

Reprint
as at 20 September 2007

Niue Land Courts Rules 1969

(SR 1969/126)

Niue Land Courts Rules 1969: revoked, on 20 September 2007, by section 7(2) of the Niue Amendment Act 2007 (2007 No 71).

PURSUANT to the Niue Amendment Act (No 2) 1968, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

These rules are administered in the Maori and Island Affairs Department.

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1 Title and commencement

- (1) These rules may be cited as the Niue Land Courts Rules 1969.

- (2) These rules shall come into force on the date of the commencement of the Niue Amendment Act (No 2) 1968.

2 Interpretation

In these rules, unless the context otherwise requires—

The Act means the Niue Act 1966

Applicant includes an appellant

Application includes a notice of appeal

Court means the Land Court or the Land Appellate Court, as the case may require

Commissioner means a Commissioner of the Land Court

Gazette means the Niue Island Gazette

Judge means a Judge of the Land Court or a Judge of the Land Appellate Court, as the case may require

Party means any person who has made an application to the Court; and includes any person whose rights or interests are affected by an application or by any order made pursuant to an application; and also includes any *Leveki Mangafaoa* or trustee in respect of any such person

Registrar means a Registrar of the Land Court or of the Land Appellate Court, as the case may require; and includes a Deputy Registrar

A reference to a numbered form is a reference to the form so numbered in Schedule 1 hereto

Subject to the foregoing provisions of this rule, expressions defined in the Act have the meanings so defined.

Continuance of subsisting proceedings

3 Application of rules

All proceedings in the Court commenced before the commencement of these rules may be continued, completed, and enforced under these rules.

Forms and attestation

4 Forms

The forms set out in Schedule 1 hereto shall be used with such modifications as the case may require, and, if no form is prescribed by these rules, such form shall be used as a Judge or the Registrar may direct or approve. In any case an equivalent form in the Niuean language may be used, and shall be sufficient.

5 Attestation

Where these rules require that the signature of any person to any application or other document shall be attested, that signature must be attested by any person mentioned in section 720 of the Act.

Failure to comply with rules

6 Failure to comply with rules

A failure to comply with these rules shall not render any proceedings void unless the Court so directs; but any such proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the Court may direct.

Notices

7 Service of notices

- (1) Subject to the provisions of rules 12(5)(f), 23(2), and 29(4) of these rules, a notice or other document required or authorised

by these rules to be served on any person may be delivered to him either personally or, where that person is in Niue, by posting it by letter to that person at his last-known place of abode or business in Niue. A notice or other document so posted shall be deemed to have been served at the time when the letter would in the ordinary course of post be delivered.

- (2) If the person is absent from Niue, the notice or other document may be delivered as aforesaid to his agent in Niue. If he is deceased, the notice may be delivered as aforesaid to his personal representative in Niue.
- (3) If the person is not known, or is absent from Niue and has no known agent in Niue, or is dead and has no personal representative in Niue, the notice or other document shall be delivered in such a manner as may be directed by an order of a Judge.
- (4) Notwithstanding anything in the foregoing provisions of this rule, a Judge may in any case make an order directing the manner in which a notice or document (other than a summons to a witness to show cause) is to be delivered, or dispensing with the delivery thereof.

Court office and Court records

8 Court office

- (1) There shall be an office of the Court (in these rules referred to as the Court office) situated at such place in Niue as the Resident Commissioner from time to time appoints.
- (2) The Court office shall be open for business from 10 a.m. to 3 p.m. on every day, not being a Saturday, Sunday, or Court holiday.
- (3) The administration work of the Court shall be carried out at the Court office.

9 Court records

The records and other documents of the Court shall be deposited and kept at the Court office in the custody of the Registrar, and, except as provided in these rules, none of those

records or other documents shall be taken out of the Court of-
fice save with the leave or pursuant to the direction of a Judge.

Sittings

10 Times and places of sittings

- (1) The Court shall sit at such times and places as the Chief Judge appoints.
- (2) The Registrar shall cause the times and places of the sittings of the Court to be duly and conveniently advertised in the *Gazette*.
- (3) Notwithstanding anything in the foregoing provisions of this rule, a sitting of the Land Court may be held at any time and place appointed by a Judge, without notice of that sitting being given in the *Gazette* by the Registrar, but no matter shall be heard or determined at any such sitting other than a matter of which due notice has been given to the parties or which, in accordance with the Act or these rules, may be heard and determined *ex parte*.

11 Cancelling, opening, and adjourning sittings

- (1) The Chief Judge may, at any time before the commencement of any sitting of the Court, cancel the sitting.
- (2) Any Judge, or any person authorised in that behalf by a Judge, may open a sitting of the Court.
- (3) After the opening of any sitting of the Court, the presiding Judge or, in his absence, any person authorised in that behalf by him, may adjourn the sitting or any part of the business notified to be dealt with at the sitting, either *sine die* or to some other time or place.
- (4) The Registrar shall give notice of any cancellation or adjournment made under this rule to such persons and in such manner as a Judge may direct.

- (5) Any matter adjourned *sine die* may be heard at such time and place and upon such notice to the parties and others as a Judge may direct.

Commencement of proceedings

12 Commencement of proceedings

- (1) All proceedings in the Land Court shall be commenced by application.
- (2) An application to the Land Court shall be in form 1.
- (3) All proceedings in the Land Appellate Court shall be commenced by notice of appeal.
- (4) A notice of appeal shall be in form 2, and shall be attested.
- (5) Every application shall be in writing, and shall set forth, in a legible fashion—
- (a) The full names, address, land occupation of the applicant:
 - (b) Each statutory provision, section of the Ordinance, and rule in reliance upon which the application is made:
 - (c) The nature of the order sought by the applicant:
 - (d) The grounds on which the application is made:
 - (e) The full names of the person filing the application:
 - (f) An address, in Niue, at which notices and other documents relating to the application may be served on the applicant, which address shall, for the purposes of rule 7(1) of these rules, be deemed to be the last-known place of business in Niue of the applicant.
- (6) Every application shall be signed by the applicant or his duly authorised agent.
- (7) Every *ex parte* application shall be marked “*ex parte*”.
- (8) An application shall be filed by delivering it at the Court office to the Registrar, or to some other officer of the Court duly authorised in writing by the Registrar to receive it.
- (9) No application for the partition of Niuean land shall be heard or determined by the Court until all previous partition orders made with respect to the same land have been sealed and signed.

- (10) Every application shall have annexed thereto all documents that are, by the provisions of any Act or Ordinance, required to be filed with the application.
- (11) An application for an interlocutory injunction may be made *ex parte*.
- (12) Any party to any proceedings may apply *ex parte* to the Court for an interlocutory order for directions or with reference to any other interlocutory matter in the proceedings.
- (13) If, in the opinion of the Registrar, an application is not properly made, he may refuse to accept it, unless he is directed by a Judge to accept it.

13 Register of applications

- (1) The Registrar shall keep a register of applications.
- (2) The Registrar shall cause to be recorded in the register and upon each application accepted by him—
 - (a) The date on which the application was filed:
 - (b) The date on which any fee payable in respect of the filing of the application was paid.
- (3) The Registrar shall cause a distinctive number to be inscribed on each application, and that number shall correspond with the number of the application in the register.

14 Annexure of documents to applications

The Registrar shall cause to be endorsed on or annexed to each application all such particulars and extracts from the records of the Court as may be necessary, in his opinion, to enable the Court to deal effectively with the application at the hearing of the application.

Persons under disability

15 Definition of person under disability

In this rule, and in rules 16 and 17 of these rules, the expression **person under disability** means—

- (a) Any person who is under the age of 16 years; or
- (b) Any person who is unable, wholly or partly, to manage his own affairs by reason of—

- (i) His age; or
- (ii) His physical or mental infirmity; or
- (iii) His intemperate or recklessly extravagant habits; or
- (iv) His improvidence; or
- (c) Any person who is of unsound mind; or
- (d) Any person who is in prison or other place of detention; or
- (e) Any other person who is, or whose interests are, in the opinion of a Judge, in need of special care and protection which that person is unable himself personally to provide.

16 Application on behalf of a person under disability

- (1) Any person who desires to make an application to the Court on behalf of a person under disability may apply *ex parte* to a Judge for an order that the applicant be appointed the agent of the person under disability to make the application on behalf of the person under disability. With any application for such an order there shall be filed a draft of the application which the agent (if appointed) desires to make on behalf of the person under disability.
- (2) On the hearing of any such application for appointment, the Judge may, by order,—
 - (a) Refuse the application; or
 - (b) Grant the application upon such conditions as to the liability of the agent for the costs of the person under disability, the giving of security for those costs, or otherwise, as the Judge thinks fit, and the agent shall not act on behalf of the person under disability contrary to those conditions and shall, on filing any application on behalf of the person under disability, be bound by those conditions.
- (3) Where—
 - (a) An application has been filed by an agent duly appointed under this rule on behalf of a person under disability; and
 - (b) That person, on ceasing to be a person under disability, elects himself to proceed with the application,—

that person shall be liable for all the costs of the proceedings in the same manner as if he himself had commenced them after ceasing to be a person under disability.

- (4) An application made by an agent on behalf of a person under disability shall be attested and shall be made in the name of the agent, but the agent shall state, in the application, that he is making it on behalf of the person under disability.

17 Guardian *ad litem*

- (1) A Judge may at any time (whether on application made to him *ex parte*, or of his own motion, or otherwise) make an order appointing a guardian *ad litem* for any person under disability whose interests are affected by any application not filed by or on behalf of the person under disability.
- (2) A guardian *ad litem* so appointed shall not be personally liable for costs unless they are occasioned by his personal negligence, dishonesty, or other misconduct.
- (3) No person shall be appointed a guardian *ad litem* without his written consent.

18 Restrictions on persons under the age of 16 years and on persons of unsound mind

No person who is under the age of 16 years or of unsound mind shall, otherwise than with the leave of a Judge,—

- (a) Make any application to the Court or act as a party to any proceedings in the Court, otherwise than by and through an agent or guardian *ad litem* appointed pursuant to rule 16 or rule 17 of these rules; or
- (b) Act as an agent or representative in or with respect to any proceedings in the Court on behalf of any other person.

Notice of hearing

19 Registrar to give notice

- (1) Subject to any directions of a Judge, the Registrar shall give in the *Gazette* at least 14 clear days' notice of the hearing of an application.

- (2) The Registrar shall also give, in writing, at least 3 clear days' notice of the date of the commencement of the sitting of the Court at which an application is intended to be heard to—
 - (a) The applicant; and
 - (b) Every person who has filed a notice of intention to appear; and
 - (c) Such other persons as the Registrar, in his discretion, thinks fit; and
 - (d) Such other persons as a Judge may, in his discretion, direct.
- (3) All such notices shall be in a form and contain such particulars as a Judge or the Registrar thinks necessary.

20 No notice required for *ex parte* applications

Notwithstanding any other provision of these rules, an application which may be made *ex parte* may, in his discretion, be heard and determined by a Judge, without notification, at any time and place specified by a Judge.

21 Court may direct that notice be given

The Court may, before hearing or proceeding further with the hearing of an application, require the Registrar or the applicant or any other party to the proceedings to give such notice as the Court thinks necessary to any persons who appear to the Court to be affected by the application.

Clerk of the Court

22 Attendance of Clerk of the Court

- (1) The Registrar shall arrange for the attendance, at every sitting of the Court, of a Clerk of the Court.
- (2) The Clerk of the Court shall, unless the Court otherwise directs, be a skilled interpreter of the Niuean language into the English language and vice versa.
- (3) The Registrar shall transmit all applications to be heard at a sitting of the Court, together with all other documents ancillary thereto and the necessary Court records, to the Clerk of the

Court, who shall be responsible for their custody and safety and shall, as and when required, produce them to the Court.

Persons affected by applications

23 Persons affected by applications

- (1) Any person interested in or who may be affected by any application shall be entitled to appear and be heard on the application.
- (2) Any person who is not named in an application and who wishes to be a party to and be heard on the application shall, before the commencement of the hearing of the application, file in the Court office or in the Court a written notice in form 3 of his intention to appear, stating whether he supports or opposes the application and setting forth the grounds of any such support or opposition, and specifying an address in Niue at which notices and other documents relating to the application may be served on him, which address shall, for the purposes of rule 7(1) of these rules, be deemed to be his last-known place of business in Niue:
Provided that—
 - (a) No such person shall be debarred from appearing and being heard on an application by reason only of his failure to file a notice of intention to appear; but any person who has so failed shall be allowed to appear and be heard on the application subject to such reasonable and proper conditions as the Court thinks fit to impose:
 - (b) The Crown, the Minister, the Resident Commissioner, or the Registrar shall be entitled to appear and be heard on any application without filing or giving any notice of intention to appear.
- (3) Subject to rule 18 of these rules, any person entitled to appear in any proceedings in the Court may appear either personally or, with the leave of the Court, by an agent or representative.

Such leave may be given on such terms as the Court thinks fit, and may at any time be withdrawn.

Presiding and recording

24 Senior Judge to preside at sitting of Land Court

If more than one Judge is present at a sitting of the Land Court, the senior Judge present shall preside.

25 Recording proceedings

The Judge or, if more than one Judge is present, one of the Judges nominated by the presiding Judge, shall record the proceedings of the Court in a minute book, which book shall be a record of the Court.

Powers of Court

26 Powers of Court with reference to applications

- (1) The Court may dismiss or grant any application, in whole or in part, or, upon such terms as the Court thinks fit, give leave to extend, amend, or withdraw an application, in whole or in part.
- (2) The Court may dismiss an application on the grounds of the nonappearance of the applicant or for want of proper prosecution, but any such dismissal shall be without prejudice to the right of the applicant to make a fresh application in respect of the same matter, or to the power of the Court to reinstate an application so dismissed.
- (3) Every order or decision made by the Court shall be recorded in the minute book referred to in rule 25 of these rules.

Evidence

27 Evidence of witnesses

- (1) Unless the Court otherwise directs, the evidence of witnesses at the hearing of an application shall be given orally and upon oath or affirmation.
- (2) The Court may, in its discretion, accept evidence given by affidavit or declaration.

- (3) Affidavits to be filed in the Court shall—
 - (a) If made in Niue, be made in accordance with the provisions of section 78(1) of the Act as if they were affidavits in the High Court:
 - (b) If made outside Niue, be made in accordance with the same rules as are in force for the time being with respect to affidavits in the Supreme Court of New Zealand.
- (4) Declarations to be filed in the Court shall—
 - (a) If made in Niue, be made in accordance with the provisions of section 720 of the Act:
 - (b) If made outside Niue, be made in accordance with the provisions of the Oaths and Declarations Act 1957 relating to declarations.
- (5) The Court, in its discretion and on such terms as it thinks fit as to costs or otherwise, may in any proceedings where it appears necessary make an order for the examination on oath or affirmation before any officer of the Court or before the Maori Land Court of New Zealand or a Judge thereof or before any other person or persons, and at any place either in or out of New Zealand, of any witness or other person, and may order any deposition so taken to be filed in the Court as evidence in the proceedings.

28 Expenses of witnesses

A witness shall be allowed such reasonable expenses and allowances as the Court, in its discretion, thinks fit to award.

29 Summons to witness

- (1) Any party to any proceedings shall be entitled to apply *ex parte* to a Judge for an order that a summons to a witness be issued by the Court.
- (2) A summons to a witness shall be in form 4, and may be addressed to any number of persons not exceeding three.
- (3) Every such summons shall be signed by a Judge or the Registrar, and shall be dated and shall be under the Seal of the Court.

- (4) Notwithstanding anything in these rules, service of any such summons shall be personal:
Provided that a Judge may direct that service of a summons (other than service of a summons to show cause) in any particular case may be made in such other manner as will, in his opinion, be sufficient to bring the summons to the knowledge of the person to be served.
- (5) Personal service of such a summons may be effected by leaving with the witness a true copy of the summons, sealed with the Seal of the Court, and it shall not be necessary to produce the original summons to the person served.
- (6) Such a summons shall be served by—
- (a) An officer of the Court; or
 - (b) A constable; or
 - (c) A person duly authorised in writing in that behalf by the person who applied for the order under which the summons was issued; or
 - (d) Such other person as a Judge or the Registrar specifies in writing.
- (7) Unless the Judge otherwise directs in writing, there shall be paid or tendered to a witness at the time of the service of a summons (other than a summons to show cause) upon him, or at a reasonable time before the day on which he is ordered to attend the Court, such reasonable sum of conduct money as is specified in the summons by the Judge making the order granting the issue of the summons, to enable the witness to go to, stay at, and return from the place of hearing.
- (8) Service of a summons may be proved on affidavit or, at the hearing, on oath.
- (9) A summons to a witness to show cause shall be in form 5.
- (10) Notwithstanding the foregoing provisions of this rule, a Judge may, without application and of his own motion, direct that a summons to a witness shall be issued.

Rehearing

30 Application for rehearing

No application under section 45 of the Niue Amendment Act (No. 2) 1968 for a rehearing shall be made after the expiration

of 14 clear days after the making of the order or determination in the matter in respect of which the rehearing is sought.

Orders

31 Submission of drafts of orders

The Court or the Registrar may require any party in whose favour an order has been made to submit a draft of the order to the Registrar.

32 Form of order

- (1) An order shall be in form 6, unless the Court otherwise directs.
- (2) The form of an order shall be finally settled by a Judge or the Registrar.
- (3) Every order shall have annexed thereto such plans and other documents as the Court may require.
- (4) Every order shall be under the hand of a Judge or the Registrar and the Seal of the Court.
- (5) Duplicates of all orders shall be kept in and form part of the records of the Court, and all duplicates of orders shall be marked "duplicate".
- (6) No order shall be issued out of the Court to the person entitled thereto, other than an order in favour of the Crown, the Minister, the Resident Commissioner, or the Registrar, until all Court fees, other fees, duties, charges, and other money payable in respect thereof have been duly paid.
- (7) It shall be the duty of the Registrar, without any unnecessary delay, to draw up and complete as far as possible all orders made by the Court.
- (8) Nothing in these rules shall restrict the power of the Court to make interlocutory orders in respect of any matter as to which the Court is empowered to make a final order.
- (9) Where any order of the Land Appellate Court makes provision for the payment of any sum of money or for the imposition of any charge, then, for the purposes of enforcing that provision

or charge, the order shall be deemed to be an order of the Land Court.

Amendment of defects and records

33 Amendment of defects

- (1) The Court shall have power in the course of any proceedings, and whether with or without the application of any party, to amend all defects or errors in the proceedings, whether there is anything in writing to amend or not, and whether or not the defect or error is that of a party applying to amend.
- (2) All such amendments may be made on such terms as the Court thinks fit, and all amendments shall be made which are necessary for exercising as fully and beneficially as possible the jurisdiction of the Court.

34 Amendment of records

- (1) A Judge may at any time make or authorise to be made in any order, warrant, record, or other document made, issued, or kept by the Court all such amendments as he considers necessary to give effect to the intended determination or decision of the Court or to record the actual course and nature of any proceedings in the Court.
- (2) Any such amendment shall take effect as at the date of the order, warrant, record, or other document amended, but no such amendment shall take away or affect any right, title, or interest acquired in good faith and for value before the making of the amendment.
- (3) This rule shall extend and apply to all such orders, warrants, records, and other documents, whether made before or after the commencement of these rules.

Costs

35 Costs

In any proceedings the Court may make such order as it thinks fit for the payment of the costs thereof, or of any matters incidental or preliminary thereto, by or to any person who is a party to the proceedings, whether the parties by and to whom

all costs are so made payable are parties in the same or different interests.

36 Security for costs

- (1) In any proceedings and at any stage thereof the Court may require any party thereto to deposit with the Registrar or the Clerk of the Court or any other person specified by the Court any sum of money as security for costs; and, in default of that deposit being made, the Court may stay the proceedings, either wholly or in respect of the party so in default.
- (2) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs.
- (3) Notwithstanding any other provision of these rules, neither the Crown, nor the Minister, nor the Resident Commissioner, nor the Registrar shall in any case be liable to give security for costs in respect of any application to or proceeding in the Court.

37 Charging orders for costs

- (1) Where in any proceedings any order is made by the Court affecting or relating to Niuean land, the Court may in addition to or instead of making an order pursuant to rule 35 of these rules, make an order charging the whole or any part of those costs on the rents, revenues, income, or profits arising or to arise from the land or upon the share of any person in any such rents, revenues, income, or profits.
- (2) Any such order shall be deemed to be a deed of assignment, valid and effectual in all respects, enuring for the person in whose favour the order is made.

Appeals

38 Powers and duties of Chief Judge in relation to notices of appeal

- (1) The Registrar, on receiving a notice of appeal, shall forthwith transmit it, or a true copy thereof duly certified by the Registrar as being such a copy, to the Chief Judge. On receipt thereof, the Chief Judge may, in his discretion and without the necessity of hearing parties, if he is of the opinion that the grounds

of appeal are insufficiently stated in the notice, direct that a more explicit statement of such grounds be lodged by the appellant with the Registrar within a time to be fixed by the Chief Judge, to be computed from and including the day on which notice of the direction is given to the appellant. The Registrar shall forthwith give notice in writing of the direction to the appellant accordingly.

- (2) On the receipt of a notice of appeal or a true copy thereof, the Chief Judge shall, in his discretion and without hearing parties, decide whether security for the costs of the appeal shall be given by the appellant. If he decides that such security shall be given, he shall fix the amount thereof and the time within which the security shall be given, that time to be computed from and including the day on which notice of the requirement of security is given to the appellant. The Registrar shall forthwith give notice in writing of the requirement to the appellant accordingly.
- (3) Security for the costs of an appeal shall in all cases be given by depositing the amount thereof in money with the Registrar, or any other person specified by the Chief Judge.
- (4) Should the appellant fail to lodge a more explicit statement of grounds of appeal or fail to give security for costs in accordance with the provisions of this rule, the Chief Judge may, on application by any person interested in the appeal or of his own motion, make an order dismissing the appeal or an order enlarging the time in which the appellant shall lodge a more explicit statement of grounds of appeal or give security for costs. The Registrar shall give notice in writing of any such order to the appellant accordingly.
- (5) If, within the time enlarged as aforesaid, the appellant fails to lodge a more explicit statement of grounds of appeal or fails to give security for costs, the provisions of subclause (4) of this rule shall apply:

Provided that should an appellant not lodge a more explicit statement of the grounds of appeal or give security for costs within a period of 2 years computed from and including the date on which he was first given notice in that regard by the Registrar, the appeal shall be deemed to have been heard and finally dismissed by the Court.

39 Appeal from Commissioner

- (1) Any party to any proceedings before a Commissioner may appeal from any order or decision of the Commissioner to a Judge of the Land Court.
- (2) Every such appeal shall be by way of an application in form 1 to the Land Court, and shall be filed in the Court office within 28 clear days after the date of the order or decision appealed from.
- (3) On the filing of such an appeal, the Commissioner shall, unless a Judge otherwise orders, stay further proceedings on the order or decision appealed from.
- (4) Every such appeal shall be by way of rehearing.
- (5) Before hearing an appeal, a Judge may impose such conditions on the appellant as the Judge thinks fit as to security for costs or otherwise.
- (6) If the appellant fails to prosecute the appeal with due diligence, or fails to observe or perform any of the conditions imposed on him pursuant to subclause (5) of this rule, the Judge may dismiss the appeal.
- (7) The appellant may, at any time before the hearing of the appeal, discontinue his appeal, either wholly or in part, by filing in the Court a notice of discontinuance. If an appeal is wholly discontinued, the order or decision may be immediately carried into effect and the appeal shall be deemed to have been dismissed pursuant to subclause (6) of this rule and the Court shall give directions as to the disposal of any sum deposited as security for costs.
- (8) A Commissioner may at any stage of any proceedings before him adjourn the proceedings for hearing and determination by a Judge.
- (9) No appeal from an order or decision of a Commissioner shall, save with the leave of the Land Court or of the Land Appellate Court, be brought in the Land Appellate Court.

40 Withdrawal of appeal

- (1) Without limiting the provisions of rule 39 of these rules, an appellant may at any time before the hearing of his appeal by notice in writing given to the Registrar, or at any time after

the hearing has begun by oral application made in open Court, apply to the Court for leave to withdraw his appeal.

- (2) Leave to withdraw an appeal may be given on such terms as the Court thinks fit to impose, and the Court shall, in granting such leave give directions as to the disposal of any sum deposited as security for costs.
- (3) Any appeal so withdrawn shall be deemed to have been finally dismissed by the Court.
- (4) This rule shall apply to—
 - (a) Any appeal from an order or decision of a Commissioner:
 - (b) Any appeal to the Land Appellate Court.

41 Appeals to be by way of rehearing

- (1) All appeals to the Land Appellate Court shall be by way of rehearing.
- (2) On the hearing of any appeal the parties shall be restricted to the evidence adduced at the hearing upon which the order or decision appealed from was made:
Provided that the Land Appellate Court may in its discretion allow such further evidence to be adduced as may in its opinion be necessary to enable it to come to a just decision upon the matters in issue:
Provided also that the Land Appellate Court may refer to any record or other document filed or held in the records of the Court although the same may not have been produced or referred to at the aforesaid hearing in the Land Court.
- (3) The evidence adduced at the hearing upon which the order or decision appealed from was made shall be proved by the records of the Land Court, and no other proof thereof, except by leave of the Land Appellate Court, shall be admitted.

42 Procedure at hearing of appeal to Land Appellate Court

- (1) On the hearing of an appeal to the Land Appellate Court, no person other than the appellant shall, except with the leave of the Court, be heard in support of the appeal or put forward any claim contrary to the order or decision appealed from, and

no other person shall be heard save a person who satisfies the Court that he is a person interested in the proceedings.

- (2) No appeal shall be allowed on any ground not set out in the notice of appeal, or in a more explicit statement of the grounds of appeal, or in an amended statement of the grounds of appeal, unless the Court is of the opinion that the appeal may be so allowed without injustice to all other parties interested in the appeal.

Fees

43 Exemptions from payment of fees

- (1) No fee shall be payable on any application by the Crown, the Minister, the Resident Commissioner, or the Registrar.
- (2) No fee shall be payable on the filing of a notice of intention to appear referred to in rule 23 of these rules.

44 Scale of fees

- (1) Subject to the provisions of rule 43 of these rules, there shall be paid in respect of the matters described in Schedule 2 hereto the respective fees therein set out.
- (2) Subject to the provisions of rule 45 of these rules, no document shall be filed in the Court without the leave of a Judge or the Registrar unless the prescribed fee has been paid.

45 Reduction and remission of fees

The Court or a Judge may, in its or his discretion, reduce or remit any fee.

Copies of documents

46 Certified and sealed copies

Unless otherwise directed by a Judge, the Registrar, upon payment of the fee prescribed in Schedule 2 hereto, shall furnish to any person applying for the same a certified or sealed copy

of any order or document made by or filed or lodged in the Court.

General provisions

47 Arrangement of business

The Court may arrange the order of its business as it thinks fit.

48 Matters not provided for

In any matter for which no provision is made by these rules, the Court may proceed as it thinks fit, and shall dispose of the matter as nearly as may be in accordance with any rules affecting any similar case or, if there be no such rules, in such manner as the Court thinks best calculated to promote the ends of justice.

49 Rules ceasing to be in force in Niue, and savings

- (1) After the commencement of these rules, the rules specified in Schedule 3 hereto shall cease to have effect as part of the law of Niue.
- (2) The provisions of the Acts Interpretation Act 1924 shall apply with respect to the rules specified in Schedule 3 hereto as if they had been revoked by these rules.
- (3) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the foregoing provisions of this rule shall not affect any document or thing whatsoever done under the provision ceasing to have effect as part of the law of Niue or under any corresponding former provision

50

Revoked, as from 19 October 1974, by section 3(2) Niue Amendment Act 1974 (1974 No 43).

Schedule 1

Forms

[Spent]

Form 1

Rule 12(1)

(Ex parte) application to the Land Court

Number:

IN THE LAND COURT
OF NIUE

IN THE MATTER OF

I,

of

HEREBY APPLY for an ORDER
UPON THE GROUNDS

Dated this day of 19 .

This application is made in reliance upon

.....
Applicant (Agent for Applicant).

Witness (where rule 16(4) applies)

Fee: \$.....

This application was filed by
and notices and other documents relating to this application may be
served on the applicant at

For Court use only.

Initials

1. Date of filing of application:
2. Date fee paid:
3. Notes:

Form 2
Notice of appeal

Rule 12(4)

IN THE LAND (LAND APPELLATE) COURT
OF NIUE

IN THE MATTER of

At a sitting of the Court held on the day of 19 ,
before Esquire(s), Chief Judge, Judge(s) (Commissioner)

UPON HEARING the application (appeal) of dated the
day of 19 in the matter of

IT IS HEREBY ORDERED, pursuant to the provisions of
THAT

AS WITNESS the hand of the Chief Judge (Judge) (Commissioner) (Registrar)
(Deputy Registrar) and the Seal of the Court.

.....

Chief Judge (Judge) (Commissioner)
(Registrar) (Deputy Registrar)

Land Court (Appellate Court)

Minute Book References:

Volume(s)..... Folio(s).....

Form 3
Notice of intention to appear

Rule 23(2)

Number:
IN THE LAND (LAND APPELLATE)
COURT
OF NIUE

IN THE MATTER of Rule 23 of
the
Niue Land Courts Rules 1969

AND

IN THE MATTER of and
application (appeal) by for

I,

of

claiming to be interested in or affected by the above-mentioned application
(appeal) HEREBY GIVE NOTICE that I intend to appear in support of
(opposition to) the same UPON THE GROUNDS:

Dated this day of 19 .

.....
Claimant

Address for service:

.....
.....

No fee

For Court use only.

Initials

1. Date of filing of notice
2. Notes:

Form 4
Summons to witness

Rule 29(2)

Number:

IN THE LAND (LAND APPELLATE) COURT
OF NIUE

IN THE MATTER of Rule 29 of the
Niue Land Courts Rules 1969

AND

IN THE MATTER of an application
(appeal) by
for

To:

of

YOU ARE HEREBY SUMMONED to attend the Court
at on the of 19 at the hour
of o'clock in the noon, and from day to day until required,
to give evidence in the above matter and YOU ARE HEREBY REQUIRED then
and there to have and produce to the Court all the documents mentioned in the
Schedule hereto, and all other documents of whatsoever nature relating to that
matter in your possession, custody, or control. Should you fail to obey this
summons, you will be liable, for that failure, to such punishment or penalty as
is by law provided, if there was paid or tendered to you, in accordance with the
above-mentioned rule, conduct money in the sum of \$

THIS SUMMONS was issued at the request of
AS WITNESS the hand of the Judge (Registrar) (Deputy Registrar)
and the Seal of the Court this day of 19

SCHEDULE

.....
Judge (Registrar) (Deputy Registrar)

I, a Judge of the above-mentioned
Court hereby direct, pursuant to rule 29(4) of the Rules of the Court, that service
of this summons may be effected in the following manner, namely, by

Dated this day of 19 .

.....
Judge

Form 5—*continued*

IN THE LAND (LAND APPELLATE) COURT
OF NIUE

IN THE MATTER of Rule 29 of the
Niue Land Courts Rules 1969

AND

IN THE MATTER of an application
by
for

To

of

YOU ARE HEREBY SUMMONED to attend the Court
at on the day of 19
at o'clock in the noon, to SHOW CAUSE why you should
not be dealt with according to law for your failure to observe the provisions of
a summons dated the day of 19 issued in the
matter of the above-mentioned application and duly served upon you:

AND TAKE NOTICE that if you fail to observe this summons the matter
may be determined in your absence.

AS WITNESS the hand of the Judge (Registrar) (Deputy Registrar) and
the Seal of the Court this day of 19 .

.....
Judge (Registrar) (Deputy Registrar)

I, of
make oath and say that I served the above-named
with a summons, of which the copy of the
summons upon which this affidavit is endorsed is a true copy by delivering the
same to him (her) personally at on the day of
19 at o'clock in the noon.

SWORN by the above-mentioned }
at }
this day of }
19 before me: }

**Form 6
Order**

Rule 32(1)

Number:
IN THE LAND (LAND APPELLATE) COURT
OF NIUE

IN THE MATTER of

At a sitting of the Court held on the day of 19 ,
before Esquire(s), Chief Judge, Judge(s) (Commissioner)
UPON HEARING the application (appeal) of dated the
day of 19 in the matter of

IT IS HEREBY ORDERED, pursuant to the provisions of
THAT

AS WITNESS the hand of the Chief Judge (Judge) (Commissioner) (Registrar)
(Deputy Registrar) and the Seal of the Court.

.....

Chief Judge (Judge) (Commissioner)
(Registrar) (Deputy Registrar)

Land Court (Appellate Court)

Minute Book References:

Volume(s)..... Folio(s).....

**Schedule 2
Fees**

Rule 44(1)

	\$
1. On filing an application to the Land Court which may be made ex parte	0.50
2. On filing an application to a Judge of the Land Court by way of appeal from an order or decision of a Commissioner	1.00
3. On filing any other application to the Land Court	1.00
4. On filing a notice of appeal to the Land Appellate Court	15.00
5. On filing any other application not herein before in this Schedule mentioned	1.00

- §
6. On furnishing a certified or sealed copy, pursuant to rule 46 —
- (a) Of any application or order 0.50
- (b) Of any other document 0.05 per 100 words or part thereof

Schedule 3
Rules ceasing to be in force in Niue

Rule 49(1)

Title	<i>Gazette</i> Reference or Statutory Regulations Serial Number
The Cook Islands Native Land Court Rules 1916	<i>Gazette</i> , 1 December 1916, Vol III, p 3707
The Cook Islands Native Land Court Rules 1916, Amendment No 1	SR 1942/86
The Cook Islands Native Appellate Court Rules 1947	SR 1947/163

P J BROOKS,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules prescribe the procedure of the Land Court of Niue and the Land Appellate Court of Niue.

Reprinted as at
20 September 2007

Niue Land Courts Rules 1969

They are in substitution for the existing rules of the Land Court of the Cook Islands and of the Land Appellate Court of the Cook Islands, which will cease to have effect as part of the law of Niue.

Issued under the authority of the Regulations Act 1936.
Date of notification in the *Gazette*: 10 July 1969.

Contents

- 1 General
 - 2 About this eprint
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-

Notes**1 General**

This is an eprint of the Niue Land Courts Rules 1969. It incorporates all the amendments to the Niue Land Courts Rules 1969 as at 20 September 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Niue Amendment Act 2007 (2007 No 71): section 7(2)
