



Tuvalu

**MATRIMONIAL CAUSES
(MAGISTRATES' COURTS) RULES**

L.N. 26/81



Tuvalu

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

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Tuvalu

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

L.N. 26/81

MATRIMONIAL PROCEEDINGS ACT 1984

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [Date]

[These rules were originally made under section 9 of the repealed Divorce Act, and continue in operation pursuant to section 32 of the Interpretation and General Provisions Act.]

1 Citation

These Rules may be cited as the Matrimonial Causes (Magistrates' Courts) Rules.

2 Interpretation

- (1) In these Rules, unless the context otherwise requires —
“**court**” means a magistrate's court exercising powers under the Ordinance;
“**the Ordinance**” means the Divorce Ordinance.
- (2) Unless the context otherwise requires, any reference in these Rules to a numbered rule refers to a rule in these Rules-and any reference to a numbered form refers to a like numbered form in the Schedule to these Rules.

- (3) Any form used in accordance with these Rules may be used with such variations as the circumstances of the individual case may require.

3 Application of Magistrates' Courts Rules

Subject to the provisions of these Rules and of any other written law any Magistrates' Courts Rules for the time being current shall apply, with the necessary modifications, to the practice and procedure in relation to the institution and hearing of matrimonial proceedings in a magistrate's court exercising powers under the Ordinance.

4 Commencement of proceedings

Subject to the provisions of the Ordinance and these Rules, proceedings for dissolution of marriage may be instituted by filing a petition, addressed to the Magistrate's Court, with the Clerk to the Magistrate's Court.

5 Petition

- (1) A petition shall be in accordance with Form 1.
- (2) Unless otherwise directed, every petition shall contain the information required by Form 1, and any further information required by such of the following paragraphs of this rule as may be applicable.
- (3) A petition shall state the full name of each party to the proceedings and, in addition —
 - (a) the address and occupation of the petitioner;
 - (b) the name of the wife immediately before the marriage; and
 - (c) the address and occupation, so far as known to the petitioner, of any person, not being a party to the proceedings, specified in the petition as a person with whom the respondent is alleged to have committed adultery.
- (4) Where the address, at the date of the petition, of a person referred to in paragraph (3) is not known to the petitioner, the petition shall state that the address is not known to the petitioner and also state the last address (if any) of the party or person known to the petitioner.

6 Ground of petition

- (1) A petition shall state the ground on which the decree is sought.

- (2) For the purpose of these Rules, a ground specified in a lettered paragraph of section 3 of the Ordinance may be stated in any court document in the terms set out in the table below opposite the letter by which the paragraph is identified in section 3 of the Ordinance.
- | | | |
|-----|-------|-----------------------|
| (a) | | adultery |
| (b) | | desertion |
| (c) | | cruelty |
| (d) | | refusal to consummate |
| (e) | | insanity |
| (f) | | venereal disease |
| (g) | | mistake |
| (h) | | incompatibility |

7 Date and signing of petition

- (1) A petition shall be signed by the petitioner and shall be dated the date on which it is filed.
- (2) The court may in any case where a petition has not been filed or where a petition has been filed either on application or on its own volition complete a form of petition or make good any inadequacy in a petition filed on the basis of evidence given on oath by the petitioner but shall not proceed with any hearing of the petition without service of the new or amended petition unless the respondent is present before the court.

8 Document to be filed with petition

- (1) A petition shall, subject to the provisions of rule 7, be presented for filing together with 2 copies.
- (2) A certificate of marriage or an official copy of an extract of the entry in the register of marriages of the marriage to which the petition relates shall be filed with the petition. Where a certificate is not written in English a translation in English shall be annexed to the certificate:

Provided that if a certificate, or an official copy of an entry in the register of marriage relating to the marriage cannot for good reason be procured and filed the petitioner may file instead an affidavit in Form 2.

9 Summons to answer petition

- (1) A petition presented for filing and every copy of the petition for service shall be attached to a form of summons in Form 3 addressed to the respondent.
- (2) On the filing of a petition, the Clerk of the Court shall cause a summons in Form 3 to issue for the hearing of the petition on a day and at a time and place to be appointed and specified in the summons.

10 Discontinuance

Before a petition is heard, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

11 Service of petition

- (1) Unless otherwise directed, a copy of every petition and summons issued in accordance with rule 9(2) shall be served personally upon every respondent and on any person specified in the petition on or with whom the respondent is alleged to have committed adultery.
- (2) Service shall be effected through the court.
- (3) Service of a copy petition and summons shall be effected not less than 8 clear days before the day appointed in the summons for the hearing of the petition.
- (4) Where the court is satisfied that it is not reasonably practicable to effect personal service of a petition, the court may order that service be effected in a manner specified in the order or that notice of a petition may be given by advertisement in which case the form of the advertisement shall be approved by the court and a copy of the newspaper containing any advertisement shall be filed in the court.

12 Dispensing with service

- (1) Where it appears necessary or expedient to do so the court may subject to paragraph (2) of this rule by order dispense with service of a copy of a petition on any person.
- (2) Service of a copy of a petition on a respondent spouse shall not be dispensed with except with the written approval of the Senior Magistrate.

13 Supplementary petition and amendment

- (1) A supplementary petition may only be filed with leave after the petition has been served.
- (2) A petition may be amended without leave before it is served but only with leave after it has been served.
- (3) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition, together with as many copies as there are persons to be served.
- (4) The provisions of rule 9 shall apply to a supplementary or amended petition as it applies to an original petition.

14 Proof of service

Unless service has been dispensed with in accordance with these Rules a petition shall not proceed to hearing unless every person required to be served with a copy of the petition and the summons —

- (a) has appeared before the court in answer to the summons; or
- (b) is shown by an affidavit (which shall be filed) in Form 4 to have been served with a copy of the petition and the summons personally or in accordance with an order for substituted service.

15 Answer

- (1) Unless the respondent seeks a decree of dissolution of marriage, it shall not be obligatory on him to file an answer unless the court so orders.
- (2) Except with the leave of the court or in accordance with rule 17, no answer may be filed later than 2 days before the date appointed in the summons as that on which the respondent is required to appear before the court to answer the petition.
- (3) An answer seeking a decree of dissolution of marriage shall be in accordance with Form 5.

16 Only respondent may file an answer

- (1) An answer shall not be filed by any party other than the respondent.

Court may hear any person named in petition or answer

- (2) The court may of its own motion hear evidence from any person named in any petition or answer if it considers it to be in the interest of justice so to do and on application of any such person shall hear that person.

17 Procedure at hearing

- (1) On the date and at the time and place appointed in the summons, if the respondent is present and is not represented by a barrister or solicitor, the court shall read and explain the petition and the answer, if any, and shall explain the nature of the proceedings. The court shall ascertain and record whether the respondent wishes to oppose the grant of a decree of dissolution of marriage on any ground set out in the petition and whether the respondent wishes to himself apply for a divorce and if so on which of the grounds set out in the Ordinance he intends to rely. The grounds shall (unless an answer has already been filed) be recorded with such further information as may be required in the form of an Answer in Form 5 a copy whereof shall be delivered to the Petitioner who shall be granted on adjournment if he or she so requires.
- (2) The court may adjourn any hearing on application of any party or on its own motion where the interest of justice so demands.
- (3) The Magistrate may, in any case where, by reason of the complexity of law or otherwise, it appears to him to be a matter that should be tried before the Senior Magistrate, remit the hearing of the petition to the Senior Magistrate's Court.
- (4) The court shall hear evidence on oath whether or not the parties contest the issue. All evidence shall be recorded in writing by the Magistrate.
- (5) The judgement of the court shall be pronounced in open court and shall contain the points for determination the decision thereon and the reason for the decision.

18 Form of decree

- (1) The decree nisi shall be in Form 6.
- (2) The Magistrate shall immediately upon making a decree nisi forward the papers in the case to the Senior Magistrate.

19 Certificate of decree absolute

Upon the expiration of the time specified in section 5 of the Ordinance and subject to the provisions of section 6 of the Ordinance the Magistrate shall issue

3 certificates of decree absolute and shall supply one each to the Petitioner and Respondent if required.

20 Reducing period for decree to become absolute

- (1) Application for an order reducing the period at the expiration of which a decree nisi may become absolute may be made, without notice, at the time of the hearing of the petition, but, if not so made, shall be made by summons supported by affidavit which shall be filed in the Magistrate's Court.
- (2) A copy of the summons and the affidavit in support shall be served on the other party to the marriage not less than 8 days before the hearing:
Provided that the Magistrate may, if he thinks fit, dispense with such service or reduce the period of such service.

21 Reconciliation

- (1) Where, after a decree nisi for dissolution of the marriage has been made but before a certificate of decree absolute has been issued, the parties have become reconciled, either party may apply to the court by way of notice of motion inter-parties for the decree nisi to be rescinded.
- (2) Where the application for a decree nisi to be rescinded is made under paragraph (1) the court shall, if it is satisfied that the parties are reconciled, make an order to be made rescinding the decree.

22 Matters to be heard in chambers

All applications and summonses under the Ordinance or these Rules, other than the hearing of the petition, shall be heard in chambers unless the court otherwise directs.

23 Application for decree nisi

An application for a decree nisi to be made absolute shall be signed by the applicant and be in Form.

SCHEDULE

(Rule 2 (2))

FORM 1

(Rule 5)

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

In the Magistrate's Court

Matrimonial Cause No. of 19....

Between Petitioner

..... and

..... Respondent

(See Notes at end)

PETITION

To the Magistrate's Court

I, of now ask the Court to dissolve my marriage to the respondent whose address is, and whose occupation is, on the ground(s) of: —

(see Note 1)

1. On the day of 19, I was lawfully married to the respondent at, I (or the respondent) being then being called (state full name and status of wife immediately before the marriage).

2. The respondent and I have cohabited at and at (or the respondent and I have never cohabited).

3. I am domiciled (or resident) in Tuvalu *(see Note 2)* or (I being the wife have ordinarily resided in Tuvalu for three years immediately) *(see Note 3)* preceding the presentation of this Petition.

4. There have been no previous proceedings in any court with reference to the marriage or to any child of the marriage except (state the nature of the proceedings, the date and effect of any order made and whether there has been any resumption of cohabitation since the order).

5. The facts which I rely on as constituting the ground(s) specified above are –

(see Note 4)

I therefore ask that the marriage be dissolved.

Dated and filed this day of 19...

.....

Petitioner

NOTES

1. Insert one or more of the following grounds. The full wording of the grounds is given in the Divorce Ordinance but you may use the following word or words to describe which ground or grounds you feel apply:

- a) adultery
- b) desertion
- c) cruelty
- d) refusal to consummate
- e) insanity
- f) venereal disease
- g) mistake
- h) incompatibility

2. If you are the husband then your country of domicile will be in Tuvalu if it is the country where you are making your permanent home. If you are just a visitor and intend to leave eventually then you are not domiciled in Tuvalu even if you stay in the country for many years. Delete this sentence if the part in bracket applies.

3. If you are a woman then you may as an alternative ask for a divorce if you have ordinarily lived in Tuvalu for the last 3 years. Delete the part in brackets if you are a man or if it does not apply.

4. State briefly the facts which establish that the grounds for divorce given by you apply (i.e. the details of adultery or insanity or as the case may be). These should give sufficient information to allow your husband or wife to understand the allegation.

FORM 2

(Rule 8(2))

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

In the Magistrate's Court

Between Petitioner

..... and Respondent

Matrimonial Cause No.of 19...

AFFIDAVIT AS TO MARRIAGE

I of

MAKE OATH and SAY as follows:

1. I am unable to file a marriage certificate or an official copy of an extract of the entry in a register of marriages because (insert reason).

2. I was married to of on the day of 19 ... My unmarried name (my wife's unmarried name) (delete as appropriate) was.....

3. At the time of the marriage I was years old and my wife/husband was years old. At that time I was single/married/widowed/a widower/divorced (delete as appropriate) and my husband/wife was single/ married/ a widower/ divorced (delete as appropriate).

4. The marriage was performed by of (state name if known and position held)

SWORN before me

..... Signed..... thisday of 19

SIGNED

Position held

FORM 3

(Rule 9)

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

SUMMONS

In the Magistrate's Court

Matrimonial Cause No. of 19.....

Between Petitioner

and Respondent

SUMMONS

To the above named respondent

(and to..... of)

TAKE NOTICE that you must appear before this Court sitting aton the day of 19.... at o'clock in the noon, if you think fit to do so, upon the hearing of the petition (a copy whereof is attached) in the above cause, in connection with the allegations against you contained in that petition and that if you do not appear the Court may proceed to hear the petition even though you are not there.

Dated this day of 19....

.....

Magistrate/Clerk of the Court

NOTE

If you intend to defend, or wish to be heard on any allegation or claim in the petition or to make any application on your own behalf, you must attend at the time and place specified on the above summons.

FORM 4

(Rule 16 (6))

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

In the Magistrate's Court

Between Petitioner.....

..... and Respondent

Matrimonial Cause No. of 19....

AFFIDAVIT OF SERVICE

I of

MAKE OATH and SAY as follows:

1. On 19..... I served with a copy of the Petition and Summons in the above matter by delivering the Summons with the Petition attached to him personally.

2. I know that the person on whom I served the Summons and the Petition was because (he is known to me) (I was able to identify him by.....) (delete or complete as appropriate).

Signed:.....

SWORN before me

.....

this day of 19.... at

SIGNED

Office held

FORM 5

(Rule 17 (3))

MATRIMONIAL CAUSES (MAGISTRATES' COURTS) RULES

In the Magistrate's Court

Matrimonial Cause No.of 19....

Between Petitioner

..... and

..... Respondent

ANSWER

I, the Respondent in answer to the allegations made in the Petition in these proceedings say that the following facts set out in the Petition are incorrect:

(see Note 1)

I do not accept that the Petitioner is entitled to a decree of dissolution marriage and ask that the court dismiss the Petition.

CROSS PETITION (delete this entire section if Respondent does not wish to Petition for Divorce)

1. I the Respondent now ask the court to dissolve my marriage to the Petitioner on the following grounds: *(see Note 2)*

2. The details contained in Petition paragraph 1, 2, and 4 are correct (except in the following respect) (delete if not applicable):

3. I am domiciled in Tuvalu *(see Note 3)* (I am the spouse and I have been ordinarily resident in Tuvalu for 3 years immediately preceding the presentation of this Petition) *(see Note 4)*.

4. The facts on which I rely as constituting the grounds specified above are as follows:

(see Note 5)

I now ask that the marriage be dissolved

Dated and filed this day of 19.....

.....

Respondent

NOTES

1. Read the facts and grounds set out in the Petition (opening paragraph and paragraph (5)) and indicate what if anything you feel is incorrect or untrue.

2. Insert one or more of the following grounds. The full wording of the grounds if given in the Divorce Ordinance but you may use the following word or words to describe which ground or grounds you feel apply:

- a) adultery
- b) desertion
- c) cruelty
- d) refusal to consummate
- e) insanity
- f) venereal disease
- g) mistake
- h) incompatibility

3. If you are the husband then your country of domicile will be in Tuvalu if it is the country where you are making your permanent home. If you are just a visitor and intend to leave eventually then you are not domiciled in Tuvalu even if you stay in the country for many years. Delete this sentence if part in bracket applies.

4. If you are a woman then you may as an alternative ask for a divorce if you have ordinarily lived in Tuvalu for the last 3 years. Delete the part in brackets if you are a man or if it does not apply.

5. State briefly the facts which establish that the grounds for divorce give you apply (i.e. the details of adultery or insanity or as the case may be), should give sufficient information to allow your husband or wife to understand the allegation.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References