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**CIVIL:**

**THE CIVIL TRIAL**



# 1 Introduction

If a defendant chooses to defend against a claim, and the matter has not been dealt with through mediation, or settlement, or summary judgment, the case proceeds to trial.

## 2 Proving a Claim

### 2.1 Burden and Standard of Proof

The claimant has the burden, or responsibility, of proving their case. They must prove their case on a balance of probabilities.

## 3 Open Court

To ensure the transparency of justice, it is a long standing principle of the common law that hearings be conducted in open Court, wherever possible. In Vanuatu, all civil proceedings must be held in open Court unless you direct otherwise: *Rule 12.2 Civil Procedure Rules*.

### Exceptions

All domestic violence cases are heard in chambers. This allows the parties to maintain their privacy while also being able to speak honestly about the situation.

## 4 Non – Appearance

### 4.1 Claimant Does Not Appear

If the claimant does not appear at the date trial:

- you may adjourn the proceedings to a date you fix; or
- you may dismiss the claimant's claim and give judgment for the defendant; or
- with your permission, the defendant may call evidence to establish that he or she is entitled to judgment under a counterclaim against the claimant;

- you may give directions about further dealing with the case; and
- you must consider the question of costs: *Rules 12.9(2),(3) Civil Procedure Rules*.

See Chapter 21, Civil: First Hearing.

## **4.2 Defendant Does Not Appear**

If the defendant does not appear at the date of first hearing:

- you may adjourn the proceedings to a date you fix; or
- you may give judgment for the claimant; or
- with your permission, the claimant may call evidence to establish that he or she is entitled to judgment against the defendant; and
- you may give directions about further dealing with the case; and
- you must consider the question of costs: *Rules 12.9(1),(3) Civil Procedure Rules*.

See Chapter 21, Civil: First Hearing.

## **4.3 Witness Does Not Appear**

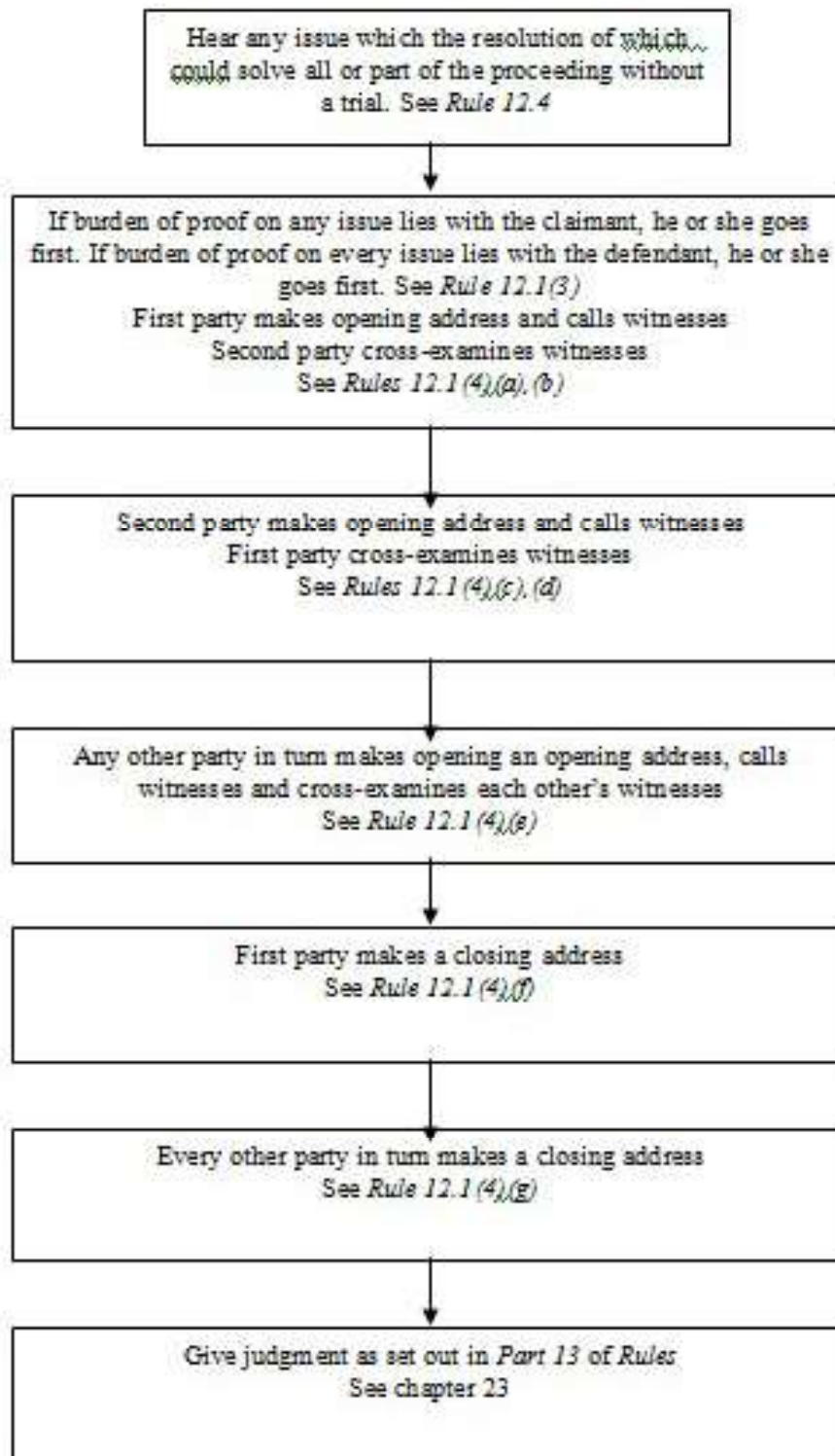
If a witness does not appear, and no summons was given, issue a summons for that person to attend. If necessary, adjourn proceedings.

If the witness does not appear in response to a summons, without a lawful excuse, the matter may be dealt with as contempt of Court. For further guidance, see chapter 19, Civil: Management of Proceedings.

# **5 Defended Hearing Procedure**

The diagram on the next page shows the hearing procedure for a civil trial.

## Civil Defended Hearing



At trial, it is within your discretion to give directions about the order of evidence and addresses and the conduct of the trial, generally: *Rule 12.1(1) Civil Procedure Rules*. Nevertheless, the following steps should serve as a guideline for the conduct of a civil trial:

1. Hear any legal arguments on preliminary issues if it appears that resolving these issues will lead to the proceeding or part of the proceeding being resolved without a trial.
2. The claimant presents his or her case first if the claimant has the burden of proof on any question.
3. The defendant presents his or her case first only if he or she has the burden of proof on every question.
4. The party who presents his or her case first (normally the claimant) makes an opening address and brings any oral evidence in support of his or her case. See chapter 18, Civil: Evidence.
5. The defendant then cross-examines the claimant's witnesses.
6. The defendant then makes an opening address and brings any oral evidence in support of his or her case.
7. The claimant then cross-examines the defendant's witnesses.
8. If there are any other parties, they in turn make their opening addresses, bring any oral evidence and cross-examine each other's witnesses.
9. The claimant then makes a closing address.
10. The other parties make their closing addresses in turn.
11. At the end of the trial, you must give judgment: *Rules 12.1(3),(4), 12.4, 12.11 Civil Procedure Rules*. See Chapter 23, Civil: Judgment.

### **Re-opening a Proceeding**

After the conclusion of a hearing but before judgment is given, you may allow a party to re-open a proceeding if you are satisfied that it is necessary to do so in order for substantial justice to be done: *Rule 12.10 Civil Procedure Rules*.

## **6 Ending a Proceeding Early**

### **6.1 Claimant Discontinues Claim**

The claimant may discontinue his or her claim, at any time, for any reason: *Rule 9.9(1) Civil Procedure Rules*.

To discontinue, the claimant must:

- file a Notice of Discontinuance in Form 18; and
- serve the notice on all other parties: *Rule 9.9(2) Civil Procedure Rules*.

If there are several defendants, the claimant may discontinue the claim against one or some of the defendants. The claim will then continue in force against the remaining defendants: *Rule 9.9(3) Civil Procedure Rules*.

If the claimant discontinues:

- he or she may not revive the claim;
- the defendant's counterclaim will continue in force; and
- the party against whom the claimant discontinued may apply to the Court for costs against the claimant: *Rule 9.9(4) Civil Procedure Rules*.

### **6.2 Striking Out the Claim**

If the claimant does not take the steps required by the *Civil Procedure Rules* to advance proceedings, or fails to comply with a Court order made during the proceedings, the claimant may have his or her proceedings struck out.

If the claimant takes no steps in a proceeding for three months, you may give the claimant notice to appear on the date in the notice to show why the proceeding should not be struck out: *Rule 9.10(3) Civil Procedure Rules*.

If the claimant does not appear on the date or does not show cause, you may strike out the proceeding: *Rule 9.10(3) Civil Procedure Rules*.

Additionally, you may strike out a proceeding:

- at a hearing; or
- without notice, if there has been no step taken in the proceeding for six months: *Rule 9.10(2) Civil Procedure Rules*.

Upon striking out a proceeding, ensure the Registrar sends the required notice to the parties telling them the proceeding has been struck out: *Rule 9.10(4) Civil Procedure Rules*.

### 6.3 Settlement

If the parties to a proceeding inform you that they have settled the matter, you must:

- record the case as being settled;
- note in the file the details of the settlement; and
- not enter judgment for any party: *Rule 9.8(2) Civil Procedure Rules*.

If the parties to a proceeding do not inform you that they have settled the matter, you may:

- set the case aside for six months; or
- if nothing has been heard from the parties in six months, strike out the case under *Civil Procedure Rule 9.10*.

If either party does not comply with the terms of the settlement, the other party may apply to have you reopen the case, whether or not it has already been struck out: *Rule 9.8(3) Civil Procedure Rules*.

If you are satisfied that the party has not complied with the settlement, you may reopen the case: *Rule 9.8(4) Civil Procedure Rules*.

## 7 Adjournments

Before or during the hearing of any case, you may adjourn the hearing to a certain time and place: *Rule 12.3 Civil Procedure Rules*. State the time and place in the hearing of the parties or their advocates.

Set a date after considering the time the parties need to prepare their cases and the Court diary.

**Adjourning** a case has a useful role if used properly. It allows parties to prepare themselves to present their best case and recognises that delays do sometimes happen.

Adjourning a case should not be used merely as a delaying tactic so that parties are not diligent in their preparation.



The most common reasons for adjourning a case are:

- a party does not appear;
- the witnesses of one of the parties do not appear;
- legal representation is being sought;
- a new issue has been raised and a party needs time to prepare a response.

You must exercise your power to adjourn judicially, by weighing several competing considerations, which include:

- the interests of the accused to a fair trial;
- the interests of the public in ensuring efficient prosecutions;
- the reasons for the adjournment;
- any fault causing the delay.

## 8 Interlocutory Orders During a Proceeding

At anytime during a proceeding a person may apply for an interlocutory order.

### 8.1 Content of the Application

The application must:

- be signed by the applicant or the applicant's lawyer; and
- name, as defendant, anyone whose interests are affected by the order sought; and
- state what the applicant applies for; and
- have with it a sworn statement by the applicant setting out the reasons why the order should be made (unless there are no questions of fact regarding the order or the facts are already known to the Court): *Rule 2.7(2), 7.2(4) Civil Procedure Rules*.

### 8.2 Urgent Interlocutory Applications

In urgent situations you may dispense with a written application and allow an oral application.

You may allow an **oral** application if:

- the application is for urgent relief; and
- the applicant agrees to file a written application within the time you order; and

- you consider the matter an appropriate one:
  - ⇒ because of the need to protect persons or property; or
  - ⇒ to prevent the removal of persons or property from Vanuatu; or
  - ⇒ because of other circumstances that justify making the order: *Rule 7.6 Civil Procedure Rules*.

If the interlocutory order sought is one outside your jurisdiction (such as an Order to Protect Property under *Rule 7.8* or *Order to Seize Documents* under *Rule 7.9*), direct the applicant to apply to the Supreme Court for the order.