

**S.I. 17 of 2023**

**FAIR TRADING ACT, 2022**

*(Act 12 of 2022)*

**Fair Trading (Practice and Procedure of the Tribunal) Rules, 2023**

**Arrangement of Rules**

**Rules**

1. Citation
2. Definitions
3. Filing of application
4. Particulars of application to be registered
5. Commencement of suit
6. The application
7. The statement of reply
8. Copies of documents for Tribunal
9. Date on which parties to appear
10. Procedure if neither party appears
11. Evidence on Oath
12. Respondent admits claim
13. If claim denied, statement of reply to be filed
14. Hearings before the Tribunal
15. Instances where rules are silent
16. Record of hearing
17. Appeals

**S.I. 17 of 2023**

FAIR TRADING ACT, 2022

*(Act 12 of 2022)*

**Fair Trading (Practice and Procedure of the Tribunal) Rules, 2023**

In exercise of the powers conferred by section 48 of the Fair Trading Act, 2022, the Chief Justice hereby makes the following Rules —

**Citation**

1. These Rules may be cited as the Fair Trading (Rules of Practice and Procedure of the Tribunal) Rules, 2023.

**PART A  
INTERPRETATION**

**Definitions**

2. In these Rules unless the context otherwise requires —

“Act” means the Fair Trading Act, 2022;

“applicant” means an applicant initiating proceedings before the Tribunal;

“Code” means the Seychelles Code of Civil Procedure, 1976 (*Cap 213*).

“Commission” means the Fair Trading Commission established by section 5(1) of the Fair Trading Act, 2022;

“file or filing” means to deliver to the Secretary in terms of rule 3;

“party” to any matter includes an applicant, respondent, intervener, or any party joined in or substituted for another;

“record” means the documents listed in rule 16 and includes an electronic record or a voice recording;

“respondent” means the party against whom the application is made;

“Secretary” means the person performing the functions of secretary of the Tribunal appointed under section 21 of the Act;

“Tribunal” means the Fair Trading Tribunal established under section 14(1).

## **PART B COMMENCEMENT OF PROCEEDINGS**

### **Filing of application**

3.(1) Any applicant may commence proceedings before the Tribunal by filling an application accompanied by necessary affidavit with the Secretary of the Tribunal.

(2) The Secretary shall serve the applications on the respondent.

### **Particulars of application to be registered**

4.(1) On receipt of the application, the Secretary shall enter in a register of the Tribunal of suits, the names and places of residence of the parties, the nature of the action and the relief sought.

(2) Such entries shall be numbered in every year according to the Rules in which the application are received and the suit shall bear the same number.

### **Commencement of suit**

5.(1) The Secretary shall issue summons in the form as prescribed under schedule 1, under his or her signature with the seal of the Tribunal to each respondent calling upon them to appear before the Tribunal at a date and time therein stated, to answer the claim.

(2) The Secretary shall fix the date of appearance of the respondent so as to allow the respondent sufficient time to enable him or her to appear and answer on such day, according to the distance of respondent's place of residence from the court and to the circumstances.

(3) In any event, the time fixed for appearance under subrule (2) shall not be earlier than forty eight hours after the service of the summons.

(4) Service of summons shall be effected in the manner provided for under code 34 to 52 of the Code.

### **The application**

6.(1) The application referred to under subrule 3(1) shall contain the following particulars —

- (a) the name, description and place of residence of the applicant;
- (b) the name, description and place of residence of the respondent, so far as they can be ascertained;
- (c) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material facts which are necessary to sustain the action;
- (d) a demand of the relief which the applicant claims;
- (e) if the applicant has allowed a set-off or has relinquished a portion of his claim, the amount so allowed or relinquished.

(2) If the applicant seeks the recovery of money, the plaintiff must state the precise amount, so far as the case admits.

(3) If the applicant sues, or the respondent or any of the respondents are sued in a representative character, the plaintiff must state in what capacity the applicant or respondent sues or is sued.

(4) The applicant shall attach copies of all the documents he or she will rely on in support of his or her claim and annex a list of all those documents thereof to his or her application.

(5) Any documents listed in the annex which is not submitted along with the application shall be marked where the same may be seen at reasonable time before the hearing.

### **The statement of reply**

7.(1) The statement of reply must contain a clear and distinct statement of the material facts on which the respondent relies to meet the claim accompanied by affidavit.

(2) The statement of reply shall be filed with the Secretary who shall serve the reply on the applicant.

(3) If the respondent intends to produce any documentary evidence, he or she shall annex a list thereof to his or her statement of reply and shall state where the same may be seen a reasonable time before the hearing.

(4) Set-off (*compensation*) or counter-claims, shall be governed by code 79 and 80 of the Code.

(5) If the set-off depends upon a document, he must annex a copy of such document to his or her statement of reply.

### **Copies of documents for Tribunal**

8. A copy of every document tendered as evidence must be provided for the use of the Tribunal, unless the Tribunal otherwise directs.

## **PART C APPEARANCE OF PARTIES**

### **Date on which parties to appear**

9. On the day fixed in the summons for the respondent to appear and answer to the claim, the parties shall be in attendance at the Tribunal in person or by their respective attorneys or representatives.

### **Procedure if neither party appears**

10.(1) If on the day fixed for the respondent to appear and answer the claim, or on any other subsequent day to which the hearing of the suit is adjourned, when the case is called on neither party appears, the suit shall then be dismissed unless the Tribunal, for reasons to be recorded, otherwise directs.

(2) If respondent appears and the applicant fails to appear, the Tribunal may dismiss the claim for want of prosecution upon motion by the respondent or if the respondent appears and admits to the claim and the applicant fails to appear, judgment may be entered in the applicant's absence.

(3) If the applicant appears but the respondent fails to appear, the applicant may move the Tribunal for a hearing *ex parte*.

(4) On the date fixed for appearance under rule 5(2) the Tribunal shall fix a time and place for a hearing in respect of the matter.

## **PART D CONDUCT OF HEARING**

### **Evidence on Oath**

11.(1) The Tribunal may take evidence on oath and for that purpose may administer oaths.

(2) A person required to give evidence under oath may make an affirmation or declaration in lieu of an oath.

### **Respondent admits claim**

12. If on the day fixed in the summons for the respondent to appear, the respondent appears and admits the applicant's claim, judgment shall be given for the applicant.

### **If claim denied, statement of reply to be filed**

13. If the respondent denies the applicant's claim or any part thereof, the tribunal shall adjourn the case to a date to be fixed by the Tribunal and

shall notify the respondent to file a statement of reply on a date before the date fixed for hearing.

### **Hearings before the Tribunal**

**14.** A party to the proceedings shall not be entitled to produce before the Tribunal additional evidence, either oral or documentary, which was in his or her possession or knowledge but was not produced to the Commission during an investigation, except where —

- (a) it is proved to the satisfaction of the Tribunal that the party was not given sufficient opportunity by the Chief Executive Officer or staff members of the Commission to adduce such evidence at the investigation stage;
- (b) it is proved to the satisfaction of the Tribunal that the Chief Executive Officer or staff members of the Commission, deliberately or negligently omitted to consider such evidence at the investigation stage;
- (c) existence of such evidence was unknown to the party; or
- (d) it would be in the interests of justice to do so.

### **Instances where rules are silent**

**15.** If any matter of procedure is not specifically provided for by this Rule the Tribunal shall adopt as far as practicable the procedure of the Code.

### **Record of hearing**

**16.(1)** The Secretary shall compile a record of the proceedings in respect of any matter that has come before the Tribunal, comprising of —

- (a) the plaint documents or any application documents;
- (b) notices;
- (c) the presiding member's record of pre-hearing procedures;

- (d) any interlocutory order made by the Tribunal;
- (e) all documentary evidence;
- (f) the transcript, if any, of the oral evidence given at the hearing; and
- (g) a written record of the Tribunal's final decision with reasons.

## **PART E APPEALS**

### **Appeals**

17.(1) A person dissatisfied with a decision of the Tribunal, may appeal to the Supreme Court against the decision of the Tribunal in that matter by written notice delivered to the Secretary within 30 days from the date of, the decision complained of unless extended by a Judge.

(2) The notice shall set forth the substance of such decision and the grounds of appeal.

(3) On receipt of such notice, the Secretary shall file the notice in the Registry of the Supreme Court with the original record, if any, and a brief statement of the grounds of the Tribunal's decision.

(4) The Registrar of the Supreme Court shall fix a date for the hearing of the appeal and shall serve a copy of the notice of appeal on the respondent.

(5) After the decision of the Supreme Court, the Registrar of the Supreme Court shall transmit a certified copy of the decision to the Secretary and such decision may be enforced in the same way as if it were a decision of the Tribunal.

(6) The fees payable in an appeal to the Supreme Court from a decision of the Magistrates' Court shall mutatis mutandis apply to an appeal under subsection (1).

**SCHEDULE 1**

*[Rule 5(1)]*

**Summons to appear to an application**

**The Fair Trading Tribunal**

**Applicant**

**Against**

**Respondent**

**WHEREAS** an application numbered ..... has been filed with the Secretary of the Tribunal on the ..... day ..... against you the above-named respondent.

You are hereby summoned to appear at a sitting of the Tribunal to be held at ..... o'clock of the ..... day of ..... in the Year Two thousand and ..... to answer the said application.

**Secretary of the Tribunal.**

A copy of the above-mentioned summons and application has been duly served by me the undersigned Process Server at ..... of the clock on the ..... day of ..... in the Year Two thousand and ..... by delivering the same to the said respondent.

**Process Server in and for the Tribunal**

**SCHEDULE 2**

**APPLICATION**

*[Rule 6(1)]*

**IN THE FAIR TRADING TRIBUNAL**

**Mr./Mrs** ....., of ....., Mahe,

[acting for and on behalf of Mr A. B. Sent]

Applicant

v

**Mr./Mrs** ....., of ....., Mahe

[Attorney representing

The respondent]

Respondent

**APPLICATION**

**1.**

**2.**

**3.**

**WHEREFORE** the Applicant prays that judgment be entered against the Respondent and in his favour.....

Victoria,

Date.

**[Attorney for]**

**Applicant**

**SCHEDULE 3**

**STATEMENT OF REPLY**

*[Rule 7(1)]*

**IN THE FAIR TRADING TRIBUNAL**

**Mr./Mrs.....**, of ....., Mahe,

[acting for and on behalf of Mr A. B. Sent]

*Respondent*

v

**Mr./Mrs .....**, of ....., Mahe

[Attorney representing

The respondent]

*Respondent*

**Grounds of Reply**

**1.**

**2.**

**3.**

**WHEREFORE** the Respondent prays that the application be dismissed and that judgment be entered against the Applicant and in his favour.....

Victoria,

Date.

**[Attorney for]**

**Applicant**

**SCHEDULE 4**

**Accompanied Affidavit**

*[Rule 7(1)]*

**AFFIDAVIT**

**In the Fair Trading Tribunal**

**Case No:**

**In the matter between:**

**Mr./Mrs.....**

**Applicant /Respondent**

**And**

**Mr./Mrs.....**

**Applicant /Respondent**

**APPLICANT/RESPONDENT REPLYING AFIDAVIT**

**I, the undersigned,**

**Mr./Mrs. ....**

**Do hereby make oath and say that:**

- 1.
- 2.
- 3.
- 4.

.....  
**Mr./Mrs.**

**SIGNED and SWORN to BEFORE me the undersigned Notary at .....on this ..... day of .....20...., after the Deponent has acknowledged that he knows and understand the content of this Affidavit, that it is the truth given on oath and binding on him.**

.....  
**NOTARY**

**SCHEDULE 5**

*[Rule 17]*

**NOTICE OF APPEAL**

**IN THE SUPREME COURT**

In the matter between

..... Appellant

and

.....Respondent

(Case No: .....)

**NOTICE OF APPEAL**

Take Notice that ..... being dissatisfied with the decision of the Tribunal given on ..... day of ..... 20...., hereby appeal to the Supreme Court against the whole of the decision (or against such part of the decision as the case may be) upon the grounds set out in paragraph 2 and will at the hearing of the appeal seek relief set out in paragraph 3.

1. Grounds of appeal

(a) .....

(b) .....

(c) .....

2. Relief sought from the Supreme Court.

(a) .....

(b) .....

(c) .....

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

Signed .....  
(Appellant)

The address for service of the Appellant is.....

Copy of decisions attached

**MADE this 1<sup>st</sup> day of February, 2023.**

**RONY GOVINDEN  
CHIEF JUSTICE**

\_\_\_\_\_