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CIVIL:

APPEALS/CASES STATED/REVIEWS

1 Appeals to the Supreme Court

1.1 Right of Appeal

A party to a proceeding may appeal:

- a judgment or final order of the Magistrate's Court; and
- an interim injunction: *Rules 16.26 and 16.27(1) Civil Procedure Rules*.

The appeal may be on a question of law or fact or mixed law and fact: *Rule 16.27(2) Civil Procedure Rules*

1.2 Commencement of Appeal

An appeal is launched by filing and serving an application within 28 days of the date of the decision: *Rule 16.28(1) Civil Procedure Rules*.

The application must:

- set out the grounds of appeal; and
- be in Form 33: *Rule 16.28(2) Civil Procedure Rules*.

Filing an appeal against a civil judgment does not affect the enforcement of the judgment unless:

- the party appealing applies for a suspension; and
- the Court grants a suspension: *Rule 13.4 Civil Procedure Rules*.

2 Appeals From Island Courts

2.1 Right of Appeal

Any person may appeal to the Magistrate's Court from a decision of an Island Court within 30 days from the date of the order or decision of the Island Court *s22(1) as amended by s7 Schedule Island Courts (Amendment) Act No15 of 2001*.

Notwithstanding the 30 day requirement, upon application, you may grant an extension to bring the appeal, provided the application is made within 60 days of the date of the order or decision of the Island Court: *s22(5) Island Courts Act*.

Whether or not to grant an extension is within your discretion. See *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUCA 26; Civil Appeal Case No 15 of 2003.

The appellant must:

- file a Notice of Appeal in the Magistrate's Court; and
- give a copy of the Notice to each other party: *Rule 16.34(2) Civil Procedure Rules*.

Each party must give an address for service to the Magistrate's Court: *Rule 16.34(3) Civil Procedure Rules*.

Ensure that the Island Court provides you with the Notice of Appeal and all supporting documents: *s16.34(4) Civil Procedure Rules*.

Upon getting the documents to launch the appeal:

- fix a first hearing date; and
- tell the parties of this date: *Rule 16.34(5) Civil Procedure Rules*.

2.2 Hearing the Appeal

When hearing an appeal against a decision of an Island Court, you must appoint two or more assessors knowledgeable in custom to sit with the Court: *s22(2) Island Courts Act*.

When hearing the appeal, you must:

- consider any records relevant to the decision;
- receive any relevant evidence; and
- make any inquiries you think fit: *s22(3) Island Courts Act*.

Upon hearing the appeal, you may:

- make any order or pass any sentence the Island Court could have made or passed when hearing the matter; or
- order that the cause or matter be reheard before the same court or before any other Island Court: *s23 Island Courts Act*.

First Hearing

At the first hearing of the appeal:

- you must appoint 2 or more assessors knowledgeable in custom to sit on the appeal;
- you may make any other orders, or give any directions, for hearing the appeal; and
- you must fix a date for hearing the appeal: *Rule 16.34(6) Civil Procedure Rules*.

3 Cases Stated

A case stated is a statement of certain relevant portions of the case for the opinion or judgment of another Court. Unlike an appeal, a case stated is limited to a specific issue. Once the issue is decided, the case returns to Magistrate's Court for determination of the case itself.

For any civil or criminal matter, you may reserve any question of law for the Supreme Court to determine through a case stated: *s17(1) Judicial Services and Courts Act*.

After sending a case stated to the Supreme Court you cannot deliver judgment in the case until the Supreme Court has given its opinion: *s17(2) Judicial Services and Courts Act*.

After the Supreme Court hears argument on the case, it will make its determination. Upon receiving this determination you may proceed in accordance with it to continue with the proceedings.

3.1 Referring Civil Appeals

Whenever you refer a constitutional question or question of law to the Supreme Court, you must:

- state the question to be decided;
- state concisely the facts necessary to enable the Supreme Court to decide the question; and
- set out the questions and facts in numbered paragraphs: *Rules 16.22(2),(3) Civil Procedure Code*.

It is very important to clearly state the question you wish the Supreme Court to answer and to provide sufficient information. Leaving out important facts or details could lead to the Supreme Court being unable to make a good decision, which will affect the proceeding and may serve to bring the judiciary into disrepute.

Copies of the case stated must be served on all parties to the proceeding: *Rule 16.22(5) Civil Procedure Rules*.

While the case stated is being dealt with by the Supreme Court, you must ensure no steps in the proceeding are taken either by yourself or by the parties: *Rule 16.22(6) Civil Procedure Rules*.

4 Review of Island Court Decisions by Supervising Magistrate

The decisions of all Island Courts are subject to the review by the Court's Supervising Magistrate.

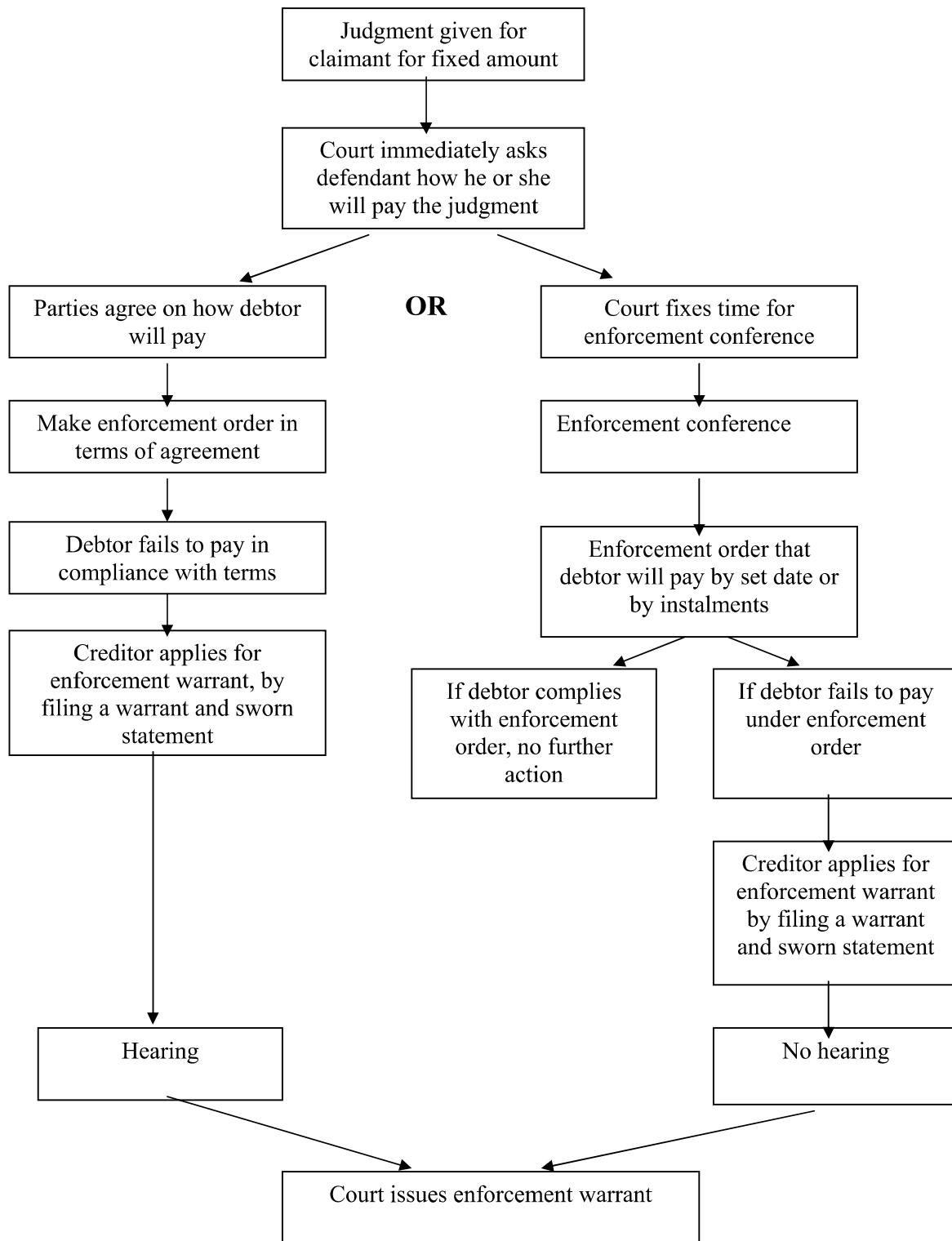
At all times, the Supervising Magistrate must have access to the Island Courts and their records within his or her jurisdiction: *s21(1) Island Courts Act*.

4.1 Review

For both civil and criminal matters, on his or her own application or on the application of any other person, the Supervising Magistrate may:

- revise any of the proceedings as an Island Court;
- make any order or pass any sentence which the Island Court itself could have done;
- order any case to be retried before the same or any other Island Court under his or her supervision; or
- at any stage of the proceedings order the case to be transferred to himself or herself for hearing: *s21(2) Judicial Services and Courts Act*.

Enforcement of Money Orders



Enforcement of Non-Money Orders

