

HIGH COURT
LAUTOKA

PRACTICE DIRECTION NO. 3 OF 2000

SETTLING OF ORDERS FOR SEALING

Whilst a degree of flexibility is both consonant with common sense and necessary in the settling of orders for sealing at the Court Registry, there are some matters of format which need to be standardised in order that the Court's orders are both credible and worthy of obedience. Many orders presented to the Registry for sealing are deficient or illogical to some extent. Too many are unchecked and bear obvious spelling or information errors. Orders should be checked by Counsel before being allowed to leave a practitioner's office.

Guidance on format can be obtained from both the Fiji High Court Rules [now Appendix 1] and the Supreme Court Practice [Eng.] Part 2 Forms [Prescribed and Practice]. Some of the English forms have undergone considerable modification recently to make them more easily understood by lay litigants. For this reason, I venture to recommend also some flexibility with our own forms.

Orders in Fiji have tended to be settled to include matters not set out in the prescribed forms. If this assists a layman who is served with a court order arising from an ex parte application in understanding what transpired in Chambers and what he has to do to comply with the order, such inclusions are to be encouraged.

Consideration should be given to the following matters of format:

1. Entitlement or Heading

This should be as in the action heading

2. Document Subject Heading: "Order"

Though it appears not to have been a requirement most orders in Fiji carry, centred on the page, the subject heading "Order". This informs and alerts the recipient of and to the nature of the legal document served.

3. Presiding Judicial Officer

"Before the Hon. Mr. Justice Denning in Chambers on 10th January 2000 ex parte".

This further heading also seems not to have been a requirement under the forms. It is generally supplied in Fiji, and imparts helpful information. If an order was made *ex parte* this should be set out within this heading. The Judge's surname only should be given unless two judges bear the same surname or there is some possibility of confusion.

4. The Preamble

There has been much variety in the drafting of that part of the order dealing with the nature of the application, counsel being heard, and the evidence adduced. The White Book and Fiji's forms seem to prefer (i) no mention of the type of summons (ii) and the preamble "upon hearing..... and upon reading the affidavits of..... sworn etc.

Fiji practitioners have often favoured the format :

- (a) Upon reading the summons dated 14th January 2000 to set aside judgment entered in default of defence.
- (b) And Upon reading the affidavits of XYZ sworn on 11th January 2000 and of ABC sworn on 12th January 2000 and both filed herein.
- (c) And Upon hearing Mr. Norman Birkett of Counsel for the plaintiff and Mr. Peter Rawlinson of Counsel for the defendant.
- (d) And Upon reading the written submissions of both counsel filed herein.

It is ordered that :

etc.

I make the following observations :

- (i) To refer to the particular summons in response to which the order is made can be most helpful. Often in the course of a court action numerous interlocutory summonses are taken out. It is useful to know from the body of the order itself, in response to which summons the order was made.
- (ii) The forms prefer the chronology that counsel be heard before the affidavits are read. "Heard" probably means no more than "give audience to". The reality however is the reverse. The order of events of the hearing set out should be that counsel is heard after the summons and affidavits are read. Judges are expected to have read both prior to the hearing.
- (iii) Where there are numerous affidavits in the application, it is sufficient to state "And upon reading various affidavits both in support and in opposition filed herein".
- (iv) The inclusion of written submissions is perhaps unnecessary, though such material may be the persuasive matter that leads the court to make the particular order. Inclusion of such in the order therefore is optional.
- (v) Counsel should not be referred to in the order as "A.K. Simmons Esq.", rather as, Mr. A.K. Simmons or Ms O.D. Swan.

- (vi) If in doubt as to the appropriate wording for the Judge's order it is better to send an order in draft to the Deputy Registrar for approval before engrossment.

5. Seal

The forms have the end of the order as follows:

"Dated the day of 2000"

By the Court
Deputy Registrar

Some Fiji practitioners use the word "Sealed" instead of "Dated", others "Entered". "Sealed" is to be preferred as being a more accurate term than "Dated" [which could be confused with the date of the decision] or "Entered". Sealing sets the clock running for time periods for appeal purposes. Sealing is also the term used for the perfecting of the order.

6. Penal Endorsement

Many orders presented for sealing which the litigant may need to enforce do not carry a Penal Notice [Ord. 45 r. 6(4); R 237(4) Matrimonial Causes (High Court) Rules Cap.51]. They should do so. It is advisable that this be presented in a box at the end of the order, in order that the warning notice be drawn fairly to the attention of the litigant who is to obey the order. The Notice should not be in small print.

PENAL NOTICE

If you the above-named Defendant disobey this order you will be liable for process of execution for the purpose of compelling you to obey the same.

There are special wordings for indorsement, depending on the circumstances required, which are set out in the White Book at Ord. 45.

It is to be hoped that Counsel will be able to follow these principles in order to avoid delays in the sealing of orders.



ANTHONY GATES

JUDGE

30th June 2000