THE JUDICATURE ACT, No. 2 of 1978

L. D.–B. 19/78.

REGULATIONS made by the Minister of Justice under section 61, read with section 29, of the Judicature Act, No. 2 of 1978, as amended by Act, No. 37 1979.

K. W. DEVANAYAGAM
Minister of Justice.

Colombo, July 02, 1979.

Regulations

1. These regulations may be cited as the Family Courts Regulations, No. 1 of 1979.

2. These regulations shall apply to the institution and conduct of proceedings before a Family Court :

Provided that, where the institution and conduct of proceedings have been specially provided for in any of the statutes referred to in the Third Schedule to the Judicature Act, No. 2 of 1978, the institution and conduct of proceedings under any such statute in the Family Court shall be in accordance with the procedure set out in such statute.

INSTITUTION OF PROCEEDINGS

3. Proceedings may be instituted in the Family Court within the local limits of whose jurisdiction —

(*a*) the applicant or the respondent, or where there is more than one respondent any one of them, resides ;
(*b*) the dispute arose ;
(*c*) the land in respect of which the proceeding is filed is sit[illegible] whole or in part ; or
(*d*) the contract or agreement sought to be enforced or sued [illegible]as made.

4. The applicant may unite in the same application two or more disputes against the same respondent or respondents when such disputes arise :—

(*a*) out of the same family dispute which is the subject-matter of the proceeding; or

(*b*) out of the same transation or transactions.

5. A proceeding in a Family Court may be instituted by the applicant making an application to court in writing and signed by him or by stating his case orally to the Judge of the Family Court who shall reduce the same into writing and obtain the applicant's signature to it or cause it to be reduced to writing and signed by the applicant. The applicant shall attach to the application, such number of copies as there are respondents.

6. An application made under regulation 5 shall contain the following particulars :—

(*a*) the date of the application ;
(*b*) the name, description and place of residence of the applicant ;
(*c*) the name, description and place of residence of the respondent ;
(*d*) a plain and concise statement of the nature of the matter for which relief is sought ; and
(*e*) the particular relief sought.

SUMMONS

7. (1) Upon an application being made under regulation 5, the Judge of the Family Court shall direct the issue of a summons for the appearance of the respondent in court on a date to be fixed by him and shall inform the applicant to be present in court on such date. A copy of the application shall be annexed to such summons.

(2) The provisions of the Civil Procedure Code relating to the service of summons on a defendant in an action instituted in a District Court shall apply to the service of summons directed under paragraph (1) of this regulation.

PROCEEDINGS ON APPEARANCE

8. If, on the date specified in the summons, the respondent appears in court, he shall be called upon to admit or deny the averments in the application.

9. (1) If the respondent admits the averments in the application or does not object to the grant of the relief sought by the applicant, the Judge of the Family Court shall record that fact and shall require the respondent to sign the same, and enter decree accordingly:

Provided that, where the proceeding is one for dissolution of marriage, a decree shall not be so entered unless the Judge of the Family Court is satisfied on the evidence that the case of the applicant has been proved.

(2) If the respondent denies the averments in the application or objects to the grant of the relief sought by the applicant, the Judge of the Family Court shall record such denial or objection and if the Judge of the Family Court is satisfied that there is a dispute in respect of which the Family Court has jurisdiction, he shall refer such dispute to a Family Counsellor attached to that Court and fix the date, time and place at which the parties to the dispute shall appear before such Family Counsellor. The Judge of the Family Court shall also give notice of such date, time and place, and also forward the record of proceedings, to such Family Counsellor.

PROCEEDINGS BEFORE FAMILY COUNSELLOR

10. (1) Where the parties to a dispute appear before the Family Counsellor, the Family Counsellor shall hold such inquiry as he considers necessary to induce the parties to settle such dispute.

(2) The inquiry under paragraph (1) shall be held in the presence of the parties to the dispute :

Provided that where the Family Counsellor considers it necessary, he may at any stage of the inquiry examine the parties separately.

(3) For the purposes of an inquiry under paragraph (1), the Family Counsellor may :—

(*a*) obtain the assistance of any person who is not a party to the dispute, whose assistance he considers necessary to bring about a settlement of such dispute. Such person may include a religious dignitary, a medically qualified person or a social worker ;

(*b*) call for a report from a Probation Officer on any matter he considers necessary for the purpose of affecting a settlement,

(*c*) request the attendance at the inquiry of any person other than a party to the dispute ;

(*d*) request any party or person to present any document in the possession of that party or person ; or

(*e*) record any information from any party or person attending the inquiry.

(4) Any party to the dispute shall not be permitted to cross-examine the other party or any person requested to attend these inquiry or giving any information at the inquiry.

(5) Where any party to the dispute or any other person fails to attend the inquiry or to produce a document or to give any information when requested to do so by the Family Counsellor, the Judge of the Family Court shall, on application made to him in that behalf by the Family Counsellor, make and issue appropriate orders and processes of court.

(6) A party to the dispute shall not be entitled to legal representation at an inquiry before the Family Counsellor.

(7) The Family Counsellor shall keep notes of all proceedings before him.

(8) The Family Counsellor shall not administer an oath or affirmation to any party to the dispute or other person, at any inquiry under paragraph (1).

11. Any information given before the Family Counsellor shall not be used in evidence at any inquiry or trial before any Court or tribunal nor shall any party or person be entitled to obtain an extract of such information.

12. (1) Where the parties agree to settle the dispute, the Family Counsellor shall record the terms of settlement and explain such terms to the parties and obtain their signatures to such settlement.

(2) The Family Counsellor shall inform the parties that such settlement shall upon the expiry of fourteen days from the date of settlement, be final unless any of the parties notify the Family Counsellor in writing that he is repudiating such settlement for the reasons stated in such notification. Upon such notification, such settlement shall cease to be in force.

(3) When the entire matter in dispute is settled and the parties have signed the terms of settlement, the Faimly Counsellor shall forward the record of the settlement to the Judge of the Family Court who shall enter judgment and decree in terms of the settlement which shall thereafter be enforced as a decree of the Court.

(4) Where the parties agree to settle only some of the matters in dispute and it becomes necessary for the Family Court to hold an inquiry or trial in respect of the other matters in dispute, the terms of settlement signed by the parties in respect of the matters settled by them shall be forwarded by the Family Counsellor to the Judge of the Family Court who shall, unless the terms of the settlement are inconsistent with the findings of such Judge on outstanding issues, embody the terms in his final judgment or order.

13. (1) Where the Family Counsellor is not able to settle the matter in dispute or any of them, he shall refer such matter or matters in dispute to the Judge of the Family Court for determination after inquiry or trial. The Family Counsellor shall fix the date on which the parties shall appear before the Judge of the Family Court and shall inform such Judge and the parties of the same.

(2) Where the Family Counsellor is unable to settle the matters in dispute due to the failure of the parties or any of them to appear before him, he shall set down such facts in writing and forward the record to the Family Court.

(3) Upon receipt of the record under paragraph (2), the Judge of the Family Court shall, where the default has been by —

(*a*) both parties or the applicant, dismiss the application ; or

(*b*) the respondent, proceed to hear the application ex-parte and grant such relief as he thinks necessary.

(4) The provisions of paragraph (3) of regulation 20 or paragraph (1) of regulation 21 shall, as the case may be, *mutatis mutan ex parte* apply to and in relation to a party against whom an order has been made under paragraph (3) of this regulation.

(5) Where an order made under paragraph (3) has been set aside under regulation 20 or regulation 22, the Judge of the Family Court may, if he considers it desirable, return the record of proceedings to the Family Counsellor for inquiry as hereinbefore provided or proceed to inquiry or trial as provided in regulation 16 on the matters in dispute.

14. All proceedings before a Family Counsellor shall be conducted as expeditiously as possible.

15. (1) The Family Counsellor shall, while he holds office and after he ceases to hold office, maintain secrecy in respect of all matters that come to his knowledge in the exercise, performance and dischage of his powers, duties and functions under these regulations.

(2) A Family Counsellor shall not enter upon the duties of his office unless he takes and subscribes an oath or makes and subscribes an affirmation that he will not divulge any information received by him, or coming to his knowledge in the exercise, performance and discharge of his powers, duties and functions under these regulations, except for the purpose of giving effect to these regulations.

TRIAL

16. (1) The Judge of the Family Court shall, upon the material available to him and after such examination of the parties as may appear to him to be necessary, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to record the issues relating to the dispute :

Provided that where, on the application of either party or on its own motion, the court considers that further pleadings are necessary, the court shall fix a date for the filing of such pleadings.

17. (1) The Judge of the Family Court may permit parties to proceedings to amend their pleadings at any time before final judgment on such terms as to costs as the court thinks fit in the circumstances.

(2) The party amending pleadings shall give reasonable notice of the amendment to the other parties to the proceedings.

(3) An amendment of pleadings shall not be allowed where such amendment —

(*a*) would be prejudicial to a plea of prescription available to a party to the proceeding ; or

(*b*) would have the effect of ousting the jurisdiction of the Family Court.

18. A Judge of the Family Court may, on the application of any party to the proceeding or otherwise, add as a party to the proceeding any person :—

(*a*) whose presence before the court is necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the proceedings ; or

(*b*) who in the opinion of the court ought to be bound by any order or decree made or entered in the proceeding or any settlement or recommendation arrived at by the parties.

19. (1) An inquiry or trial in a Family Court shall be held in the nammer set our in the Civil Procedure Code for the conduct of a trial in a regular action in a District Court.

(2) The provisions of Chapter XLII of the Civil Procedure Code shall, *mutatis mutandis*, apply to and in relation to an inquiry or trial in a proceeding for divorce, separation or nullity of marriage instituted in a Family Court.

DEFAULT OF APPEARANCE

20 (1) Where the applicant fails to appear on the date fixed in the summons for the appearance of the respondent in court or on the dates fixed for inquiry or trial, or does not sufficiently excuse his absence, the application of the applicant shall be dismissed:

Provided that, if the respondent appears on that date and admits the averments of the applicant or does not oppose the relief sought by the applicant the Judge of the Family Court shall enter decree for the applicant :

Provided further that, where the proceeding is one for dissolution of marriage, a decree shall not be so entered unless the Judge of the Family Court is satisefid on the evidence of the respondent that the case of the applicant has been proved.

(2) Where an application is dismissed under paragraph (1), the applicant shall be precluded from making a fresh application in respect of the matter relating to which such application was made.

(3) The applicant may within a reasonable time of the dismissal of the application under paragraph (1), apply to the court with notice to the respondent, to have the order of dismissal set aside and if the court is satisfied that he had reasonable grounds for the default, the court shall set aside such order and fix another date for the appearance of the defendant, or for inquiry or trial, as the case may be.

21. (1) If the respondent fails to appear on the date fixed in the summons for his appearance in court, or on the date fixed for inquiry or trial, or does not sufficiently excuse his absence while the applicant appears, the Judge of the Family Court shall, if satisfied that the respondent has been duly served with summons, proceed to hear the application exparte forthwith or on such date as the court may fix.

(2) At the exparte trial the applicant may place evidence before the Family Court by affidavit or by oral testimony and if the court is satisfied that the applicant is entitled to the whole or part of the relief claimed, enter judgment for the applicant as to it shall seem proper and enter decree accordingly.

(3) The Family Court shall cause a copy of the decree entered under paragraph (2) to be served on the respondent in the manner prescribed for service of summons. The copy of the decree shall bear an endorsement that any application to set aside the decree shall be made to court within fourteen days of the service of the decree.

22. (1) Where at any time prior to the entering of judgment against him for default, the respondent with notice to the plaintiff satisfies the Family Court that he had reasonable grounds for the default, the court shall set aside any order made arising out of the default and permit the respondent to present his statement of objections.

(2) Where within fourteen days of the service of the decree entered against him for default, the respondent with notice to the plaintiff makes application to, and thereafter satisfies, the Family Court, that he had reasonable grounds for the default, the court shall set aside the judgment and decree and permit the respondent to present his statement of objections.

(3) Any application made by a respondent under this regulation or under regulation 10 shall be made by petition supported by affidavit.

23. (1) An appeal shall not lie against any judgment entered upon default.

(2) The order setting aside or refusing to set aside the judgment entered upon default shall be accompanied by a judgment adjudicating upon the facts and specifying the grounds upon which itis made and shall be liable to an appeal to the Court of Appeal.

JUDGMENT AND DECREES

24. (1) All judgments or orders shall be delivered by the Judge of the Family Court as expeditiously as possible and a decree shall be entered by the court in terms of the findings of the judgment or order.

(2) The provisions of the Civil Procedure Code relating to decrees and execution of decrees in a District Court shall *mutatis mutandis* apply to and in relation to the decrees of the Family Court.

APPEALS

25. (1) Any party who shall be dissatisfied with any judgment, decree or order pronounced or entered by a Family Court after inquiry or trial may appeal therefrom to the Court of Appeal for any error in law or in fact.

(2) The provisions of the Civil Procedure Code relating to and governing the manner and procedure for appeals from the District Court shall, *mutatis mutandis*, apply to and in relation to an appeal from a Family Court.

GENERAL

26. (1) In any action or proceeding before a Family Court where the interests of a minor child are in issue, the Judge of that Court may, if he is of opinion that it is in the interest of the minor child to do so, appoint a fit and proper person to represent that minor child in court.

(2) Any person being of sound mind and full age may be appointed under paragraph (1), provided his interest is not adverse to that of the minor child.

(3) Any person appointed under paragraph (1) shall not, without the leave of court enter into any agreement or compromise on behalf of the minor child.

(4) The Court may order any party to the application or proceeding, who was under a legal duty to represent the interests of the minor child in that application at the time of the appointment under paragraph (1) to pay the expenses necessarily incurred in representing the minor child in court by the person appointed under that paragraph.

27. (1) Where an order for maintenance is made by a Judge of the Family Court, he may, for the purpose of facilitating the collection of monies, forward, with notice to the parties to the proceeding, a copy of such order to the appropriate Primary Court for execution of such order.

(2) Where there is a default in the payment of maintenance specified in the order referred to in paragraph (1) the Judge of the Primary Court shall report such default to the Judge of the Family Court within seven days of such default.

28. Save as otherwise specially provided for in any other law, all pleadings and documents filed before a Judge of the Family Court shall be stamped with the duty chargeable on pleadings and documents of the same class in a District Court.

29. All questions arising between the parties to a decree entered by a Family Court and relating to the terms of that decree, including an interpretation or variation of those terms, shall be determined by order of the Family Court that entered that decree and not by separate proceeding.

30. Every Family Court shall have power upon the determination on any proceeding to award to an applicant or respondent costs in an amount which seems to the court to be reasonable.

31. If any matter or question of procedure shall arise before the Family Court in consequence of the coming into operation of these regulations or in respect of any matter or question of procedure not provided for by these regulations, the Family Court shall have the power to make such orders and give such directions as the court considers necessary to prevent injustice and as the justice of the case may require.