



LAWS OF KENYA

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## **DEBTS (SUMMARY RECOVERY) ACT**

CHAPTER 42

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**CHAPTER 42**

**DEBTS (SUMMARY RECOVERY) ACT**

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**CHAPTER 42****DEBTS (SUMMARY RECOVERY) ACT**

[Date of commencement: 26th May, 1913.]

**An Act of Parliament to make provision for the summary recovery of civil debts**

[Cap. 8 (1948), L.N. 299/1956, Act No. 17 of 1960, L.N. 172/1960, Act No. 17 of 1962, Act No. 36 of 1962, L.N. 2/1964, Act No. 10 of 1969.]

**1. Short title**

This Act may be cited as the Debts (Summary Recovery) Act.

**2. Recovery of civil debts**

Any sum declared by any Act, whether past or future, to be a civil debt recoverable summarily may be recovered in the court of any magistrate of competent jurisdiction in the manner prescribed by this Act.

**2A. Jurisdiction of magistrates**

(1) A magistrate holding a subordinate court of the first class shall have jurisdiction in any suit or proceeding brought under this Act, and notwithstanding anything contained in the Magistrates' Courts Act (Cap. 10), the pecuniary jurisdiction of such magistrate in any such suit or proceeding shall be unlimited.

(2) The Chief Justice may, by order in the *Gazette*, confer on any magistrate holding a subordinate court of the second class power to exercise the jurisdiction conferred by subsection (1) of this section on a magistrate holding a subordinate court of the first class, subject to such pecuniary limitation as he may order.

(3) Any magistrate having jurisdiction over any suit or proceeding brought under this Act may, at any stage of the proceedings, transfer such suit or proceeding to the court of any other magistrate having such jurisdiction.

[Act No. 17 of 1962, s.2, Act No. 10 of 1969, Sch.]

**3. Commencement of proceedings**

(1) All proceedings under this Act shall be commenced by complaints, which shall be in writing and shall set forth the particulars of the claim.

(2) A magistrate shall not be required to examine a complainant on oath before issuing a summons to the defendant.

**4. Magistrate to issue summons**

(1) A magistrate of competent jurisdiction receiving a complaint may issue a summons stating shortly the matter of the complaint and requiring the defendant to appear at a certain time and place before him to answer the complaint.

(2) The particulars of the claim shall, unless embodied in the summons to be annexed to, and if so annexed shall be deemed to be part of, the summons.

(3) The provisions of the Criminal Procedure Code (Cap. 75) relating to the service of a summons shall apply to the service of any summons issued under this Act.

#### **5. Warrant not to issue, but if defendant fails to appear magistrate may proceed *ex parte***

A warrant shall not be issued for compelling the attendance of the defendant to answer any such complaint, but if on the day and at the place appointed in and by the summons, or on any day to which the hearing may be adjourned, the defendant fails to appear, then and in every such case, if the magistrate is satisfied that the summons was duly served upon the defendant a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such magistrate to proceed *ex parte* to the hearing of the complaint, and to adjudicate thereon as fully and effectually, to all intents and purposes, as if such defendant had personally appeared before him in obedience to the said summons.

#### **6. Procedure in trials**

The procedure in trials before subordinate courts prescribed by the Criminal Procedure Code (Cap. 75) shall, so far as applicable, be followed in the trial of a case under this Act.

[Act No. 17 of 1962, s.3.]

#### **7. Defendant may be a witness**

The defendant in any proceedings under this Act shall be a competent witness for the defence.

#### **8. Order for payment**

(1) If on the hearing of the complaint the magistrate is satisfied that the defendant is liable to pay the sum claimed or any part thereof, he shall make an order that the defendant does pay into court such sum as the magistrate may adjudge is payable by the defendant.

(2) A magistrate by whose order any sum is adjudged to be paid may do all or any of the following things, namely—

- (a) allow time for the payment of such sum; and
- (b) direct payment to be made of the said sum by instalments; and where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

#### **9. Dismissal of complaint**

If, on the hearing of the complaint, the magistrate is satisfied that the defendant is not liable to pay the sum claimed or any part thereof, he shall dismiss the complaint.

**10. Costs**

(1) In any case in which a magistrate makes an order against the defendant, he may, at his discretion, award and order in the order that the defendant shall pay to the complainant such costs as to the magistrate seem reasonable, and the sum so allowed for costs shall be specified in the order, and be recoverable in the same manner, and under the same warrant, as any sum of money adjudged to be paid is recoverable.

(2) Whenever a magistrate dismisses a complaint, it shall be lawful for him, at his discretion, by his order of dismissal, to award and order that the complainant shall pay to the defendant such costs as to the magistrate seem just and reasonable, and such costs shall be recoverable in the like manner as any other sum of money adjudged to be paid under this Act is recoverable:

Provided that whenever proceedings have been instituted by a person in the service of the Government for the recovery of moneys alleged to be payable to the Government or to any department of the Government, and in such proceeding an order is made against the complainant under this subsection for the payment of costs, such order shall be served upon the head of the department in which the complainant is serving, and the costs ordered to be paid by the complainant shall be paid out of such fund as the Minister may, by general or special order, direct.

[L.N. 299/1956, L.N. 172/1960.]

**11. Enforcement of order for payment**

(1) Subject to the following provisions of this Act, where default is made in paying any money payable by virtue of an order made under this Act, a magistrate may—

- (a) commit the defaulter to prison for a term not exceeding six weeks or until payment of the sum due (whichever period be the shorter); or
- (b) order execution of the order, as if it were a decree to which the provisions of the Civil Procedure Act (Cap. 21) apply, by attachment and sale, or sale without attachment, of any property liable to such form of execution under that Act, or by attachment of debts (including salary accrued to or become due) as provided by that Act.

(2) All costs incurred in endeavouring to enforce an order shall, unless the magistrate otherwise orders, be deemed to be due in pursuance of the order.

[Act No. 17 of 1960, s.3.]

**12. Procedure for committal**

(1) A magistrate shall not commit any person to prison in default of payment of any money payable by virtue of an order made under this Act or for any want of sufficient execution to satisfy any such money—

- (a) unless a summons to appear and be examined on oath has been served on that person; and
- (b) unless it is proved to the satisfaction of the magistrate that that person has, or has had since the date of the order, the means to pay the money in respect of which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it.

(2) Proof of the means of the person making default may be given in such manner as the magistrate thinks just, and, for the purpose of such proof, the debtor and any witness may be summoned and their attendance enforced by the same process as in cases in which the magistrate has jurisdiction in criminal matters, and such person making default and witnesses may be examined on oath.

(3) Every order of committal under this section shall be issued, executed and obeyed in like manner to commitments under the Criminal Procedure Code (Cap. 75), except that, for the purposes of the prison laws for the time being in force, the person committed shall be deemed to be a civil prisoner.

(4) There shall be endorsed on every order of commitment the sum on the payment of which the defendant may be discharged.

(5) When an order of commitment is issued, the defendant may, at any time before he is delivered to the officer in charge of the gaol, pay to the officer holding the order the amount endorsed thereon as that on the payment of which he may be discharged, and on receiving that amount the officer shall discharge the defendant, and shall forthwith pay the amount to the magistrate who made the order.

(6) No imprisonment under this section shall operate as a satisfaction, or extinguishment of any debt, or deprive any person of any right to levy execution under section 11 of this Act against the property or debts of the person imprisoned in the same manner as if such imprisonment had not taken place.

[Act No. 17 of 1960, s.4.]

### **13. Appeal**

An appeal shall lie to the High Court from any order made under section 8 or section 9 of this Act, and the provisions of the Criminal Procedure Code (Cap. 75) relating to appeals from the order of a subordinate court shall apply to such appeal.

### **14. Rules of court**

The Chief Justice may make rules of court fixing fees, prescribing forms and generally for the purposes of, and for giving effect to, the provisions of this Act.

[Act No. 17 of 1960, s.5, Act No. 36 of 1962, Sch.]

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CHAPTER 42

DEBTS (SUMMARY RECOVERY) ACT

SUBSIDIARY LEGISLATION

*List of Subsidiary Legislation*

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Rules of Court under section 14

### DEBTS (SUMMARY RECOVERY) RULES

[Cap. 8 (1948), Sub. Leg.]

1. These Rules may be cited as the Debts (Summary Recovery) Rules.
2. The particulars of a complaint for recovery summarily of a civil debt shall be in the form in the Schedule to these Rules, and shall set forth the particulars of the complaint, and shall be filed in duplicate.
3. The fees payable on a complaint under the Act shall be the same as those payable under the rules of court for the time being in force in regard to civil suits generally, so far as they may apply to proceedings under the Act or these Rules.

#### SCHEDULE

[Rule 2.]

#### FORM OF COMPLAINT

Complaint  
Chapter 42 of the Laws.

Civil Debts,  
Summary Recovery

IN THE ..... COURT  
AT .....

Name of complainant and address for service—

Name of defendant and address for service—

*[If the complainant sues, or the defendant is sued in a representative capacity, the particulars must state in what capacity the complainant sues or the defendant is sued]*

Particulars of Complaint

Date ....., 20 .....

.....  
*Signature of Complainant*

Directions of Magistrate—

To .....

of ..... [Defendant]

You are hereby summoned to appear in this Court in person on the ..... day of  
....., 20....., at ..... o'clock in the forenoon to answer the complaint set  
forth herein.

Take notice that, in default of your appearance, the complaint will be heard and determined in  
your absence.

Given under my hand and the seal of this Court this ..... day of  
....., 20....., at .....

.....  
*Magistrate*

