



REPUBLIC OF NAURU

Courts Act 1972

As in force from 3 November 2011

This compilation comprises Act No. 10 of 1972 as amended and in force from 3 November 2011 (being, at the time the compilation was prepared on 7 November 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Courts Act 1972

An Act to re-establish the District Court and to make provision for the administration of justice by the Supreme Court and the District Court

PART I – PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Courts Act 1972* and shall come into force on a date to be notified by the Minister in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires:

‘barrister and solicitor’ means a person entitled to practise as a barrister and solicitor in Nauru;

‘cause’ includes any action, suit or other original proceeding in any Court between the person originating the proceeding and one or more other parties as defendant or respondent, and includes any original criminal proceeding;

‘Clerk’ means the Clerk of the District Court appointed under the provisions of section 15 of this Act and includes a public officer assistant to the Clerk and every other person performing the duties of the Clerk or assisting the Clerk to perform them;

‘Commissioner for Oaths’ means a person who is a Commissioner for Oaths either by virtue of appointment under the provisions of section 72 of this Act or *ex officio* under the provisions of any other section of this Act;

‘Director of Police’ means the public officer in charge of the Nauru Police Force and, where a public officer has been appointed to act as the Director of Police, such public officer while so acting;

'District Court' means the District Court established by section 9 of this Act;

'Fund' means the Courts Trust Fund established under the provisions of section 64 of this Act;

'heard' includes tried;

'hearing' includes trial;

'judgment' includes decree, decision, order, conviction and sentence;

'lay magistrate' means any magistrate other than the resident magistrate;

'magistrate' means a person appointed under the provisions of section 9 of this Act to be the resident magistrate or a lay magistrate or to act as the resident magistrate;

'matter' includes every proceeding in a Court which is not a cause;

'Registrar' means the Registrar of the Supreme Court appointed under the provisions of section 6 of this Act;

'resident magistrate' means a person appointed under the provisions of section 9 of this Act to be, or to act as, the resident magistrate;

'rules of court' means rules of court made under, or continued in force by, any law for the time being in force;

'Supreme Court' means the Supreme Court established by Article 48 of the Constitution.

PART II – THE SUPREME COURT

3 Seal of the Supreme Court

The Supreme Court shall have and use as occasion may require a seal of such nature and pattern as the President may, by notice in the Gazette, direct.

4 Constitution of the Supreme Court

- (1) The President may appoint to the Supreme Court such number of judges as he thinks fit.
- (2) The Supreme Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of Chief Justice or of any judge thereof.

5 Powers of judges

- (1) All the judges of the Supreme Court shall have in all respects, save as is expressly otherwise provided by this Act, equal power, authority and jurisdiction under this Act.
- (2) Save as may be otherwise expressly provided by any written law, any judge of the Supreme Court may exercise all or any part of the jurisdiction vested in the Supreme Court by or under the provisions of this Act or any other law, and for such purpose shall be and form a court.
- (3) The jurisdiction of the Supreme Court may be exercised in any cause or matter by a judge notwithstanding that it is being exercised at the same time in another cause or matter by another judge.

5A Retirement of judges

A judge of the Supreme Court ceases to hold office on attaining the age of seventy-five years.

Note for section 5A

For Article 50(1), this section is a law prescribing a greater age.

6 Officers of the Supreme Court

- (1) There shall be a Registrar of the Supreme Court and such other officers, including Deputy Registrars, as the Chief Justice with the written consent of the President shall consider to be necessary for the administration of justice and the due execution of all the powers and authorities which are granted to or vested in the Supreme Court.
- (2) The Registrar and every Deputy Registrar shall be appointed by the Minister after consultation with the Chief Justice.

- (3) No person shall be appointed to be, or to act as, the Registrar unless he possesses the professional qualifications prescribed by law as necessarily prerequisite for admission to practise as a barrister and solicitor in Nauru.

7 Duties of Registrar

- (1) Subject to the provisions of this Act the Registrar shall perform such duties as were on the thirty-first day of January, 1968, performed respectively by the Master, Registrar, Taxing Master and Keeper of the Records of the High Court of Justice in England.
- (2) The Registrar shall perform such other duties, and have such other powers and authority, as may be prescribed by rules of court.
- (3) The Registrar and other officers of the Supreme Court shall be subject to such directions as the Chief Justice may from time to time give.
- (4) The Registrar shall be *ex officio* a Commissioner for Oaths and also a Commissioner of the Supreme Court to take examinations of witnesses.

8 Powers of Deputy Registrar

It shall be competent for any person holding office as a Deputy Registrar, subject to any directions given from time to time by the Chief Justice, to perform any act or to discharge any duty which the Registrar may lawfully do or is required by law to do and for such purpose the person holding such office shall have all the powers, privileges and authority of the Registrar.

PART III – THE DISTRICT COURT

9 Establishment of the District Court

- (1) There shall be and is hereby established a District Court, which shall be a court of record.
- (2) The District Court shall be subordinate to the Supreme Court.
- (3) It shall consist of:
 - (a) a resident magistrate; and

(b) not less than three lay magistrates:

Provided that, if for any reason it is not possible at any time to appoint three lay magistrates, the Court shall consist of the resident magistrate alone.

- (4) The resident magistrate and the lay magistrates shall be appointed by the President after consultation with the Chief Justice.
- (5) If the office of resident magistrate is vacant or the resident magistrate is unable, by reason of illness, absence from Nauru or other cause to perform all or any of his duties, the President may appoint another person to act as the resident magistrate, such appointment may be either for a specified period or for the hearing and determination of a specified cause or matter and for the purpose of performing the duties of the office a person appointed to act as the resident magistrate shall be a magistrate of the District Court.

10 Qualifications for appointment as magistrate, etc.

- (1) No person shall be qualified to be appointed to be the resident magistrate unless he possesses the professional qualifications prescribed by law as necessarily prerequisite for admission to practise as a barrister and solicitor of the Supreme Court.
- (2) *[Omitted]*
- (3) No person shall be appointed to act as the resident magistrate unless he is qualified to be appointed to be the resident magistrate.
- (4) Where any person has been appointed under the provisions of subsection (5) of section 9 to act as the resident magistrate, he may, notwithstanding that another person has subsequently been appointed to be the resident magistrate or the resident magistrate has resumed his duties, continue to do so in respect of the hearing and determination of any cause or matter of which the hearing commenced before the District Court constituted by him as the acting resident magistrate.
- (5) Subject to the other provisions of this section, the appointment of any person to act as the resident magistrate shall terminate immediately upon any other person being appointed to be, or to act, otherwise than solely for the hearing and determination of a specified cause or matter, as, the resident magistrate or upon

the resident magistrate resuming his duties, as the case may be.

- (6) Where any person has been appointed under the provisions of this section to act as resident magistrate, the resident magistrate shall be deemed to have ceased to be the resident magistrate:
- (a) where the appointment is for a specified period, in respect of the hearing and determination of all causes and matters of which the hearing is commenced during that period; and
 - (b) where the appointment is made for the hearing and determination of a specified cause or matter, in respect of the hearing and determination of that cause or matter only.
- (7) *[Omitted]*
- (8) Each magistrate (other than the resident magistrate) must be paid the fees and allowances determined by the Minister by Gazette notice.

11 Seal of the District Court

The District Court shall have and use as occasion may require, a seal of such nature and pattern as the President may, by notice in the Gazette, direct.

12 Magistrates to take oath

Every magistrate shall, before entering upon his office, take and subscribe before the Minister the oath set out in the Schedule to this Act:

Provided that failure by any magistrate to take the oath shall not invalidate any proceedings heard and determined by the District Court.

13 Records and returns

- (1) The District Court shall keep written records and furnish returns of causes and matters heard or dealt with by it to the Supreme Court in such manner as the Chief Justice may from time to time direct.

- (2) A judge of the Supreme Court shall periodically inspect the records of the District Court and may give such instructions and advice thereon as he may deem necessary.
- (3) The resident magistrate may, and shall if the Chief Justice so directs, destroy, or cause to be destroyed, any record of any cause or matter in the District Court, including the record of the evidence in that cause or matter, at any time after the expiration of a period of:
 - (a) in the case of criminal proceedings in which no sentence of imprisonment was imposed, two years; and
 - (b) in the case of any other cause or matter:
 - (i) if the Chief Justice is satisfied that the continued retention of the record of that cause or matter is unlikely to serve any useful purpose and authorises its destruction, two years; and
 - (ii) otherwise, ten years;

from the date of final judgment in those proceedings.

14 Magistrates to be justices of the peace and Commissioners for Oaths

Every magistrate shall be ex officio a justice of the peace and a Commissioner for Oaths and shall have, and may exercise, the powers thereof.

15 Clerk of the District Court

- (1) There shall be a Clerk of the District Court who shall be appointed by the Minister.
- (2) The Clerk shall, subject to the general supervision and control of the Chief Justice, be under the immediate direction and control of the resident magistrate.

16 Duties of the Clerk

The duties of the Clerk shall be:

- (a) to attend at such sittings of the District Court as the resident magistrate may direct;

- (b) to prepare summonses, warrants, decrees, orders, convictions, recognizances, writs of execution and other documents and to submit them to the resident magistrate, or, if the resident magistrate so directs, to another magistrate, for signature;
- (c) to issue civil process if authorised by rules of court;
- (d) to maintain case files and registers to record judgments and orders of the District Court and to make, or cause to be made, copies of proceedings when required to do so;
- (e) to receive all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the District Court, and to keep an account of them;
- (f) to perform, or cause to be performed, such other duties connected with the District Court as may be assigned to him by the resident magistrate.

PART IV – THE JURISDICTION OF THE COURTS

17 Jurisdiction of Supreme Court

- (1) The Supreme Court shall have and exercise within Nauru all such powers and jurisdictions as are or may from time to time be vested in it under or by virtue of the Constitution, this Act and any other written law for the time being in force.
- (2) The Supreme Court shall, subject to any limitation expressly imposed by any written law, have and exercise within Nauru all the jurisdiction, powers and authorities which were vested in, or capable of being exercised by, the High Court of Justice in England on the thirty-first day of January, 1968.
- (3) The Supreme Court shall have within Nauru all and singular the powers and authorities vested in, or capable of being exercised by, the Lord High Chancellor of England on the thirty-first day of January, 1968, to appoint guardians of the persons and estates of infants.
- (4) Save as provided by this Act, the *Civil Procedure Act 1972*, or any other written law or by rules of court, the jurisdiction of the Supreme Court shall be exercised by a single judge.

18 Jurisdiction and constitution of the District Court

- (1) The District Court shall have and exercise within Nauru all such powers and jurisdictions as are, or may from time to time be, vested in it under or by virtue of this Act and any other written law for the time being in force.
- (2) It shall be properly constituted in any cause or matter when its powers and jurisdiction are exercised by either:
 - (a) the resident magistrate; or
 - (b) any three lay magistrates:

Provided that no cause or matter shall be heard and determined, and no preliminary investigation conducted, by lay magistrates unless the resident magistrate is unable for any reason to hear and determine, or conduct, it or considers that it would be undesirable or improper for him to do so.

- (3) The jurisdiction of the District Court may be exercised in any proceedings notwithstanding that it is being exercised at the same time in other proceedings by another magistrate or other magistrates.

19 Decisions of the District Court

Where in any cause or matter the powers and jurisdiction of the District Court are exercised by three lay magistrates together, the decision of the majority of them on questions of fact and of law shall be the decision of the Court.

20 Charge of proceedings in the District Court

- (1) Subject to the provisions of this Act and to any directions given by the Chief Justice, the resident magistrate shall determine which magistrates shall exercise the powers and jurisdiction of the District Court in any cause or matter.
- (2) Where the powers and jurisdiction of the District Court are exercised by lay magistrates, the most senior of those magistrates by date of first appointment as a magistrate under this Act shall have charge of the proceedings in court:

Provided that, where two or more of the magistrates were first appointed on the same date, their seniority relative to one another shall be as decided upon by the Chief Justice from time to time;

And provided further that, if the magistrates agree upon it unanimously, one of them other than the most senior shall have charge of the proceedings in court.

21 Civil jurisdiction of the District Court

Subject to any express limitation of its jurisdiction by any written law for the time being in force, the District Court shall, in addition to any jurisdiction it may have under any other law for the time being in force, have and exercise the following jurisdiction in respect of civil causes:

- (a) to hear and determine any cause founded on contract or on tort where the debt, demand or charge, or value of the chattels, claimed is not more than three thousand dollars, whether on balance of account or otherwise:

Provided that the District Court shall not, except as in this Act provided, have jurisdiction to hear and determine any cause for the recovery of land;

- (b) to hear and determine any cause where the debt or demand claimed consists of a balance not exceeding three thousand dollars, after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand;
- (c) to hear and determine any cause for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force, if:
 - (i) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other Court; and
 - (ii) the amount claimed in the cause does not exceed the sum of three thousand dollars;

Provided that for the purpose of this section the expression '**penalty**' shall not include a fine to which any person is liable on conviction;

- (d) to hear and determine any of the following proceedings, that is to say:

- (i) proceedings for enforcing any charge or lien, where the amount owing in respect of the charge or lien does not exceed the sum of three thousand dollars;
 - (ii) proceedings for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or lease of any property, where in the case of a sale or purchase, the purchase money or, in the case of a lease, the value of the property, does not exceed the sum of three thousand dollars;
 - (iii) proceedings for the dissolution or winding-up of any partnership, whether or not the existence of the partnership is in dispute, where the whole assets of the partnership do not exceed in amount or value the sum of three thousand dollars;
 - (iv) proceedings for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the sum of three thousand dollars;
 - (v) proceedings for the recovery of any specific or pecuniary legacy or share of residue not exceeding in value or amount the sum of three thousand dollars;
- (e) where any chattels not exceeding three thousand dollars in value belong to persons in undivided shares and the persons interested in a moiety or upwards apply for an order for division of the chattels or any of them according to a valuation or otherwise, to hear and determine the application and to make such order and give such consequential directions as it thinks fit;
- (f) to hear and determine any cause relating to the recovery of land where the rent, if any, payable in respect thereof does not exceed the rate of two thousand dollars a year or, if no such rent is payable, where the value of the land in question does not exceed twenty thousand dollars in the following cases:
- (i) where the term and interest of the tenant of any land held by him at will, or for any term, whether the tenant is or is not liable for the payment of any rent, has ended or been determined, either by the landlord or by the tenant, by a legal notice to quit or demand of possession, and the tenant, or, if the tenant does not actually occupy the land, or

occupies only a part thereof, any person by whom the same or any part thereof is then actually occupied has neglected or refused to quit and deliver up possession of the land or of such part thereof respectively;

- (ii) where any tenant holding any land under any demise or agreement, either written or verbal, is in arrear in payment of rent for such period that the landlord is entitled to exercise a right of re-entry under the terms of the demise or agreement;
 - (iii) where any person without right, title or licence is in possession of any land; and
- (g) to hear and determine interpleader applications where:
- (i) the value of the subject matter of any application does not exceed three thousand dollars; or
 - (ii) the application is made by a person who has seized the subject-matter of the application in execution of a process of the District Court, notwithstanding that the value of such subject-matter exceeds three thousand dollars.

22 No jurisdiction of District Court where validity of devise, etc., in question

The District Court shall not have cognisance of any proceedings in which the validity of any devise or bequest is in question or the limitations under any will or settlement are in dispute.

23 Jurisdiction of District Court where title in question

Subject to any express limitation of its jurisdiction by any written law for the time being in force, the District Court shall have jurisdiction to hear and determine any proceedings in which the title to any corporeal or incorporeal hereditament comes in question if the proceedings would otherwise be within the jurisdiction of the Court.

24 Abandonment of part of claim to give District Court jurisdiction

- (1) Where a plaintiff has a cause of action for more than three thousand dollars in respect of which the District Court would have had jurisdiction had the amount been not more than three thousand dollars, the plaintiff may abandon the excess, and

thereupon the District Court shall have jurisdiction to hear and determine the action.

- (2) Where any cause in which the plaintiff has abandoned part of his claim under this section is heard in the District Court, the plaintiff shall not recover an amount exceeding three thousand dollars together with costs thereon, and the judgment of the District Court in the action shall be in full discharge of all demands in respect of the cause of action.

25 Extension of jurisdiction of District Court by agreement

If, but for the amount or value of the subject-matter claimed or in issue, the District Court would have jurisdiction in any cause or matter under section 21 of this Act and the parties, by memorandum signed by them or by their respective barristers and solicitors or pleaders, agree that the District Court shall have jurisdiction to hear and determine that cause or matter, that Court shall, notwithstanding anything in any enactment save the provisions of sections 22 and 23 of this Act, have jurisdiction to hear and determine the proceedings.

26 Division of cause of action not allowed

A cause of action may not be divided for the purpose of bringing two or more actions or any counterclaim.

27 General ancillary jurisdiction of District Court

The District Court, as regards any cause of action for the time being within its jurisdiction, shall in any proceedings before it:

- (a) grant such relief, redress or remedy, or combination of remedies, either absolute or conditional; and
- (b) give such and the like effect to every ground of defence or counter-claim equitable or legal;

as ought to be granted or given in the like case by the Supreme Court and in as full and as ample a manner.

28 Ancillary powers of magistrates

A magistrate shall have jurisdiction in any proceeding pending to make any order or to exercise any authority or jurisdiction which, if it related to an action or proceeding pending in the

Supreme Court, might be made or exercise by a judge of the Supreme Court in Chambers.

29 Absence of magistrate

- (1) Where the hearing of any cause or matter has commenced before the District Court constituted by three magistrates and before it has been determined one of the magistrates dies or, because of illness or absence from Nauru, is unable to continue to attend and is unlikely to be able to do so within a reasonable time the two remaining magistrates may, if all the parties to those proceedings, or their barristers and solicitors or pleaders, consent in writing, complete the hearing and determine the cause or matter.
- (2) Where under the provisions of this section two magistrates complete the hearing of a cause or matter their decision, if unanimous, shall determine the cause or matter but, if it is not unanimous, the hearing shall be commenced again *ab initio* before a properly constituted court.
- (3) Notwithstanding the provisions of section 18, where any hearing has been completed and the cause or matter determined under the provisions of this section, the District Court shall be deemed to have been properly constituted at all times during the hearing and determination of that cause or matter.

30 Effect of proceeding or order for dissolution or winding-up of partnership

No proceeding in the Supreme Court or the District Court for the dissolution or winding-up of a partnership or order thereon shall prevent any creditor from petitioning for an adjudication of bankruptcy or insolvency against the partnership firm or any member or members thereof.

31 Power of Courts to refer to arbitration

- (1) With the consent of the parties to any cause or matter in the Supreme Court or the District Court, other than a criminal cause, that Court may order that cause or matter to be referred to arbitration, whether with or without other matters within the jurisdiction of the Court in dispute between the parties, to such person or persons and in such manner and on such terms as it thinks just and reasonable.

- (2) No such reference shall be revocable by any party except with the consent of the Court which ordered it.
- (3) On any such reference the award of the arbitrator, arbitrators or umpire shall be entered as the judgment in the cause or matter and shall be as binding and effectual to all intents as if given by the Court:

Provided that the Court may, if it thinks fit, on application made to it within such time as may be prescribed, set aside the award or may, with the consent of the parties, revoke the reference or order another reference to be made in the manner aforesaid.
- (4) In this section the expression '**award**' includes interim award.
- (5) The powers of the Supreme Court under this section may be exercised by a judge in Chambers.

32 Power of Courts to refer to referee

- (1) Where any cause or matter, other than a criminal cause, has been commenced in the Supreme Court or the District Court, that Court may, subject to rules of court, refer to a referee or inquiry and report:
 - (a) the whole cause or matter if:
 - (i) it requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made before it;
 - (ii) the question in dispute consists wholly or in part of matters of account; or
 - (iii) the parties consent; or
 - (b) any question arising, in the cause or matter if the parties consent.
- (2) Where any cause matter or question is referred as aforesaid, the Court may direct how the reference shall be conducted and may remit any report for further inquiry and report, and on consideration of any report or further report may give such judgment or make such order in the cause or matter as may be just.
- (3) The Court may, after deciding or reserving any question of liability, refer to a referee any mere matter of account which is in

dispute between the parties and, after deciding the question of liability, may give judgment on the referee's report.

- (4) The powers of the Supreme Court under this section may be exercised by a judge in Chambers.

33 Power to order arrest of absconding debtors

Where the plaintiff in any cause in the Supreme Court or the District Court proves at any time before final judgment by evidence on oath to the satisfaction of a judge or magistrate of the Court in which the cause is pending that he has a good cause of action against the defendant to the amount of one hundred dollars or upwards and that there is probable cause for believing that the defendant is about to quit Nauru unless he is apprehended, and that the absence of the defendant from Nauru will materially prejudice the plaintiff in the prosecution of his action, such judge or magistrate may, in the manner prescribed by rules of court, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the cause, that he will not go out of Nauru without the leave of the Court.

34 Powers to deal with contempt of the District Court

- (1) If any person:
- (a) wilfully insults a magistrate or any witness or any officer of the District Court during his sitting or attendance in court, or in going to or returning from court;
 - (b) wilfully interrupts the proceedings of the District Court or otherwise misbehaves in court; or
 - (c) wilfully and without lawful excuse disobeys any order or direction of the District Court in the course of the hearing of any proceedings;

the Clerk, with or without the assistance of any police officer or other person, may, by order of the magistrate having charge of the proceedings in court, take the offender into custody and detain him until the rising of the Court and the magistrate having charge of the proceedings in court may, if he thinks fit, by warrant under his hand, commit the offender to prison for any period not exceeding ten days or impose upon the offender a fine not exceeding fifty dollars for each offence.

- (2) Any person aggrieved by an order of a magistrate under this section may appeal against it to the Supreme Court within fourteen days of the order being made and the provisions of the *Appeals Act 1972* relating to bail pending the hearing of an appeal from the District Court following conviction shall apply mutatis mutandis.
- (3) The Supreme Court shall have the same powers to deal with contempt of the authority of the District Court as it has to deal with contempt of its own authority.

35 General powers of judges and magistrates

Every judge and magistrate shall have power to administer oaths and take solemn affirmations and declarations and to make such decrees and orders and to issue such process and exercise such powers judicial and administrative in relation to the administration of justice as shall from time to time be prescribed by any written law.

36 Judge or magistrate not to adjudicate if personally interested

No judge or magistrate shall adjudicate in any cause or matter in which he has a personal interest or in which he has been concerned professionally or, otherwise than as a judge or magistrate, as a public officer.

37 Proceedings by or against judge, magistrate or officer of court

Subject to the provisions of the last preceding section, any civil or criminal cause or matter by or against any judge, magistrate or officer of the Supreme Court or the District Court may be brought in any Court having jurisdiction and power to hear or deal with such cause or matter.

38 Transfer from District Court to Supreme Court

- (1) Subject to the provisions of any written law for the time being in force, the District Court may and, where a question arises involving the interpretation or effect of any provision of the Constitution, shall, of its own motion or upon the application of any party thereto, report to the Supreme Court the pendency of any cause or matter which it considers ought to be transferred to the Supreme Court and a judge shall forthwith direct whether

the cause or matter is to be transferred to the Supreme Court or is to be heard and determined in the District Court:

Provided that, where a question has arisen involving the interpretation or effect of any provision of the Constitution, the judge shall order that the cause or matter be transferred to the Supreme Court;

And provided further that, where the District Court had no jurisdiction in the proceedings and it appears to the judge that the plaintiff or one of the plaintiffs knew or ought to have known that the District Court had no jurisdiction in the proceedings, the judge may, if he thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out and in such event may award costs to the same extent and recoverable in the same manner as if the District Court had jurisdiction and the claim had not been established;

And provided further that no criminal cause or matter shall be transferred into the Supreme Court otherwise than by committal of the accused person under the provisions of any written law for the time being in force relating to the procedure in criminal causes, save where a question involving the interpretation or effect of the Constitution has arisen, in which event the cause or matter shall be transferred to the Supreme Court only for the determination of that question.

- (2) Where in any cause reported to the Supreme Court under the provisions of the last preceding subsection any counterclaim or set-off and counterclaim has been filed by any defendant, the judge may, as he thinks fit, order either:
- (a) that the whole proceedings be transferred to the Supreme Court;
 - (b) that the whole proceedings be heard and determined in the District Court; or
 - (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiff's claim and defence thereto other than the set-off, if any, be heard and determined in the District Court:

Provided that, where an order is made under paragraph (c) of this subsection and judgment for the claim is given for the plaintiff, execution thereon shall, unless a judge at any time orders otherwise, be stayed until the proceedings transferred to the Supreme Court have been determined.

39 Transfer from the Supreme Court to the District Court

Where any cause or matter pending determination in the Supreme Court is within the jurisdiction of the District Court, a judge may, of his own motion or upon the application of any party thereto, direct that the cause or matter be transferred into the District Court for hearing and determination:

Provided that no criminal cause or matter may be transferred into the District Court save where that cause or matter has first been transferred from the District Court into the Supreme Court for the determination of a question involving the interpretation or effect of the Constitution.

40 Costs in causes and matters transferred

Where any cause or matter, or any counterclaim, is ordered to be transferred:

- (a) from the Supreme Court to the District Court; or
- (b) from the District Court to the Supreme Court;

the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the judge who ordered the transfer, be in the discretion of the Court to which the proceedings are transferred, and that Court shall have power to make orders with respect thereto.

41 Exercise of power of transfer

- (1) Where a judge exercises the power of transfer vested in him by section 38 or section 39 of this Act, an order shall issue under his hand and the seal of the Supreme Court.
- (2) Any civil cause may be transferred either entirely or in respect of any part thereof or any procedure required to be taken therein.
- (3) Subject to the provisions of any written law for the time being in force relating to the procedure in criminal causes every order of transfer shall operate as a stay of proceedings in the Court from which the cause or matter is transferred and an attested copy of the record of the proceedings in that Court and of all entries in the registers of the Court relative thereto shall be transmitted to the Court to which it is transferred and henceforth, subject to the provisions of the last preceding subsection, all proceedings in the cause or matter shall be taken in that Court as if the cause or matter had been commenced therein.

- (4) Any order made under the provisions of this Act for the transfer of a cause or matter, or refusing such transfer, shall not be subject to appeal.

42 Judgment of District Court may be removed into Supreme Court

- (1) A judge, if satisfied that any person, whether resident in Nauru or not, against whom judgment has been obtained in the District Court for an amount exceeding fifty dollars, whether by way of a claim or counterclaim or by way of costs or otherwise, has no goods or chattels within Nauru which can be conveniently seized to satisfy the judgment, may, if he thinks fit and upon such terms as to costs as he may direct, by order under his hand and the seal of the Supreme Court, remove the judgment into the Supreme Court.
- (2) Upon removal of a judgment of the District Court into the Supreme Court under the provisions of this section no further proceedings shall be had or taken thereon in the District Court and judgment shall be entered in the Supreme Court for the amount due and payable under the judgment of the District Court together with the costs, if any, as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as it were a judgment originally obtained in the Supreme Court.

PART V – ENFORCEMENT OF JUDGMENTS AND ORDERS OF THE COURTS

43 Powers of the Courts to enforce their judgments and orders

The Supreme Court and the District Court shall have such powers to enforce their judgments and orders as may from time be provided by law and, in the absence of any provision to the contrary, their judgments and orders may be enforced in all or any of the ways in which judgments and orders of the High Court of Justice in England could be enforced in England on the thirty-first day of January, 1968; and all laws of England in force in England on that date authorising, or relating to, the enforcement of the judgments and orders of the High Court of Justice in England shall, so far as they are applicable to the circumstances of Nauru and are not inconsistent with or repugnant to the provisions of this Act or any other law for the time being in force in Nauru, be deemed to be laws of the Republic.

PART VI – EXECUTION OF THE PROCESS OF THE COURTS

44 Director of Police to be responsible for execution of process of the Courts

- (1) The Director of Police shall be responsible for the execution of all such writs, warrants, orders, commands and process of the Supreme Court and the District Court as he shall be required by the said Courts or any judge or magistrate thereof to execute and shall make return of every writ, warrant, order, command or process together with the manner of execution thereof to the Court out of which it issued:

Provided that, where any Court directs or awards any process against the Director of Police or awards any process in any cause, matter or thing in which the Director of Police has such personal interest that the Court considers it undesirable that he should be responsible for its execution, the Minister may appoint some other fit person to execute and return it and the said process shall be directed to the person so appointed.

- (2) Where the Director of Police is prevented, by reason of his absence from Nauru or by illness, from performing his duties under the last preceding subsection, they may be performed by the next most senior officer of the Nauru Police Force present in Nauru.
- (3) Every writ, warrant, order, command and process may be executed according to its tenor.

45 Police to obey orders and directions of judges and magistrates

All officers of the Nauru Police Force shall obey the orders and directions of every magistrate in the exercise of the criminal jurisdiction of the Courts and shall have the powers and authority necessary to enable them to do so.

PART VII – PRACTICE AND PROCEDURE

46 Practice and procedure

- (1) The jurisdiction vested in the Supreme Court and the District Court shall, except where otherwise provided by any law for the time being in force, be exercised, so far as regards practice and

procedure, in the manner provided by the *Civil Procedure Act 1972* and any written law for the time being in force relating to the procedure in criminal causes and by such rules and orders of court as may be made pursuant thereto.

- (2) Where no provision is made by the *Civil Procedure Act 1972* or any written law for the time being in force relating to the procedure in criminal causes or by any rule or order of court made pursuant thereto:
 - (a) the jurisdiction of the Supreme Court shall be exercised in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice; and
 - (b) the jurisdiction of the District Court shall be exercised in substantial conformity with the law and practice for the time being observed in England in the county courts.

47 Language of the Courts

- (1) The language of the Supreme Court shall be English.
- (2) The language of the District Court shall be Nauruan or English, as the magistrate having charge of the proceedings in any cause or matter shall direct.
- (3) Where at the hearing by the District Court of any cause or matter which is subsequently transferred to the Supreme Court the language used by the District Court is Nauruan, the record made by the magistrate and any affidavits and exhibits in the Nauruan language shall be translated into the English language by the Clerk before the record is transmitted to the Registrar and shall be certified by the Clerk to be a correct translation; and any party to the cause or matter may, on the payment of the prescribed fee, obtain from the Registrar a copy of that translation.

PART VIII – EVIDENCE

48 Summoning witnesses

Save as may be otherwise provided by any other written law:

- (a) in any cause or matter in the Supreme Court, a judge or the Registrar; and

(b) in any cause or matter in the District Court, a magistrate;

may, either of his own motion or on the application of any party, summon any person within Nauru to attend to give evidence or to produce any document in his possession or power, and may examine such person as a witness and require him to produce any document in his possession or power, subject to just exceptions.

49 Compelling attendance of witness

If any person summoned under the provisions of the last preceding section, having reasonable notice of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from court, fails to attend accordingly and does not excuse his failure to the satisfaction of the Court, he shall, independently of any other liability, be guilty of an offence and liable to a fine not exceeding one hundred dollars and may be proceeded against by warrant to compel his attendance.

50 Persons present in court may be required to give evidence

Save as may be otherwise provided from time to time by any other written law, any person present in court during the hearing of any cause or matters by the Supreme Court or the District Court, whether a party in a cause or matter or not, may be compelled by the Court to give evidence or produce any document in his possession or in his power in the same manner and subject to the same rules as if he had been summoned to attend and give evidence.

51 Prisoners may be brought to give evidence

In any cause or matter:

(a) in the Supreme Court, a judge or the Registrar; and

(b) in the District Court a magistrate;

may issue an order under his hand to bring any person confined as a prisoner under any sentence or otherwise to be examined as a witness and the officer or other person in whose charge the person shall be shall obey such order and shall provide for the safe custody of the prisoner during his absence from prison for such purpose.

52 Refusal to give evidence

Save as may be otherwise provided by any other written law, any person whether appearing in obedience to a summons, brought up under warrant or order or required to give evidence or produce any document under the provisions of this Act, who being required to give evidence refuses to take an oath or to make a solemn declaration or affirmation or to answer any question lawfully put to him or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of the Court, shall, independently of any other liability, be guilty of an offence and liable to a fine of two hundred dollars or to six months' imprisonment or to both such fine and imprisonment.

53 Allowances to witnesses

It shall be lawful for the Supreme Court or the District Court to order and allow to any person who has attended to give evidence in any cause or matter before it, whether he was examined or not, such sum of money as it considers fit as well for defraying his reasonable expenses as for affording him a reasonable compensation for his trouble and loss of time:

Provided that, where under this Act or any other written law rules have been made limiting the amount which may be ordered or allowed in respect of such expenses or compensation, the sum ordered or allowed shall not exceed such amount.

54 How allowances to witnesses are to be defrayed

Any sum of money ordered and allowed under the provisions of the last preceding section shall:

- (a) in any cause or matter other than criminal proceedings be paid by the party on whose behalf the person attended and shall be recoverable as ordinary costs of the suit if the Court so orders;
- (b) in criminal proceedings, be paid out of the Treasury Fund, unless the Court orders that it be paid by the prosecutor or the defendant.

55 Inspection of real evidence

Where in any cause or matter in the Supreme Court or the District Court inspection of real or personal property may be material to the determination of the issue in proceedings before it, the Court may make such order for inspection of the property by the Court, the parties and witnesses and may give such directions with regard to the inspection, as it considers fit.

56 Copies of and access to records of evidence

- (1) A party to any cause or matter in the Supreme Court or the District Court shall be entitled, upon payment of the prescribed fee, to receive a copy of the record of the evidence given therein.
- (2) Save as may be provided by any written law, no person shall be entitled as of right to inspect the original record of the proceedings in any cause or matter in the Supreme Court or the District Court but such inspection may be authorised:
 - (a) in respect of a cause or matter in the Supreme Court, by a judge;
 - (b) in respect of a cause or matter in the District Court, by the resident magistrate.

57 Recording of evidence

- (1) In every cause and matter the whole of any oral evidence given before the Court, or so much thereof as the Court deems material, shall:
 - (a) in the Supreme Court, be taken down in writing by the judge or recorded in such other manner as the Chief Justice may from time to time by rules direct;
 - (b) in the District Court, be taken down in writing by the magistrate who has charge of the proceedings or, where the Court is constituted by three magistrates, by one of the other two magistrates under his supervision, or recorded in such other manner as the Chief Justice may from time to time by rules direct.
- (2) Oral evidence shall ordinarily be taken down in the form of a narrative and not in the form of questions and answers:

Provided that the judge or magistrate may in his discretion take down, or cause to be taken down, any particular question and answer.

PART IX – SITTINGS OF THE COURT

58 Sittings of the Courts

- (1) The Supreme Court shall sit for the trial of criminal and civil causes and matters and for the disposal of other legal business pending at such places and times as the Chief Justice may direct; the Registrar shall ordinarily give notice beforehand of all such sittings.
- (2) The District Court shall sit for the trial of criminal and civil causes and matters at such places as the Chief Justice may direct; subject to any directions given by the Chief Justice, it shall sit at such times as the resident magistrate shall deem most suitable for the despatch of the business of the Court.

59 Nature of business at any sitting

At any sitting of the Supreme Court or the District Court both civil and criminal causes and matters may be heard, determined and dealt with, or either one or the other.

60 Adjournment

- (1) Subject to the provisions of any written law for the time being in force, the Supreme Court or the District Court may adjourn the hearing of any cause or matter before it from day to day or to any convenient day.
- (2) If the judge is not present at the time and place appointed for any sitting of the Supreme Court or at the time to which the hearing of any cause or matter in the Supreme Court has been adjourned, the Registrar may, by public notice, written or oral, adjourn the sitting to such time as he considers proper.
- (3) If at the time and place appointed for any sitting of the District Court or at the time to which the hearing of any cause or matter has been adjourned the Court cannot be properly constituted because of the absence of one or more of the magistrates, any magistrate or, if no magistrate is present, the Clerk may, by public notice, written or oral, adjourn the sitting to such time as he considers proper.

- (4) Where any sitting of a Court is adjourned under the provisions of subsection (2) or subsection (3) of this section all persons bound to be present at the sitting so adjourned shall be deemed to be similarly bound to be present at the time appointed by the notice of adjournment.

61 Courts not to be held on certain days

The Supreme Court and the District Court shall not sit on Christmas Day, Good Friday, Independence Day, Constitution Day or any Sunday.

62 Vacations

The Chief Justice may, by order, direct such vacations of the Supreme Court and the District Court, not exceeding in the aggregate thirty days in any one year, as he thinks fit.

PART X – FEES AND FUNDS IN COURT

63 Fees

All fees prescribed by the *Civil Procedure Act 1972* or any other written law and all fines, costs, forfeitures and penalties imposed by any Court in criminal proceedings may be demanded and received:

- (a) in the Supreme Court, by the Registrar or any other public officer nominated by him to do so; and
- (b) in the District Court, by the Clerk.

64 Courts Trust Fund and securities deposited in court

- (1) There shall be a fund to be known as 'the Courts Trust Fund' and all moneys paid into the Supreme Court and the District Court to stand to the credit of any party in any cause or matter in either Court shall be received into, and credited to, that fund and paid by the Registrar or the Clerk, as the case may be, into a bank account, or bank accounts to be maintained by the Registrar at a bank in Nauru in the name of the Fund:

Provided that the Registrar may, if he thinks fit, pay money from such account into an interest-bearing account, or interest-bearing accounts, at the same bank in the name of the Fund, to be maintained by him.

- (2) All securities for money deposited in the Supreme Court and the District Court shall be placed by the Registrar in safe custody.

65 Moneys in fund and securities deposited to be held in trust by Registrar

- (1) All moneys received into the Fund and all securities for money deposited in the Supreme Court and the District Court under the provisions of the last preceding section shall be held by the Registrar in trust to attend the orders of the Courts into which they were paid with regard thereto and subject to any rules made under this Act.
- (2) Subject to the provisions of the next following section, no moneys shall be withdrawn from the Fund or securities for money handed over to any person save in accordance with directions in that regard given by the Courts into which they were paid.

66 Republic to pay bank charges and be liable for loss of moneys and securities

- (1) The Republic shall pay all bank charges in respect of the bank accounts maintained by the Registrar in the name of the Fund and all expenses of the Registrar incurred in providing safe custody for securities for money deposited under the provisions of section 64 of this Act.
- (2) If any money paid into, or any security for money deposited in, any Court under the provisions of section 64 of this Act is lost or destroyed while held in trust by the Registrar, the Republic shall be liable to make good to the party to whose credit such money stood the amount of the money lost or to replace the security lost or destroyed or otherwise to make good the loss suffered by the party to whose credit it stood, as the case may be.
- (3) Any interest paid by the bank on any moneys of the Fund paid into an interest-bearing account by the Registrar under the provisions of section 64 shall ensure to the benefit of the Republic and the Registrar shall from time to time, at intervals of not more than twelve months, withdraw from the Fund the amount of such interest and pay it into the Treasury Fund.

67 Rules relating to the Courts Trust Fund

The Chief Justice may from time to time make rules for giving effect to the provisions of sections 64, 65 and 66 of this Act and

for regulating the manner in which, subject to the orders of the appropriate Court, moneys and securities shall be dealt with by the Registrar.

PART XI – PROTECTION OF JUDGES, MAGISTRATES AND OFFICERS OF THE COURTS

68 Protection of judicial officers and persons executing their lawful process

- (1) No judge, magistrate, Registrar, Deputy Registrar or other person acting judicially under any law for the time being in force shall be liable to be sued in any Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.
- (2) No officer of the Supreme Court or the District Court or other person bound to execute the lawful writs, warrants, commands, orders, and other process issued, made or given by any judge, magistrate, Registrar, Deputy Registrar or other person acting judicially shall be liable to be sued in any Court for the proper execution of the same.

PART XII – REPRESENTATION OF PARTIES

69 Representation of the Republic and public officers

In any cause or matter in the Supreme Court or the District Court in which the Republic or any public officer in his official capacity is a party or in any cause or matter affecting the revenues of the Republic, the Republic or that officer may be represented by a public officer or a barrister and solicitor, provided that such public officer or barrister and solicitor has been duly authorised in that behalf by or on behalf of the Minister.

70 Representation of parties

Subject to the provisions of the last preceding section, any party to any cause or matter in the Supreme Court or the District Court may employ as his legal representative therein a barrister and solicitor or a pleader, being a person who is entitled to be in, or to enter, Nauru.

71 Rules relating to counsel's dress

The Chief Justice may, by order, prescribe the dress to be worn by barristers and solicitors or pleaders appearing before the Supreme Court or the District Court and may direct that wigs be worn.

PART XIII – AFFIDAVITS

72 Appointment of Commissioners

- (1) The Chief Justice may appoint under his signature and the seal of the Supreme Court from time to time, such and so many barristers and solicitors and other persons as may be requisite to be Commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in any Court, and any order of a Court for the attendance and examination of witnesses or production of documents before any such Commissioner shall be enforced in the same manner as an order to attend or be examined or produce documents before the Court.
- (1A) Every person appointed upon his own application, to be a Commissioner for Oaths under subsection (1) shall on appointment pay to the Republic such fee as the Minister may from time to time prescribe.
- (2) No action shall be brought against any Commissioner in respect of any act or order performed or made by him in good faith in the execution or supposed execution of the powers or jurisdiction vested in him, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.
- (3) A Commissioner shall, unless otherwise directed in the Commission, receive such fees as may be prescribed by rules of court.

73 Swearing of affidavits outside Nauru

- (1) An affidavit required for the purpose of the Supreme Court or the District Court or proceedings in the Supreme Court or the District Court may be sworn outside Nauru before a Commissioner appointed under the provisions of section 72 or:
 - (a) in any place within any part of the Commonwealth, before a judge, magistrate, justice of the peace, notary public, commissioner for oaths, commissioner for affidavits, a diplomatic officer of the Republic or a person authorised by the law of that place to administer oaths; or
 - (b) in any other place, before a judge of a court the jurisdiction of which is unlimited, a notary public or a diplomatic officer of the Republic.
- (2) The office of the person before whom the affidavit is sworn and the date when and the place where it is sworn shall be stated in the affidavit.
- (3) The Supreme Court and the District Court may receive in evidence an affidavit purporting to have been sworn in accordance with this section without proof of the signature of the deponent or of the fact that the person before whom it was sworn holds the office stated in it.
- (4) Where an affidavit is not in the English language there shall be annexed to it:
 - (a) a certified translation of it into the English language; and
 - (b) a certificate signed by a person before whom, under the provisions of this section, an affidavit can be sworn that to his own knowledge the person who has certified the translation has an adequate knowledge and understanding of the language in which the document is made and of the English language.
- (5) In this section '**diplomatic officer**' means a person appointed to hold or act in any of the following offices of the Republic in a country or place outside Nauru:
 - (a) Ambassador;
 - (b) High Commissioner;
 - (c) Minister;

- (d) Head of Mission;
- (e) Representative;
- (f) Commissioner;
- (g) Chargé d'Affaires; and
- (h) Counsellor, Secretary or Attaché at an Embassy, High Commissioner's office, Legation or other post.

PART XIV – RULES OF COURT, REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

74 Rules of Court

The Chief Justice may make rules relating to the Supreme Court and the District Court for all or any of the following purposes:

- (a) for regulating the receipt of moneys paid into court, or received and recovered under or by virtue of any process of execution or distress;
- (b) for regulating the payment out of court of all moneys to the persons entitled thereto;
- (c) for prescribing the books and forms of accounts to be kept or used in the Courts;
- (d) for prescribing the acceptance, retention and disposal of fees;
- (e) for prescribing fees to be received by Commissioners;
- (f) for regulating the days and the hours of opening and closing the offices of the Courts;
- (g) for the better carrying into effect of the provisions, objects and intentions of this Act.

75 *[Repealed]*

76 *[Repealed]*

SCHEDULE – OATH

(Section 12)

I, , swear by Almighty God that I will well and truly serve the Republic of Nauru in the office of magistrate of the District Court and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

Notes for Courts Act 1972

Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Courts Act 1972</i>	1972/10	17.04.1972	27.11.1972 (GN No. 325/1972)
<i>Courts (Amendment) Act 1974</i>	1974/07	24.07.1974	24.07.1974
<i>Courts (Amendment) Act 1979</i>	1979/05	18.09.1979	18.09.1979
<i>Courts (Amendment) Act 1999</i>	1999/07	18.10.1999	18.10.1999
<i>Courts (Amendment) Act 2010</i>	2010/03	01.11.2010	01.11.2010
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011
<i>Courts Legislation (Amendment) Act 2011</i>	2011/19	03.11.2011	03.11.2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
om = omitted os = omitted and substituted

Provision affected	How affected
Section 2	Am. by Act 1974/07, Act 2011/08.
Section 4	Subs. (1) ad. by Act 2010/03. Subs. (2) renumbered by Act 2010/03.
Section 5A	Ad. by Act 2010/03.
Section 9	Subs. (5) ad. by Act 1974/07.
Section 10	Subs. (2) om. by Act 1974/07. Subs. (4) am. by Act 1974/07. Subs. (7) om. by Act 1999/07. Subs. (8) os. by Act 2011/19.
Section 13	Subs. (3) ad. by Act 1979/05.
Section 18	Subs (2) am by Act 2011/08.
Section 24	Subs. (2) am. by Act 2011/08.
Section 72	Subs. (1) am. by Act 1974/07, Act 2011/08.
Section 75	Rep. by Act 2011/08.
Section 76	Rep. by Act 2011/08.
Schedule	Am. by Act 2011/08.