

Civil Procedure Code (Amendment of the first Schedule)

G. N. No. 255 (contd.)

Amendment of regulation 22

5. Regulation 22 of the principal Regulations is amended by—
- (a) adding the words "licence or certificate" immediately after the word "permit" appearing in the marginal notes;
 - (b) inserting the words "licence or certificate" immediately after the word "permit" whenever it appears in sub-regulations (1) and (2).

Amendment of regulation 23

6. Regulation 23 of the principal Regulation is amended by inserting the words "licence or certificate" immediately after the word "permit" whenever it appears in the regulation.

Amendment of the Fourteenth Schedule

7. The Fourteenth Schedule to the principal Regulations is hereby amended by deleting item 4 of paragraph C of Part II which appear at page 58 of the Regulations.

Dodoma,
2nd August, 2005

ZAKIA HAMDANI MEGHJI (MP),
*Minister of Natural Resources
and Tourism*

GOVERNMENT NOTICE No. 256 published on 2/9/2005

THE CIVIL PROCEDURE CODE ACT, 1966

(No. 49 OF 1966)

ORDER

Made under section 80 and 81

THE CIVIL PROCEDURE CODE (AMENDMENT OF THE FIRST SCHEDULE)
ORDER, 2005

Citation

1. This Order may be cited as the Civil Procedure Code (Amendment of the First Schedule) Order, 2005 and shall be read as one with the First Schedule to the Civil Procedure Code Act, 1966 (hereinafter referred to as the "principal Order").

Amend-
ment of
Order
XXXII

2. Order XXXII of the principal Order is amended generally by—

(a) revoking Rule 1 and replacing it with the following:

"Parties to
suits

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage, security or in the right of redemption shall be joined as parties to any suit relating to the mortgage:

Provided that—

(a) a mortgagee may sue without being joined as party to a suit; and

(b) a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.";

(b) revoking Rules 2, 3, 4, 5, and 6;

(c) renumbering Rules 7,8,9,10,11,12,13,14,15 and 16 as Rules 2, 3,4, 5, 6, 7, 8, 9, 10 and 11 respectively;

(d) deleting in Rule 5, as renumbered the phrase "foreclosure or sale" wherever it appears; and

(e) revoking Rules 9 and 10 as renumbered and replacing them with the following—

"Suit for
possession

9. In a suit for delivery of possession of mortgaged land to the mortgagee by the mortgagor or by any other person in or alleged to be in possession of the property, the court may, if it is satisfied that the plaintiff has the right to such possession, pass a decree directing the defendant to deliver possession of such property to the Plaintiff.

"Interpre-
tation
Cap. 334

10. References in this Order to retransferring mortgaged property shall, in relation to land registered under the Land Registration Act or relation to

Civil Procedure Code (Amendment of the first Schedule)

G. N. No. 256 (contd.)

mortgages created otherwise than by transfer of the property, be construed as meaning discharging the mortgage."

Amend-
ment of
Order
XXXV

3. Order XXXV of the principal Order is amended generally as follows—

- (a) in paragraph (c) Rule 1 by—
- (i) deleting subparagraphs (ii), (iii);
 - (ii) renumbering subparagraphs (iv), (v) and (vi) as subparagraphs (ii), (iii) and (iv); and
 - (iii) deleting in subparagraph (ii) as renumbered the phrase "(where such possession is sought otherwise than by foreclosure)";

(b) by deleting paragraph (b) of subrule (2) of Rule 2 and replacing it with the following:

"(b) where the suit arises out of a mortgage and is for delivery of possession, redemption, discharge or transfer, to a decree in accordance with the provisions of Order XXXII and other provisions of this Code and such decree may, subject to exercise by the court of such powers as it may have, unless it is a preliminary decree, be executed forthwith.";

(c) by inserting immediately after Rule 3 the following:

"Possession Suit against trespassers

4.—(1) Where, in a possession suit against trespassers, the plaintiff does not know the name of a person in occupation or possession of the land, the suit shall be brought against 'persons unknown' in addition to any named defendants.

(2) In a possession suit against trespassers the defendant shall be served with the plaint and any affidavits sworn in support thereof—

- (a) in the case of a dwelling house, not less than 5 days; and
- (b) in the case of other land, not less than 2 days, before the hearing date.

(3) In all other possession suits—

- (a) the hearing date shall be not less than twenty one days from the date of issue of the plaint; and
- (b) the defendant shall be served with the plaint and any affidavits sworn in support thereof not less than fourteen days before the hearing date.

(4) Where, in a possession suit against trespassers, the suit has been issued against 'persons unknown', the plaint and any affidavits sworn in support thereof shall be served on those persons by—

- (a) attaching copies of the plaint and any affidavits sworn in support thereof to the main door or some other part of the land so that they are clearly visible; and
- (b) if practicable, inserting copies of those documents in a sealed envelope addressed to 'the occupiers' through the letter box; or
- (c) placing stakes in the land in places where they are clearly visible and attaching to each stake copies

Civil Procedure Code (Amendment of the first Schedule)

G. N. No. 256 (contd.)

of the plaint and any affidavits sworn in support thereof in a sealed envelope addressed to "the occupiers".

"Suit for Possession of Land Consisting of a dwelling house

5.-(1) Subject to Part X of Land Act, 1999, this rule shall apply where a Mortgagee Seeks Possession of land which consists of or includes a dwelling house.

(2) Not less than fourteen days before the hearing, the plaintiff shall send a notice to the property addressed to the 'occupiers'.

(3) The notice referred to in paragraph (2) must—

- (a) state that a possession suit for the property has started;
- (b) show the name and address of the plaintiff, the defendant and the court which issued the plaint; and
- (c) give details of the place, date and time of the hearing.

(4) The plaintiff shall produce at the hearing—

Additional requirements for Possession Suit by Mortgagee

6.-(1) If the suit is a possession suit by a mortgagee, the plaint shall also set out:

- (a) the state of the mortgage account by including:
 - (i) the amount of:
 - (A) the advance;
 - (B) any periodic repayment; and
 - (C) any payment of interest required to be made;

- (ii) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at a stated date not more than fourteen days after the suit started specifying the amount of advocate's costs and administration charges which would be payable;
- (iii) the rate of interest payable:
 - (A) at the commencement of the mortgage;
 - (B) immediately before any arrears referred to in subparagraph (b) accrued;
 - (C) at the commencement of the proceedings;
- (b) if the suit is brought because of failure to pay the periodic payments when due:
 - (i) in schedule form, the dates when the arrears arose, all amounts due, the dates and amounts of all payments made and a running total of the arrears;
 - (ii) details of:
 - (A) any other payments required to be made as a term of the mortgage (such as for insurance premiums, legal costs, default interest, penalties, administrative or other charges);

(B) any other sums claimed and stating the nature and amount of each such charge; and

(C) whether any of these payments is in arrears and whether or not it is included in the amount of any periodic payment;

(c) details of any tenancy entered into between the mortgagor and mortgagee including any notices served; and

(d) state any previous steps which the plaintiff has taken to recover the money secured by the mortgage or the mortgaged property and, in the case of court proceedings, state:

(i) the dates when the suit started and concluded; and

(ii) the dates and terms of any orders or decrees made,

Possession suit must state plaintiff's interest, etc.

7. In a possession suit against trespassers, the plaintiff shall state the plaintiff's interest in the land or basis of his right to delivery of possession and the circumstances in which it has been occupied without licence or consent. ";

(d) by renumbering Rules 4, 5, 6 and 7 as Rules 8, 9, 10 and 11 respectively; and

(e) by deleting in Rule 8 as renumbered the phrase "under special circumstance" and replacing it with the phrase "in exceptional circumstances,"

Dar es Salaam,
23rd August, 2005

BARNABAS A. SAMATTA,
Chief Justice