.00
5.	Filing and sealing notice to discontinue the whole action or part thereof	RM2.00
6.	Filing and sealing notice to withdraw defence	RM2.00
7.	Filing and sealing notice to withdraw appeal	RM4.00
8.	Filing and sealing any other form not specifically provided for	RM6.00
9.	Renewal of summons	RM4.00
10.	Sealing subpoena for each witness	RM2.00
11.	Sealing judgment	RM6.00
12.	Extracting certified duplicate copy of judgment	RM3.00
13.	Payment, lodging, transferring or depositing monies into Court	RM1.00
14.	Application for monies paid into or deposited into Court	RM2.00
15.	Filing and sealing any other document not specifically provided for	RM4.00

16.	Filling and sealing order of sale of property	RM4.00
17.	Making a copy of any document other than judgment	RM0.30
18.	Certified translation of any document	RM2.00
19.	Service of summons or defence	RM10.00
20.	Service of any other document not specifically provided for	RM5.00
21.	For removal of any goods or animal to a place of safe keeping, where necessary	Actual cost
22.	Storage and warehousing of goods	Actual cost
23.	For advertising	Actual cost

Made this 21st day of December, 1995.

By His Excellency's Command,

DATUK STEPHEN FOO KIAT SHIN,
State Attorney-General, Sabah