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  77. Limited grant.
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**BAYELSA STATE HIGH COURT  
RULES, 2010 (Section 76, High Court Law)  
COMMENCEMENT: 1st April, 2010**

The High Court Rules Committee, by virtue of the powers conferred on it by section 76 of the High Court Law (Cap. H2), Laws of Bayelsa State, 2006, and all other enabling powers doth hereby, with the approval of the Honourable Justice Kate Abiri - the Chief Judge of Bayelsa State - make the following Rules:

**ORDER 1  
APPLICATION AND INTERPRETATION**

**title**

I.-(I) These Rules may be cited as the Bayelsa state High Court Rules, 2010 and shall be deemed to have come into force on the 1st day of April, 2010.

**Repeal**

(2) The High Court (Civil Procedure) Rules, 2006 of Bayelsa State are hereby repealed.

**Application**

- (3) Subject to any other laws or rules specifically made to govern certain proceedings, these Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such causes and matters.
- (4) Application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice.

### **Interpretation of terms**

2.-(I) These Rules shall be interpreted in accordance with the Interpretation Law in force in Bayelsa State or any re-enactment thereof.

- (2) Where in these Rules depositions and affidavits are required to be made, such depositions or affidavits shall be made in accordance with the Evidence Act.

- (3) In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

"Claimant" shall include a claimant in a counter claim;

"Court" means the High Court of Bayelsa State;

"Court Process" or "Process" includes writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, affidavits, summons, warrants and all documents or written communication of which service is required;

"Decision" means any decision of a Court and includes judgment, ruling, decree, order, conviction, sentence or recommendation;

"Defendant" shall include a defendant to a counterclaim;

"Guardian" means any person who has, for the time being, the charge of or control over a person under legal disability and includes a person appointed to institute or defend an action on behalf of any person under legal disability,

"Law" means the High Court Law in force in Bayelsa State or any re-enactment thereof;

"Minor" means a person who has not attained the age of 18 years;

"Originating process" means any court process by which a suit is initiated;

"Persons under legal disability" means persons who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"Probate action" means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business;

"Registrar" means the Chief Registrar, Deputy Chief Registrar, Assistant Chief Registrar, Principal Registrar, Senior Registrar, Higher Registrar, or any other officer acting or performing the functions of a Registrar,

"Registry" means the Registry of the High Court of Bayelsa State in the appropriate judicial division;

"Taxing officer" means the Chief Registrar or such other officer of the Court as the Chief Judge may appoint to tax costs.



## **ORDER 2**

### **PLACE OF INSTITUTING AND TRIAL OF SUITS**

*Subject to the provisions of other enactments, the place for trial of any suit shall be regulated as follows:*

#### **Suits relating to land and property detained or seized**

1. All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal property detained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated, or the detain took place.

#### **Suits for recovery of penalties, forfeitures.**

2. All actions for recovery of penalties, forfeitures, and all actions against public officers shall be commenced and tried in the Judicial Division in which the cause of action arose.

#### **Suits upon contract.**

3. All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the defendant resides or carries on business

#### **Other suits.**

- 4.-{ 1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business.  
(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.

#### **Suits commenced in wrong Judicial Division**

5. If any suit is commenced in the wrong Judicial Division, the presiding Judge shall transfer it to the appropriate Judicial Division.

## **ORDER 3**

## **FORM AND COMMENCEMENT OF ACTION**

### **Proceedings which must be begun by writs**

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings:

(a) where a claimant claims:

(i) any relief or remedy for any civil wrong; or

(ii) damages for breach of duty, whether contractual, statutory or otherwise; or damages for personal injuries to or wrongful death of any person, or in respect of damages or injury to any person, or property.

(b) where the claim is based on or includes an allegation of fraud; or

(c) where an interested person claims a declaration.

### **Mode of beginning civil proceedings.**

2.-(1) Any civil proceedings commenced by writ of summons shall be accompanied by:

(a) statement of claim;

(b) list of witnesses to be called at the trial;

(c) written statements on oath of the witnesses; provided that in the case of a witness requiring subpoena from the court, a witness summary shall be sufficient;

(d) copies of every document to be relied on at the trial; provided that any document in the possession of the adverse party, or any document access to which or access to the making of which may not be allowed by the opposing party without a prior order of the court need not be filed at the commencement of the suit; and

(e) a list of non-documentary evidence to be relied upon at the trial.

(2) Where a claimant fails to comply with Rule 2(1) above, his originating process shall not be accepted for filing by the Registry.

### **Application for injunction before commencement of suit**

(3) Notwithstanding sub-rule(1) of this rule-

(a) Where before commencement of a suit, a person reasonably perceives that the subject matter of an intended suit is in danger of being alienated, wasted or damaged, such an intending claimant may apply for injunction before the suit is commenced to restrain the act being complained of

(b) The application shall be by motion on notice, or in appropriate cases by motion ex-parte supported by an affidavit and a written address

(c) Such an application shall be struck out if the applicant fails to file the substantive suit within 14 days of filing the application.

(d) Any order made under sub-rule (3) (a) of this rule stands discharged if the applicant fails to file the substantive suit within 14 days of filing the application.

(e) Any order of injunction made pursuant to this rule shall not last longer than the filing of the prospective suit.

- (f) A motion for injunction filed pursuant to rule 3(a) of this order shall be merged with the substantive suit when filed, and the motion shall thenceforth, as far as is practicable, be treated as if it were filed after the commencement of the substantive suit.

#### **Form of Writ, Civil Form 1**

- 3. Except in cases in which different Forms are provided in these Rules, the writ of summons shall be as in Form 1 with such modifications or variations as Circumstances may require.

#### **Form of writ for service out of Nigeria: Civil Form 2**

- 4. A writ of summons to be served out of Nigeria shall be as in Form 2 with such modifications or variations as circumstances may require.

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#### **Proceedings which may be begun by Originating summons**

- 5. Any person claiming to be interested under a deed, Will, enactment or other written instruments may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

#### **Construction of enactment.**

- 6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the construction and for a declaration of the right claimed.

#### **Discretion of the Judge**

- 7. A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such orders as he deems fit.

#### **Forms of originating summons**

- 8.-(1) An originating summons shall be as in Forms 3, 4 or 5 to these Rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be signed, stamped and filed in the Registry, and when so stamped and filed it shall be deemed to be issued.

- (2) An originating summons shall be accompanied by:
  - (a) an affidavit setting out the facts relied upon;
  - (b) all the exhibits to be relied upon;
  - (c) a written address in support of the application.

- (3) The person filing the originating summons shall leave at the Registry sufficient number

of copies thereof together with the documents in sub- rule 2 above for service on the respondent or respondents.

### **Service outside Bayelsa State**

9. Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Bayelsa State shall be endorsed by the Registrar of the Court with the following notice:

"This summons (or as the case may be) is to be served out of Bayelsa State of Nigeria and in the State".

### **Originating process to be tested by its dates**

10-(1) The Registrar shall indicate the date and time of presentation on every originating process presented to him for filing and shall arrange for service to be effected, where service is required.

(2) An originating process shall not be altered after it has been signed and stamped except upon application to a Judge.

## **ORDER 4 ENDORSEMENT OF CLAIM AND OF ADDRESS**

### **Endorsement**

1. Every originating process shall contain the claim, the relief or remedy sought and the full names and address of the claimant.

### **Endorsement to show representative capacity**

2. Where a claimant sues, or the defendant or any of several defendants is sued in a representative capacity, the originating process shall state that capacity.

### **Probate actions.**

3. In probate actions the originating process shall state whether a claimant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity.

### **What is endorsed where the claim is liquidated.**

4.- (1) Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the claimant's Legal Practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

(2) The defendant may, notwithstanding payment under this rule, have the costs taxed and if more than one sixth of the costs shall be disallowed, the claimant's Legal Practitioner shall pay the costs of taxation.

### **Ordinary account.**

5. In all cases where a claimant in the first instance desires to have an account taken, the originating process shall so state.

#### **Endorsement of address by claimant or by Legal Practitioner**

6.-(1) A claimant suing in person shall state on The originating process his residential or business as his address for service. If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service.

(2) Where a claimant sues through a Legal Practitioner, the Legal Practitioner shall state on the originating process his chambers' address as the address for service. If the Legal Practitioner is based outside the jurisdiction, he shall state a chambers' address within the jurisdiction as his address for service.

#### **Endorsement of address.**

7. Where an originating process is to be served on a defendant outside the jurisdiction the process shall state the address required in rule 6.

#### **Originating process without an address or with fictitious address**

8. If the originating process does not state an address for service, it shall not be accepted and if any such address is illusory, fictitious or misleading the process may be set aside by a Judge on the application of the defendant.

### **ORDER 5 EFFECT OF NON-COMPLIANCE**

#### **Non-compliance with rules**

1.- (1) Where in the course of any proceedings or in connection with any proceedings there has by reason of anything done or left undone been a failure to comply with the requirements of these Rules as to time, place, manner, form or content, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularise such step.

(2) The Judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

#### **Application to set aside for irregularity**

2.-(1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by motion and the grounds of objection shall be stated in the notice of motion.

## **ORDER 6**

### **ISSUE OF ORIGINATING PROCESS**

#### **Preparing originating process**

1. Originating process shall be prepared by a claimant or his Legal Practitioner, and, shall be clearly printed on white opaque paper of good quality

#### **Signing and stamping of originating process**

2- (1) The Registrar shall sign and stamp every originating process, whereupon it shall be deemed to be issued.

(2) A claimant or his Legal Practitioner shall, on presenting any originating process for filing, leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.

(3) Each copy shall be signed by the Legal Practitioner or by a claimant where he sues in person.

#### **What is to be done after signing and stamping**

3. The Registrar shall after signing and stamping an originating process, file it and note on it the date and time of filing and the number of copies supplied by a claimant or his Legal Practitioner for service on the defendants. The Registrar shall then make an entry of the filing in the Cause Book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

#### **Copies to be served.**

4. The Registrar shall promptly arrange for personal service on each defendant of a copy of the originating process and accompanying documents duly signed and stamped as provided by rule 2 (3) of this Order.

#### **Probate action: affidavit with originating process**

5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a claimant or one of several claimants verifying the contents of the process.

#### **Renewal of originating process: Civil Form 6.**

6.-( 1) The life span of every originating process shall be 6 months.

(2) If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its life span and a claimant applies before its expiration for renewal of the

process, the Judge may renew the original or concurrent process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as circumstances may require.

#### **Endorsement of renewal.**

7. A Judge may order two renewals in each case strictly for good cause and upon prompt re-application, provided that no originating process shall be in force for longer than a total of 12 months. The Registrar shall state the fact, date and duration of renewal on every renewed originating process.

#### **Loss of originating process.**

8. Where an originating process is lost after issue and a copy of it exists, a Judge, upon being satisfied of the loss and of the correctness of the process, may order the copy to be signed, stamped and filed in place of the lost originating process.

#### **Concurrent originating process**

9. A claimant may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes, each to bear the same date as the initial process marked 'CONCURRENT' and have stated on it the date of issue.

#### **Concurrent originating process for service within and out of jurisdiction**

10. An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction and an originating process for service out of the jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.

### **ORDER 7 SERVICE OF PROCESSES**

#### **By whom services is to be effected.**

I.-( 1) Service of originating process shall be made by a Sheriff; Deputy Sheriff, Bailiff; Special Marshal or other officer of the Court. The Chief Judge may also appoint and register any law chambers, courier company or any other person to serve court processes and such person shall be called process server.

(2) Where a party is represented by a Legal Practitioner, service of court process of which personal service is not required may be made on such Legal Practitioner or any Legal Practitioner in his chambers, or on the clerk or secretary of such chambers.

(3) Where parties agree, service of court processes, of which personal service is not required, may be made by electronic means.

**Service of originating process, etc: how effected.**

2. The process server shall serve an originating process by delivering to the party to be served a copy of the process duly signed and stamped as prescribed by Order 6 rule 2(1).

**Mode of service when not personal.**

3. All processes in respect of which personal service is not expressly required by these Rules or any applicable law shall be sufficiently served if left with an adult person resident with or employed at the address for service of the person or party to be served.

**Substituted service.**

- 4.-(1) Where personal service of a process is required by these Rules or otherwise and a Judge is satisfied that prompt personal service cannot be effected, the Judge may upon application by the party desirous of effecting service make such order for substituted service as may seem just.

(2) Every application to the Judge for substituted service shall be supported by an affidavit setting forth the grounds upon which the application is made.

**Persons under disability.**

- 5.-(1) Where a person under disability is a defendant, service on his guardian shall be legal deemed good and sufficient personal service, unless a Judge otherwise orders; provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.

(2) The Judge may order that personal service on a person under legal disability shall be deemed good and sufficient.

**Prisoner or detainee.**

6. Where a detainee or prisoner is a defendant, service on the head or other officer in charge of the station, facility or prison where the defendant is, or on an officer of the agency in charge of the station, facility or prison shall be deemed good and sufficient personal service on the defendant.

**Partners.**

7. Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the principal place of business within the jurisdiction or upon any person having control or management of the partnership business there and such service shall be deemed good service upon the firm, whether any of the members are out of the jurisdiction or not, and no leave to issue an originating process against them shall be necessary:



Provided that in the case of a partnership that has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every member of the dissolved partnership within the jurisdiction sought to be made liable.

**Corporation or company.**

8. Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every originating process or other process requiring personal service may be served on the organisation by delivery to a director, secretary, trustee or other senior, principal or responsible officer of the organisation, or by leaving it at the registered, principal or advertised office or place of business of the organisation within the jurisdiction.

**Foreign corporation or company: Cap. C 20 LFN, 2004**

9. When the suit is against a foreign corporation or company within the meaning of Section 54 of the Companies and Allied Matters Act having an office and carrying business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative of such foreign corporation or company within the jurisdiction:  
Provided that where a foreign company has complied with the provisions of Chapter 3 of the Companies and Allied Matters Act, personal service shall be effected on one of the persons authorised to accept service on behalf of the said company.

**Local agent of principal who is out of jurisdiction.**

10. Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business out of the jurisdiction, an originating process in an action relating to or arising out of such contract may, before the determination of such agent's authority or of his business relations with the principal, be served on such agent. A copy of the originating process shall be sent promptly by the claimant by courier to the defendant at his address out of the jurisdiction.

**Where violence threatened.**

11. Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to the process server, the process server may leave the process within the reach of the person to be served, and this shall be deemed good and sufficient for all purposes.

**Proof of service generally.**

- 12.-{1) After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place, mode of service and description of the

process served and shall, except in the circumstances mentioned in rules 4 and 11 of this Order, exhibit the acknowledgment of service.

(2) After service, the affidavit on production before the Judge shall be prima facie proof of service.

#### **Expenses of service.**

13.—(1) The party seeking to effect service of any process shall pay, in advance, all costs and expenses of and incidental to service.

(2) The rate for service shall be as prescribed by the High Court Rules Committee from time to time.

#### **Time of service**

14.—(1) Service of originating and other processes, pleadings, notices, summons, orders and documents whatsoever shall be effected between the hours of six in the morning and six in the evening.

(2) Save in exceptional circumstances and as may be authorised by a Judge, service shall not be effected on a Sunday or on a public holiday.

#### **Recording of service.**

15.—(1) A register shall be kept at the Registry, in such form as the Chief Judge may direct, for recording service of processes by any process server. The Registrar shall record therein the names of the claimant and defendant, the method of service, whether personal or otherwise, and the manner used to ascertain that the right person was served.

(2) Where any process was not served, the cause of failure shall be recorded in the register.

(3) Every entry in such register or certified copy thereof shall be prima facie evidence of the matters stated therein.

#### **Agreement as to service**

16. Where parties have by their contract prescribed the mode or place of service, the person that may serve, or the person who may be served any process in any claim arising out of the contract, service as prescribed in the contract shall be deemed good and sufficient service.

#### **Outside jurisdiction**

17. In this Order "outside jurisdiction" means outside Bayelsa State.

## **SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS**

### **Cases where service of originating process, etc, are allowed out of Nigeria**

1. A Judge may allow any originating or other process to be served outside Nigeria where:
  - (a) the whole subject matter of the claim is land situate within jurisdiction, or
  - (b) any act, deed, Will, contract, obligation, liability affecting land or hereditaments situate within jurisdiction, is sought to be construed, rectified, set aside or enforced,
  - (c) any relief is sought against any person domiciled or ordinarily resident within jurisdiction, or
  - (d) the claim is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within jurisdiction or for the execution (as to property situate within jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in Bayelsa State, or
  - (e) the claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise effect a contract or to recover damages or other relief for or in respect of a contract:
    - (i) made within jurisdiction, or
    - (ii) made by or through an agent residing or carrying on business within jurisdiction on behalf of a principal residing or carrying on business out of jurisdiction; and
    - (iii) which by its terms or by implication is to be governed by the applicable law in Bayelsa State, or the parties have agreed that the court shall have jurisdiction to entertain any claim in respect of such contract or is brought against the defendant in respect of a breach committed within jurisdiction of a contract wherever made notwithstanding that such breach was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract which ought to have been performed within jurisdiction,
  - (f) the claim is founded on a tort or other civil wrong committed within jurisdiction,
- or
- (g) an injunction is sought as to anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed whether or not damages are sought in respect thereof, or
- (h) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within jurisdiction, or
- (i) the claim is by a mortgagee or mortgagor in relation to a mortgage of property situate within jurisdiction and seeks relief of the nature or kind following, that is: sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee but does not seek (unless and except so far as permissible under paragraph (e) of this rule) any judgment or order for payment of any monies due under the mortgage, or

- (j) the proceedings relate to a person under legal disability, or
- (k) the proceedings relate to probate matters, or
- (l) where any proceedings under any law or rule of court has been instituted by any originating process.

**Agreement as to service.**

- 2. Where parties have by their contract prescribed the mode or place of service, or the person that may serve or the person who may be served any process in any claim arising out of the contract, service as prescribed in the contract shall be deemed good and sufficient service.

**Service abroad by letter of request.**

- 3. Where leave is granted to serve an originating process in any foreign country with which no convention in that behalf has been made, the following procedure may be adopted:
  - (a) the process to be served shall be sealed

With the seal of the Court for service out of Nigeria and shall be transmitted to the Solicitor-General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with a request for its further transmission to the appropriate authority in that country. The request shall be in Form 7 with such modifications or variations as circumstances may require;

**Civil Form 8**

- (b) a party wishing to serve a process under this rule shall file a praecipe in Form 8 with such modifications or variations as circumstances may require;
- (c) A certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country, to the court, shall be deemed good and sufficient proof of service;

**Civil Form 9**

- (d) Where a certificate, declaration, affidavit or other notification, transmitted as aforesaid states that efforts to serve a process, have failed, a Judge may, on an ex-parte application, order substituted service, whereupon the process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor-General of the Federation, together with a request in form 9 with such modifications or variations as circumstances may require:

Provided that, notwithstanding the foregoing provision, a claimant may with leave of a Judge serve any originating process by courier. Nothing herein contained shall in any way affect any power of a Judge in cases where lands, funds, choses-in-action, rights or property within the jurisdiction are sought to be dealt with or affected. The court may, without assuming jurisdiction over any person out of the jurisdiction, cause such person to be informed of the

nature or existence of the proceedings with a view to such person having any opportunity of claiming, opposing or otherwise intervening.

**Where leave is granted or not required.**

4.-{ 1) Where leave is granted or is not required in a civil suit and it is desired to serve any process in a foreign country with which a Convention in that behalf has been made, the following procedure shall, subject to any special provisions contained in the Convention, be adopted:

(a) the party desiring such service shall file in the registry a request in Form 10 with such modifications or variations as circumstances may require and the request shall state the medium through which it is desired that service shall be effected, either:

(i) directly through diplomatic channels, or

(ii) through the foreign judicial authority;

(b) the request shall be accompanied by the originating document and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request, and a copy of each for every person to be served and any further copies which the Convention may require (unless the service is required to be made on a Nigerian subject directly through diplomatic channels in which case the translation and copies thereof need not accompany the request unless the Convention expressly requires that they should do so);

(c) the documents to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Chief Registrar to the Permanent Secretary, Federal Ministry of Foreign Affairs for onward transmission to the foreign country;

(d) an official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a Nigerian diplomatic agent, to the Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of service within the requirements of these Rules.

(2) A Judge, in granting leave to serve a process out of jurisdiction under this Order, may upon request therefore in appropriate cases direct that courier shall be used by the party effecting service.

**Service of foreign processes.**

5. Where in any civil or commercial matter pending before a court or tribunal of a foreign country a Letter of Request from such court or tribunal for service on any person or citation in such matter is transmitted to the Court by the Bayelsa State Attorney-General with intimation that it is desirable that effect be given to the same, the following procedure shall be adopted:

(a) the letter of request for service shall be accompanied by a translation in the English Language, and by two copies of the process or citation to be served, and two copies thereof in English Language;

(b) service of the process or citation shall be effected by a process server unless a Judge otherwise directs;

(c) such service shall be effected by delivering to and leaving with the person to be served one copy of the process or citation to be served, and one copy of the translation thereof in accordance with the rules and practice of the court regulating service;

(d) after service has been effected by the process server, he shall file an affidavit of service in which he shall furnish particulars of charges for the cost of effecting the service. The affidavit shall be transmitted to the Chief Registrar with one copy of the process annexed;

(e) the Chief Registrar shall examine and verify the process server's particulars of charges and may approve it or approve some lesser figure, whereupon the Chief Judge shall forward to the Attorney-General a letter of request for service, the approved amount for service, evidence of service and a certificate appended to it.

#### **Inapplicability of rule 4.**

6• Rule 4 of this Order shall not apply to or render invalid, defective or insufficient any otherwise valid sufficient mode of service in any foreign country with which a Convention has been made, provided that no mode of service expressly excluded by the Convention.

#### **Service on behalf of foreign tribunals**

7. Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service of any process or document on any person within the jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the Convention, be adopted:

(a) the process server shall deliver the original or a copy thereof along with a copy of its translation to the party to be served;

(b) the process server shall submit the particulars of the costs and expenses of service to the Chief Registrar who shall certify the amount payable in respect of the service;

(c) the Chief Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of service or indicating reasons for failure to serve and also notify the authority as to the amount certified under paragraph (b) of this rule.

#### **Substituted service of foreign process.**

8. In appropriate cases, upon application, a Judge may order substituted or other service of the foreign process.

## **ORDER 9 APPEARANCE**

### **Mode of entry of appearance.**

1.-(1) A defendant served with an originating process shall within the period prescribed in the process for appearance file in the registry the original and copies of a duly completed and signed memorandum of appearance as in Form 11 with such modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance the Registrar shall make entry thereof, sign and stamp the copy showing the date he received it and return same to the person making the appearance.

(3) A defendant entering appearance shall not later than 5 days thereafter serve a signed and stamped copy of the memorandum of appearance on a claimant's Legal Practitioner or on the claimant if he sues in person.

### **Defendant appearing in person or represented by Legal Practitioner.**

2.-(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within Bayelsa State.

(2) Where a defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within Bayelsa State, and where any such Legal Practitioner is only the agent of another Legal Practitioner he shall also insert the name and place of business of the principal.

### **Fictitious address.**

3. The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such address is illusory, fictitious or misleading, the appearance may be set aside by a Judge on the application of a claimant.

### **Defendants appearing through same Legal Practitioner.**

4. If two or more defendants in the same action appear through the same Legal Practitioner the memorandum of appearance shall include the names of all defendants so appearing.

### **Late appearance.**

5. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the court an additional fee of N200.00 (two hundred naira) for each day of default. If the defendant appears late but within the time prescribed for filing his defence, he shall file his defence within that time.

#### **Intervener in probate matters.**

6. In probate matters any person not named in the originating process may, with the leave of a Judge, intervene and appear in the matter on filing an affidavit showing his interest in the estate of the deceased.

#### **Recovery of land**

7. Any person not named as a defendant in an originating process for recovery of land, may with leave of a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or through his tenant.

#### **Landlord appearing.**

8. Any person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only through his tenant, shall state in his appearance that he appears as landlord.

#### **Person under legal disability appearing.**

9. person under legal disability shall enter an appearance by his guardian.

#### **Tenant.**

10. In this Order the word "tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

### **ORDER 10 DEFAULT OF APPEARANCE**

#### **Default of appearance by person under legal disability**

1. Where no appearance has been entered for a person under legal disability a claimant shall apply to a Judge for an order that some person be appointed guardian for such defendant and when appointed the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed.

#### **Default of appearance generally**

2. Where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of these Rules upon proof of service of the originating process.

#### **Liquidated demand.**

3. Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for judgment for the claim on the originating process or such lesser sum and interest as a Judge may order.

#### **Liquidated demand: several defendants**



4. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more appear to the process and another or others fail to appear, a claimant may apply to a Judge for judgment against those who have not appeared and may execute the judgment without prejudice to his right to proceed with the action against those who have appeared.

#### **Judgment in default appearance.**

5. Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without a claim for pecuniary damages, and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for judgment. The value of the goods and the damages or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

#### **Several defendants.**

6. Where the claim in the originating process is as in rule 5 of this Order and there are several defendants one or some of whom appear while another or others do not appear, a claimant may apply for judgment against the defendants) failing to appear. The value of the goods and the damages or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

#### **Detention of goods, damages and liquidated demand.**

7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and includes a liquidated demand and any of the defendants fail to appear, a claimant may apply to a Judge for judgment. The value of the goods and the damages, or the damages only as the case may be shall be ascertained in such manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

#### **Recovery of land**

8. If no appearance is entered within the time prescribed in the originating process in a claim for recovery of land or if appearance is entered but the

### **ORDER 11 SUMMARY JUDGMENT**

#### **Where claimant believes there is no defence.**

1. Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the written & statement on oath of his

witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written address in respect thereof.

**Delivery of extra copies.**

2. A claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in rule 1 of this Order as there are defendants.

**Service.**

3. Service of all the processes and documents referred to in rule 1 of this Order shall be effected in the manner provided under Order 7.

**Where defendant intends to defend**

4. Where a party served with the processes and documents referred to in rule 1 of this Order intends to defend the suit, he shall, not later than the time prescribed for defence, file:

- (a) this statement of defence;
- (b) written statements on oath of his witnesses;
- (c) exhibits to be used in his defence; and
- (d) a written address in reply to the application for summary judgment.

**Where defendant has good defence, or has no good defence or has good defence to part of the claim**

5.-(1) Where it appears to a Judge that a defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend.

(2) Where it appears to a Judge that the defendant has no good defence the Judge may thereupon enter judgment for the claimant.

(3) Where it appears to a Judge that the defendant has a good defence to part of the claim but no defence to other parts of the claim, the Judge may thereupon enter judgment for that part of the claim to which there is no defence and grant leave to defend that part to which there is a defence.

**Where there are several defendants**

6. Where there are several defendants and it appears to a Judge that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend, the former may be permitted to defend and the Judge shall enter judgment against the latter.

**Oral submission on written address.**

7. Where provision is made for written addresses under these rules, each party shall be at liberty advance before a Judge oral submissions to expatiate his written address.

### **Order of account**

1. Where in an originating process a claimant seeks an account under Order 4 rule 5 or where the claim involves taking an account, if the defendant either fails to appear, or after appearance fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application make an order for the proper accounts, with all necessary inquiries and directions.

### **Application how made.**

2. An application for account shall be supported by an affidavit filed on a claimant's behalf, stating concisely the grounds of his claim to an account. The application may be made at any time after the time prescribed for defence.

### **Account may be taken by a Judge or Referee.**

3. Where an order is made for account under this Order, the account may be taken by a Judge or a Referee appointed by the Judge.

## **ORDER 13 PARTIES GENERALLY**

### **Persons claiming jointly or severally**

1. All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such claimant(s) as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

### **Action in name of wrong claimant.**

2. Where an action has been commenced in the name of the wrong person as claimant or where it is doubtful whether it has been commenced in the name of the right claimant, the Judge may order the substitution or addition of any other person as claimant on such terms as may be just.

### **Misjoinder and counter-claim.**

3. Where in commencing an action any person has been wrongly or improperly included as a claimant and a defendant has set-up a counterclaim or set-off, such defendant may establish his set-off or counterclaim as against the parties other than a claimant so included, notwithstanding the inclusion of such claimant or any proceeding based thereon.

**Any person may be joined as defendant.**

4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

**Action in name of wrong defendant**

5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated, a Judge may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just.

**Defendant need not be interested in all the reliefs sought**

6.-(1) It shall not be necessary that every defendant shall be interested as to all the reliefs prayed For, or as to every cause of action included in any proceeding against him.

(2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may appear just to prevent him from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

**Joinder of persons severally or jointly and severally liable**

7. A claimant may at his option join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any contract, including parties to bills of exchange and promissory notes.

**Claimant in doubt as to person from whom redress is to be sought**

8. Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that, the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.

**Persons under legal disability.**

9. Persons under legal disability may sue by their guardians or defend by guardians appointed for that purpose.

**Guardian.**

10. Where any person's name is to be used in any action as guardian of a person under legal disability or other party or as relator, a written authority for that purpose signed by that person shall be filed in the registry.

**Trustees, executors, etc. maybe sued as representing the estate**

11. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered, as representing such person, but a Judge may, at any stage of the proceedings order any of such persons to be

made parties in addition to or in lieu of the previously existing parties. This rule shall apply to trustees, executors and administrators in proceedings to enforce a security by foreclosure or otherwise.

### **Numerous persons.**

12.—(1) Where more persons than one have the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.

(2) Where more persons than one have the same interest in one suit and they seek to defend the action, a Judge may allow one or more of such persons to defend the action on behalf of or for the benefit of all persons so interested.

### **Representation of persons or class of persons in certain proceedings.**

13.—{ 1) Without prejudice to rule 12, where in any proceedings concerning:

- (a) the administration of an estate, or
- (b) property subject to a trust, or
- (c) land held under customary law as family or community property, or
- (d) the construction of any written instrument, including a statute;

A Judge is satisfied that:

- (i) the person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained;
- (ii) the person, the class or some members of the class interested if ascertained cannot be found;
- (iii) though the person or the class and the members thereof can be ascertained and found;

it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or members of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

(2) Notice of appointment made by a Judge under this rule and all processes filed in court shall be served on the person(s) so appointed.

(3) If in any proceedings mentioned in sub-rule 1 of this rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate Legal Practitioners, then, unless the Judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be framed accordingly.

(4) In this rule, the word "class" includes the persons recognised by Customary Law as members of a family or as members of a land owning community.

### **Power to approve compromise.**

14. Where in any proceedings mentioned in sub-rule (1) of rule 13 of this Order, a compromise is proposed and some of the absent persons who are interested in or may be affected by the compromise are not parties to the proceedings (including unborn or unascertained persons) but where:

(i) there are some other persons having the same interest before the court who assent to the compromise or on whose behalf the court sanctions the compromise or

(ii) the absent persons are represented by a person under rule 13 of this Order who so assents; a Judge if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that such compromise shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

### **Where there is no personal representative**

15-(1) If in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for the purpose of the proceedings, on such notice to such persons (if any) as the Judge shall deem fit, either specifically or generally by public advertisement, and the order so made and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the proceedings.

(2) Where a sole or sole surviving claimant or defendant in a proceedings dies and the cause of action survives but the person entitled to proceed fails to proceed, a Judge may on the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

(3) In default of such application or where the person substituted fails to proceed, judgment may be entered for the defendant, or as the case may be, for the person against whom the proceedings might have been continued.

### **Proceedings not defeated by misjoinder or nonjoinder**

16.—(1) No proceedings shall be defeated by reason of misjoinder or nonjoinder of parties, and a Judge may deal with the matter in controversy so far as regards the rights and interest of the parties actually before him.

(2) A Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Judge to be just, order that the names of any parties improperly joined be struck out.

(3) A Judge may order that the names of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.

(4) No person under legal disability shall be added as a claimant suing without a guardian and no person shall be added as the guardian of a claimant under legal disability without his own consent in writing.

(5) Every party whose name is added as defendant shall be served with the originating processes or notice in the manner prescribed in these Rules or in such manner as may be prescribed by a Judge and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice.

**Application to add or strike out.**

17. Any application to add or strike out or substitute or vary the name of a claimant or defendant may be made to a Judge by motion.

**Where defendant is added.**

18.—(1) Where a defendant is added or substituted, the originating process shall be amended accordingly and the claimant shall, unless otherwise ordered by a Judge, file an amended originating process and cause the new defendant to be served in the same manner as the original defendant.

(2) The newly joined defendant shall within 42 days file his statement of defence, the documentary exhibits intended to be tendered at the trial, list of non documentary exhibits, the list of his witnesses and their statements on oath.

**Third parties may be joined by any of the defendants**

19.—(1) Where it appears to a Judge that any person not a party in the proceedings may bear eventual liability either in whole or in part, the Judge may upon an application, allow that person to be joined as a Third Party by any of the defendants. The application shall state the grounds for the applicant's belief that such Third Party may bear eventual liability.

(2) The order and existing processes shall be served on the Third Party within the time prescribed for filing the defence.

**Appearance by Third Party.**

20. Where a party is joined to any proceeding as Third Party he may after service enter appearance within 8 days or within 30 days if he resides or carries on business outside jurisdiction or within such further time as a Judge may order.

**Default by Third Party.**

21. If a Third Party duly served with the order and all existing processes does not enter an appearance or makes default in filing any pleading, he shall be deemed to admit the

validity of and shall be bound by any judgment given in the action, whether by consent or otherwise.

### **Subsequent Third Party**

22. A party joined as a Third Party in any proceedings may join any other party in the same manner as he was joined and the expression "Third Party" shall apply to and include every person so joined.

### *Actions against Firms and Persons carrying on Business in names other than their own*

#### **Actions by and against firms.**

23. Any two or more persons claiming or alleged to be liable as partners and doing business and within the jurisdiction may sue or be sued in the name of the firm, if any, of which they were partners when the cause of action arose and any party to an action may in such case apply to the Judge for a statement of the names and addresses of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Judge may direct.

#### **Disclosure of partners' names**

24.-(1) when an originating process is issued by partners in the name of their firm, the claimants or their Legal Practitioners shall, on demand in writing by or on behalf of any defendant declare in writing the names and residential addresses of all the persons constituting the firm on whose behalf the action is brought.

(2) Where the claimants or their Legal Practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as a Judge may direct.

(3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as claimants in the originating process, provided that the proceedings may continue in the name of the firm.

#### **Appearance of partner.**

25.-(1) Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm.

(2) Where an originating process is served upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued.

### **Application of rules to action between co-partners**



26. The above rules in this Part shall apply to proceedings between a firm and one or more of its partners and between firms having one or more partners in common, provided such firm or firms carry on business within the jurisdiction.

**Persons trading as firms.**

27. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all rules relating to proceedings against firms shall apply.

*III. Change of Parties by Death or Otherwise, etc*

**Action not abated where cause of action survives.**

28. No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the finding on issues of fact and judgment, but judgment may in such case be entered notwithstanding the death.

**Order to carry on proceedings.**

29.—(1) Where by reason of death or bankruptcy, any other event occurring after the Commencement Of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the proceeding, it becomes necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex parte upon an allegation of such change, or transmission of interest or liability, or of any such person interested having come into existence.

(2) An order obtained under this rule shall be served on the continuing party or parties, or their Legal Practitioner(s) and also upon such new party unless the person making the application is the new party.

(3) Every person served who is not already a party to the proceeding shall where applicable enter an appearance thereto within the same time and in the same manner as if he had been served with the originating process. He shall thereupon be served the originating and all existing processes.

(4) Any party served under this rule who was not already a party to the proceedings shall file his proceedings and documents as if he had been an original party in the proceedings.

**In case of assignment, creation or devolution of estate or title**

30. In case of assignment, creation or devolution of any estate or title pendente lite, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

**Application to discharge order by person under disability having a guardian**

31. Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings is served with an order under rule 29 such person may apply to a Judge to discharge or vary such order at any time within 14 days from the service of the order.

**By persons under disability having no guardian.**

32. Where any person under legal disability and not having a guardian in the proceedings is served with an order under rule 29, such a person may apply to a Judge to discharge or vary such order at any time within 14 days from the appointment of a guardian for such party, and until such period of 14 days has expired, such order shall have no force or effect as against the person under legal disability.

*IV Legal Practitioners or Agents*

**Acts may be done by Legal Practitioner or agents.**

33. Where by these Rules any act may be done by any party in any proceedings, such act done may be done either by the party in person, or by his Legal Practitioner, or by his agent (unless an agent is expressly barred under these Rules).

**ORDER 14  
JOINDER OF CAUSES OF ACTION**

**All causes of actions may be joined.**

1. Subject to the following rules of this Order, the claimant may unite in the same action several causes of action; but if it appears that they cannot be conveniently tried or disposed of together, a Judge may order separate trials of any such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

**Recovery of land.**

2.-{1) An action for recovery of land may be joined with an action for declaration of title, mesne profits or arrears of rent, damages for breach of any contract under which the land or any part thereof is held, or for any wrong or injury to the premises.

(2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property and a claim for payment of principal money or interest secured by or any other relief in respect of the mortgage of or charge on such land.

### **Executor and administrator.**

3. Claims by or against an executor or administrator as such, may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the claimant or defendant sues or is sued as executor or administrator.

### **Claims by joint claimants.**

4. Claims by claimants jointly may be joined with claims by them or any of them separately against the same defendant.

## **ORDER 15 PLEADINGS**

### **Filing of Pleadings.**

1.-(1) A statement of claim shall include the relief or remedy to which a claimant claims to be entitled.

(2) A defendant shall file his statement of defence, set-off or counterclaim, if any, not later than 42 days after service on him of the claimant's originating process and accompanying documents. A counterclaim shall have the same effect as a cross action, so as to enable the court pronounce a final judgment in the same proceedings. A set-off must be specifically pleaded.

(3) A claimant shall within 14 days of service of the statement of defence and counterclaim, if any, file his reply, if any, to such defence or counterclaim:  
Provided that where a defendant sets up a counterclaim, if a claimant or any other person named as party to such counter claim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent proceeding, a Judge may at any time order that such counterclaim be excluded.

### **Pleadings to state material facts and not evidence**

2.-(1) Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary, be divided into paragraphs numbered consecutively.

issues shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined except any fact which the party may be willing to admit.

### **Effect of documents to be stated.**

10. Wherever the contents of any document are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

#### **Notice.**

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred are material.

#### **Implied contract or relation**

12. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. If in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances he may state the same in the alternative.

#### **Presumptions of law.**

13. A party may not allege in any pleadings any matter or fact the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has been specifically denied.

#### **Stated or settled account**

14. In every case in which the cause of action is a stated or settled account the same shall be alleged with particulars but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

#### **Technical objection**

15. No technical objection shall be raised to pleading on the ground of any alleged want of form.

#### **Striking out of pleadings.**

16. A Judge may at the pre-trial conference in any proceedings order to be struck out or amended, any matter in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case, if the Judge shall deem fit, order costs of the application to be paid as between Legal Practitioner and client.

#### **Defamation.**

17.-{ 1) Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

(2) Where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

(3) Where in an action for libel or slander the defendant alleges that in so far as the words complained of consist of statement of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the facts and matters he relies on in support of the allegation that the words are true.

#### **Where pleading discloses no reasonable cause of action.**

18.—(1) The Judge may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that:

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on application under paragraph (1)(a) of this rule,

(3) This rule shall, so far as applicable, also apply to an originating summons and a petition as if the summons or petitions, as the case may be, were a pleading.

(4) No proceedings shall be open to objection on the ground that only a declaratory judgment or order is sought thereby and a Judge may make a binding declaration of right whether any consequential relief is or could be claimed or not.

#### **Close of pleadings**

19- (1) Where a pleading subsequent to reply is not ordered, then, at the expiration of 7 days from the service of the defence or reply (if a reply has been filed) pleadings shall be deemed closed.

(2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file the same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the pleadings shall be deemed closed:

Provided that this rule shall not apply to a defence to counterclaim and unless the claimant files a defence to counterclaim, the statements of fact contained in such counterclaim shall at the expiration of 14 days from the service thereof or of such time (if any) as may by order be allowed for filing of a defence thereto be deemed to be admitted, but the Judge may at any subsequent time, give leave to the claimant to file a defence to counterclaim.

## **ORDER 16**

### **STATEMENT OF CLAIM**

#### **Statement of claim.**

1.-{ 1) Every statement of claim or counterclaim shall state specifically the relief claimed either singly or in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as a Judge may think just as if it had been asked for.

(2) Where the claimant seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off or ' counterclaim founded upon separate and distinct facts.

#### **Claim beyond endorsement**

2. Whenever a statement of claim is filed, the claimant may alter, modify or extend his claim without any amendment of the endorsement of the writ:

Provided that the claimant may not completely change his cause of action endorsed on the writ without amending the writ.

## **ORDER 17**

### **DEFENCE AND COUNTERCLAIM**

#### **Statement of defence.**

1. The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath.

#### **Evasive denial.**

2. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

#### **Denials generally.**

3.-(1) In an action for debt or liquidated demand in money, a mere denial of the debt shall not be sufficient defence.

(2) In an action for money had and received, a defence in denial must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the claimant.

(3) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed.

(4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, e.g. the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.

#### **Persons in representative capacity**

4. If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

#### **. Pleadings to damages**

5. No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.

#### **. Set-off and counter-claim.**

6. Where any defendant seeks to rely upon any ground as supporting a right of set-off or counterclaim, he shall in his defence state specifically that he does so by way of supporting a right of set-off or counterclaim.

#### **Title of counter-claim.**

7. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the claimant along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the claimant.

#### **Claim against persons not party.**

8. Where any such person as in rule 7 of this Order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counterclaim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter claim so served shall be endorsed in Form 12 with such modifications or variations as circumstances may require.

#### **Appearance by added parties.**

9. Any person not already a party to the action, who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with an originating process to appear in an action.

**Reply to counter-claim.**

10. Any person not already a party to the action, who is named in a defence as a party to a counterclaim thereby made, shall deliver a defence in a mode and manner prescribed under this Order and the provisions of the Order shall apply to such a person.

**Discontinuance of the claimant's claim.**

11. If, in any case in which the defendant sets up a counterclaim, the action of the claimant is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with.

**Judgment for balance.**

12. Where in an action, a set off or counterclaim is established as a defence against the claimant's claim, the Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

**Grounds of defence after action brought.**

13.- (1) Any ground of defence which arises after the action has been filed, but before the defendant has delivered his defence and before the time limited for doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence.

**Further defence or reply.**

(2) If after a defence has been delivered along with a set-off or counterclaim, any basis for answer or ground of defence arises to any such set-off or counterclaim respectively, it may be raised by the claimant in his reply (in the case of a set-off) or defence to counterclaim, either alone or together with any other ground of reply or defence to counterclaim.

**Further defence or reply.**

14. Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivery of a reply has expired, the claimant may, within 8 days after such ground of defence has arisen or at any subsequent time by leave of a Judge deliver a further defence or further reply, as the case may be setting forth the same.

**Concession to defence.**

15. Whenever any defendant in his defence or in any further defence pursuant to rule 14 of this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 13 with such modification as circumstances may require) and may thereupon obtain judgment up to the



time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

### **Defence to originating summons**

16. A respondent to an originating summons shall file a counter affidavit together with all the exhibits he intends to rely upon and a written address within 21 days after service of the originating summons.

## **@@#ORDER 18#@@ REPLY**

### **Filing of reply.**

1. Where the claimant desires to make a reply, he shall file it within 14 days from the service of the defence.

### **Reply to counter-claim.**

2. Where a counterclaim is pleaded, a reply thereto is called a defence to counterclaim and shall be subject to the rules applicable to defences.

## **ORDER 19 ADMISSIONS**

### **Notice of admission of facts.**

1. Any party to a proceeding may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the facts of the case of any other party.

### **Notice to admit documents.**

2.-(1) Either party may, not later than 7 days before the first pre-trial conference, by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service, give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) When a party decides to challenge the authenticity of any document, he shall not later than 7 days of service of that document give notice that he does not admit the document and requires it to be proved at the trial.

(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of five thousand naira,

shall be paid by the party who has challenged it, unless at the trial or hearing the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

**Notice to admit facts.**

3.-(1) Either party may not later than 7 days before the first pre-trial conference by notice in writing filed and served require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non-admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) Any admission made pursuant to such notice shall be deemed to be made only for the purposes of that particular proceedings and not as an admission to be used against the party or any other party than the party giving the notice.

(3) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira, shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

**Judgment or Order upon admission of fact.**

4. The Judge may, on application, at a pre-trial conference or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment, including declarations, as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

**Cost of notice where documents unnecessary.**

5. Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira shall be borne by the party giving such notice.

**ORDER 20  
DEFAULT OF PLEADING**

**Claim for debt or liquidated demand.**

1. If the claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

**Several defendants: default of one.**

2. When in any such action as in rule 1 of this Order, there are several defendants, if one of them makes default as mentioned in rule 1 of this Order, the claimant may apply for final judgment against the defendant making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

#### **Damages and detention of goods.**

3. If the claimant's claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and the defendant or all the defendants, if more than one, make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the damages only as the case may be, shall be ascertained in any way which the Judge may order.

#### **Default of one or more defendants.**

4. When many such action as in rule 3 of this Order there are several defendants, if one or more of them make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants so making default and proceed with his action against the others.

In such case the value and amount of damages against the defendant making default shall be assessed at the trial of the action or issues therein against the other defendants, unless the Judge shall otherwise order.

#### **Debt or damages and detention of goods or damages**

5. Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in rule 1, the claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in rules 3 and 4.

#### **Recovery of land.**

6. In an action for the recovery of land, if the defendant makes default as mentioned in rule 1, the claimant may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with his costs.

#### **Claim for mesne profits, arrears or damages.**

7. Where the claimant has endorsed a claim for mesne profits or arrears of rent in respect of premises claimed, or any part of them, or damages for breach of contract, or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 1, or if there be more than one defendant, some or one of the defendants

make such default, the claimant may apply for final judgment against the defaulting defendant(s) and proceed as mentioned in rules 3 and 4.

**Where a defence is filed to part of claim only**

8. If the claimant's claim is for a debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any such matters, or for the recovery of land, and the defendant files a defence which purports to offer an answer to part only of the claimant's alleged cause of action, the claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:

Provided that the unanswered part consists of a separate cause of action or is severable from the rest, as in the case of part of a debt or liquidated demand:

Provided also that where there is a counterclaim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the Judge.

**Defendant in default.**

9. In all actions other than those in the preceding rules of this Order, if the defendant makes default in filing a defence, the claimant shall apply to a Judge for judgment, and such judgment shall be given upon the statement of claim as the Judge shall consider the claimant to be entitled to.

**One of several defendants in default.**

10. Where in any such action as mentioned in rule 9 of this Order, there are several defendants, if one of such defendants makes such default as aforesaid, the claimant may apply for judgment against the defendant so making default, and proceed against the other defendants.

**Default of third party.**

11. In any case in which issues arise in a proceeding other than between claimant and defendant, if any party to any such issue makes default in filing any pleading, the opposite party may apply to a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to, and the Judge may order judgment to be entered accordingly or may make such other order as may be necessary to do justice between the parties.

**Setting aside judgment by default**

12. Any judgment by default whether under this Order or under any Order of these Rules shall be final and remain valid and may only be set aside upon application to the Judge on grounds of fraud, non-service or lack of jurisdiction upon such terms as the court may deem fit.

**ORDER 21**  
**PAYMENT INTO AND OUT OF COURT**

**Payment into and out of court**

- 1.-(1) Where after service in any proceeding for debt or damages a defendant evinces an intention to pay money into Court in respect of the proceeding, he shall notify the Chief Registrar who will thereupon direct him to pay the money into an interest yielding account in a commercial bank and he shall file the teller for such payment with the Chief Registrar.
- (2) Where a teller for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the claimant who may apply to a Judge for an order to withdraw the amount so paid.
- (3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.
- (4) The defendant may without leave give a written notice to the Registrar of an intention to increase the amount of any sum paid into Court.
- (5) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action unless a Judge otherwise directs.
- (6) The notice shall be in Form 14 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.
- (7) Where money is paid into Court with denial of liability the claimant may proceed with the action in respect of the claim and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim, and the balance, if any, shall on the order of a Judge be repaid to the defendant. Where the defendant succeeds in respect of such claim, the whole amount paid into Court shall be repaid to him on the order of a Judge.

**Claimant may take out money.**

- 2.-( 1) Where money is paid into Court under rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum relates by giving notice to the defendant in Form 15 with

such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

(2) Payment shall be made to the claimant or, on his written authority, to his Legal Practitioner, and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) If the claimant accepts money paid into Court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more specified causes of action, and give notice that he abandons the other causes of action, he may after 4 days from out and unless a Judge otherwise orders, tax his costs incurred to the time of payment into Court, and 48 hours after taxation may sign judgment for his taxed costs.

(4) Where in an action for libel or slander, the claimant accepts money paid into Court, either party may apply by summons to the Judge for leave for the parties or either of them to make a statement in open court in terms approved by the Judge.

#### **Money remaining in court.**

3. If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order of a Judge which may be made at any time before, at or after trial.

#### **Several defendants.**

4.-(1) Money may be paid into Court under rule 1 of this Order by one or more of several defendants sued jointly or in the alternative upon notice to the other defendant or defendants.

(2) If the claimant elects within 14 days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he shall give notice as in Form 16 with such modifications or variations as circumstances may require to each defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) The money shall not be paid out except in pursuance of an order of a Judge dealing with the whole cause or causes of action.

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into Court, the claimant may within 14 days elect to accept the sum paid into Court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 15 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with rule 2(3) of this Order and the action shall abate against that defendant.

(5) The claimant may continue with the action against any other defendant but the sum paid into Court shall be set off against any damages awarded to the claimant against the defendant or defendants against whom the action is continued.

**Counterclaims.**

5. A person made a defendant in a counterclaim may pay money into court in accordance with the foregoing rules, with necessary modifications.

**Persons under legal disability.**

6.-(1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money into Court, whether before, at or after the trial, shall as regards the claims of any such person be valid without the approval of a Judge.

(2) No money (which expression for the purpose of this rule includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any legal proceedings in respect of the claims of any such person under legal disability whether by judgment, settlement, compromise, payment into Court or otherwise, before, at or after the trial, shall be paid to the claimant or to the guardian of the claimant or to the claimant's Legal Practitioner unless a Judge shall so direct.

(3) All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the Judge shall direct. The directions thus given may include any general or special directions that the Judge may deem fit to give, including any directions on how the money is to be applied or dealt with and as to any payment to be made either directly or out of money paid into Court to the claimant or to the guardian in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the claimant's Legal Practitioner in respect of costs or of the difference between party and party and Legal Practitioner and client costs.

**Payment into and withdrawal of money from court.**

7. Every application or notice for payment into or transfer out of court shall be made on notice to the Other side.

**ORDER 22  
PROCEEDINGS IN LIEU OF DEMURRER**

**Demurrer abolished.**

1. No demurrer shall be allowed.

### **Points of law may be raised by pleading**

2.-(1) Any party may by his pleading raise any point of law and the Judge may dispose of the point so raised before or at the trial.

(2) If in the opinion of the Judge, the decision on such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision as may be just.

## **ORDER 23 DISCONTINUANCE**

### **Claimant may discontinue before defence**

1.-(1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other step in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

(2) A discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent claim

(3) Where a defence has been filed, the claimant may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order. The Court hearing an application for leave may refuse the application whereupon if the party refuses or fails to proceed, the Court shall dismiss the action or the claim and award costs to the deserving party.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the Judge have been fully complied with.

(5) The Judge may in like manner and like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter claim to be withdrawn or struck out.

### **Withdrawal by consent.**

2. When a cause is ready for trial, it may be withdrawn by either claimant or defendant upon producing to the Registrar a consent in writing signed by the parties and their Legal



Practitioners, if any, and thereupon a Judge shall strike out the matter without the necessity of attendance of the parties or their Legal Practitioners.

## **ORDER 24 AMENDMENT**

### **Amendment of originating process and pleading**

1. A party may amend his originating process or other processes and pleadings at any time before the close of pre-trial conference and, except in exceptional circumstances, not more than twice during the trial.

### **Application.**

2. Application to amend may be made to a Judge. Such application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.

### **Amendment of originating process.**

3. Where any originating process and or a pleading is to be amended a list of any additional witness to be called together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment shall be filed with the application.

### **Failure to amend after order.**

4. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 7 days from the date of the order, the order to amend shall, on the expiration of such limited time as aforesaid, or such seven days as the case may be, become ipso facto void, unless the time is extended by the Judge.

### **Filing and service of amended process.**

5. Whenever any originating process or pleading is amended, the document as amended shall be filed in the Registry and copies served on all the parties to the Action.

### **Date of order and amendment to be displayed.**

6. Whenever any endorsement or pleading is amended, it shall be marked in the following manner:

"Amended..... day of..... Pursuant to order of (name of Judge) dated the..... day Of....."

### **Clerical mistakes and accidental omissions.**

7. A Judge may at anytime correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission upon application, without an appeal being filed.

**General power to amend.**

8. Subject to the provisions of rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

**ORDER 25**

**I - PRE-TRIAL CONFERENCES AND SCHEDULING**

**Pre-Trial conference notice.**

1.-(1) Within 14 days after close of pleadings, the claimant shall apply to the registrar for the issuance of a pre-trial conference notice as in Form 17.

(2) Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties or their Legal Practitioners (if any) a pre-trial conference notice as in Form 17 accompanied by a pre-trial information sheet as in Form 18 for the purposes set out hereunder:

- (a) disposal of matters which must or can be dealt with on interlocutory application;
  - (b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal;
  - (c) Promoting amicable settlement of the case or adoption of alternative dispute resolution.
- (3) If the claimant does not make the application, the defendant(s) may do so within 14 days after the expiration of the period allowed by rule 1(1) or apply for an order to dismiss the action.

(4) (i) If neither the claimant nor the defendant makes an application in accordance with sub- rules 1 and 3 of this rule, the Registrar shall notify the Judge in writing of the facts as in 17 A.

(ii) The Judge upon receipt of the notice of the Registrar, shall cause the case to be listed for striking out and the parties to the case shall be so notified as in Form 18 A.

(5) (i) Upon the case coming up for striking out, the Judge shall strike out the same unless good cause be shown why it should not be struck out.

(ii) A claimant who does not want his case to be struck out under paragraph (i) of this sub- rule shall file in court, within 3 days of the service of the notice of striking out, an application giving the reasons for his failure to comply with sub-rule 1 of this rule.

**Scheduling and planning.**

2. At the pre-trial conference, the Judge shall enter a Scheduling Order for:

- (a) joining other parties;
- (b) amending pleadings or any other processes;
- (c) filing motions;
- (d) further pre-trial conferences;
- (e) any other matters appropriate in the circumstances of the case.

### **Agenda.**

3. At the pre-trial conference, the Judge shall consider and take appropriate action with respect to such of the following (or aspects of them) as may be necessary or desirable:

- (a) formulation and settlement of issues;
- (b) amendments and further and better particulars;
- (c) the admissions of facts and other evidence by consent of the parties;
- (d) control and scheduling of discovery, inspection and production of documents;
- (e) narrowing the field of dispute between expert witnesses by their participation at the pre-trial conference or in any other matter;
- (f) hearing and determination of objections on points of law;
- (g) giving orders or directions for separate trial of a claim, counter-claim, set-off, cross claim or third party claim or of any particular issue in the case;
- (h) settlement of issues, inquiries and accounts under Order 27;
- (i) securing statement of special case of law or facts under Order 28;
- (j) determining the form and substance of the pre-trial order;
- (k) referring the matter for amicable settlement or Alternative Dispute Resolution;
- (l) such other matters as may facilitate the just and speedy disposal of the action.

### **Time Table.**

4. The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 3 months of its commencement, and the parties and their Legal Practitioners shall co-operate with the Judge in working within this time-table. As far as is practicable, pre-trial conferences shall be held from day to day or adjourned only for the purpose of compliance with pre-trial conference orders, unless ' extended by the Judge.

### **Report.**

5. After a pre-trial conference or series of pre-trial conferences, the Judge shall issue a Report. This report shall guide the subsequent course of the proceedings unless modified by the Judge.

### **Sanctions.**

6.-{l) If a party or his Legal Practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith, the Judge shall:

- (a) In the case of the claimant, dismiss the claim; or
- (b) In the case of a defendant, enter judgment against him.

(2) Any judgment given under this rule may be set aside upon an application made within 7 days of the judgment or such other period as the pre-trial Judge may allow not exceeding the pre-trial conference period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial conference.

### **Management.**

7. The Judge shall direct the pre-trial conference with due regard to its purpose and agenda as provided under this Order, and shall require parties and their Legal Practitioners to co-operate with him effectively in dealing with the conference agenda.

## **II. Alternative Dispute Resolution**

8. A Court or Judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either -

- (a) Arbitration;
- (b) Conciliation;
- (c) Mediation; or
- (d) any other lawfully recognised method of dispute resolution.

## **ORDER 26 DISCOVERY AND INSPECTION**

### **Discovery by interrogatories.**

1 In any cause or matter the claimant or defendant may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the end of it stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference.

### **Civil Form 19.**

2. Interrogatories shall be in Form 19 with such modifications or variations as circumstances may require.

### **Corporation or companys**

3. If any party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprise, friendly society, association or any other body or group of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may deliver interrogatories to any member or officer of such party.

### **Objection to interrogatories by answer.**

4. Any objection to answering any one or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken in the affidavit in answer at the pre-trial conference.

### **Affidavit in answer, filing of.**

5. Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar.

### **Form of affidavit in answer: Civil Form 20.**

6. An affidavit in answer to interrogatories shall be in Form 20 with such modifications or variations as circumstances may require.

### **Order to answer or answer further.**

7. If any person interrogated omits to answer or answers insufficiently, the pre-trial Judge shall on application issue an order requiring him to answer or to answer further as the case may be.

### **Application for discovery of documents.**

8.-(1) Any party may in writing request any other party to any cause or matter to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the Judge may allow and it shall be dealt with at pre-trial conference.

(2) Every affidavit in answer to a request for discovery of documents shall be accompanied by office copies of documents referred to therein.

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing stating the grounds of his objection, and it shall be in Form 21 with such modifications or variations as circumstances may require.

### **Processes filed after pre-trial conference.**

9.-(I) Any process to be filed after the pre- trial conference shall be accompanied by copies of documents referred to in the process.

(2) Where a process filed is not accompanied by a document referred to herein a Judge may on application strike out the process.

### **Verification of business books.**

10.-( 1) Where any document required to be attached to any process or produced under this or any other rule is a business book a Judge may, upon application, order a copy of any entry therein to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.

(2) Notwithstanding that a copy has been supplied, a Judge may order inspection of the book from which the copy was made.

(3) Where on a request or application for inspection, privilege is claimed for any document, the Judge may inspect the document for the purpose of deciding the validity of the claim of privilege.

(4) The Judge may, suo motu or on application, and whether or not an affidavit of documents has already been ordered or made, make an order requiring any party to state by affidavit whether any particular document or documents, or any class or classes of documents, is or are or has or have at any time been in the possession, custody, power or control of that party when that party parted with the same and what has become of same.

(5) The Judge may suo motu or otherwise, at pre-trial conference, order or direct or require a party (including a defendant who is not disputing the claim or otherwise defending), a counsel, a witness, or a prospective witness, or even a non-party, to answer such interrogatories and furnish such discovery and inspection as the Judge may direct, in the interest of justice.

### **Attachment of party after service on Legal Practitioner.**

11. An order for interrogatories or discovery or inspection made against any party, if served on his legal Practitioner, shall be sufficient service to found an application for attachment of a party for disobedience to the order.

### **Attachment of Legal Practitioner.**

12. A Legal Practitioner, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse, to give notice thereof to his client shall be liable to pay the costs occasioned thereby.

### **Using answers to interrogatories at trial.**

13. Any party may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the other answers or the whole of such answer:

Provided that the Judge may look at the whole of the answers and order that any of them may be put in.

**Discovery against sheriff.**

14, in any action against or by a Sheriff in respect of any matter connected with the execution of his duty, a Judge may, on application of either party, order that the affidavit to be made in answer either to interrogatories or to any order for discovery shall be made by the Sheriff concerned.

**Order to apply to person under legal disability**

15. This Order shall also apply to persons under legal disability and their guardians

**ORDER 27**  
**ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO**  
**REFEREES**

**Issues of facts.**

1.-(1) In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings.

(2) If the parties differ on the issues the pre-trial Judge may settle the issues.

**Reference to referee.**

2. In any legal proceeding, the Judge may at any time order the whole cause or matter or any question or issue of facts, arising therein, to be tried before an official referee or officer of the court, notwithstanding that it may appear that there is a special or other relief sought or some special issue to be tried as to which it may be proper that the cause or matter should proceed in the ordinary manner.

**Instructions to referee.**

3. In any case in which a matter is referred to a referee, the Court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties if necessary to attend upon the referee during the inquiry.

**General powers of referee.**

4. The referee may, subject to the order of the Judge, hold the inquiry at or adjourn it to any place which he may deem most expedient, and have any inspection or view which he may

deem expedient for the disposal of the controversy before him. He shall, so far as practicable, proceed with the inquiry from day to day.

### **Evidence.**

5- (1) Subject to any order made by the Judge ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Judge in the same manner as such attendance may be enforced before the Court; and every such inquiry shall be conducted in the same manner or as nearly as circumstances will admit as trials before a Court.

(2) The referee shall have the same authority in the conduct of any inquiry as a Judge when presiding at any trial.

(3) Nothing in these rules shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise; but the Judge may, in respect of matters before a referee, make such order of attachment or committal as he may consider necessary.

### **Reports made in pursuance of reference under Order**

6.(1) The report made by a referee in pursuance of a reference under this Order shall be made to the Judge and notice thereof served on the parties to the reference.

(2) A referee may by his report submit any question arising therein for the decision of the Judge or make a special statement of facts from which the Judge may draw such inferences as he deems fit.

(3) On the receipt of a referee's report, the Judge may:  
(a) adopt the report in whole or in part;

### **Just allowances.**

12. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

### **Expediting proceedings in case of undue delay**

13. If it shall appear to the Judge that there is any undue delay in the prosecution of any proceedings under this Order, the Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may require; and for the purposes aforesaid any party may be directed to summon the persons whose attendance is required, and to conduct any proceeding and carry out any directions which may be given.



## **ORDER 28**

### **SPECIAL CASE**

#### **Special case by consent.**

1. At the pre-trial conference parties may concur in stating the questions of law arising in their case in the form of a special case for the opinion of the Judge. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions. Upon the argument of such case the Judge and the parties may refer to all the contents of such documents and the Judge may draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

#### **Special case by order before trial.**

2. If at the pre-trial conference it appears to the Judge that there is in any cause or matter a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the Judge may make an order accordingly, and may raise such questions of law or direct them to be raised at the trial either by special case or in such other manner as the Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

#### **Special case to be signed.**

3. Every special case agreed pursuant to rule 1 shall be signed by the several parties or their Legal Practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

#### **Application to set down where a person under legal disability is a party.**

4. An application to set down a special case in any cause or matter to which a person under legal disability is a party shall be supported by sufficient evidence that the statements contained in such case, so far as the same affects the interest of such persons, are true.

#### **Agreement as to payment of money and costs**

5.     -(1) The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs as the case may be.

(2) The judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal.

#### **Application of order**

6. This Order shall apply to every special case stated in a cause or matter and in any proceedings incidental thereto.

### **ORDER 29 CAUSE LISTS**

#### **List of causes for hearing**

1.-(1) The Registrar shall keep a list (hereinafter called the Pre-Trial List) of actions directed to be set down for pre-trial conference under Order 25 rule 3.

(2) The Registrar shall also keep a Weekly Cause List of all other actions which are ready for trial or hearing.

#### **Pre-trial and weekly cause list**

2.-(1) The Registrar shall post up every Friday Pre-Trial and Weekly Cause Lists which shall set out the arrangement of causes before each of the Judges sitting in Court during the following week, provided that nothing in this Order shall preclude a Judge from hearing any urgent matter not set out in the Weekly Cause Lists.

(2) Nothing in this rule shall preclude the Chief Judge from making special arrangements, whenever necessary or convenient, for the disposal of causes and matters included in the list.

#### **Public holiday**

3. Where any Friday is a public holiday, the Pre-Trial and Weekly Cause Lists shall be posted up on the day last preceding which is not a public holiday.

#### **Judge unable to sit**

4. On any day when a Judge shall be unable to sit in Court and deal with any cause or matter fixed for hearing, a minute, recording the parties present and the step taken by the Registrar, shall be entered on the Court file.

#### **Notice boards**

5. Pre-Trial Lists and Weekly Cause Lists and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

## **ORDER 30 PROCEEDINGS AT TRIAL**

### **Non-appearance of both parties**

1. When a cause has been called for hearing and neither party appears, the Judge shall, unless he sees good reason to the contrary, strike the cause out.

### **Default of appearance by defendant at trial**

2. When a cause is called for hearing, if the claimant appears and the defendant does not appear, claimant may prove his claim, so far as the burden of proof lies upon him.

### **Default of appearance by claimant.**

3. When a cause is called for hearing, if the defendant appears and the claimant does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim, so far as the burden of proof lies upon him.

### **Judgment by default may be set aside on terms**

4.-( 1) Where a cause is struck out under rule 1 of this Order either party may apply that the cause be replaced on the cause list on such terms as the Judge may deem fit.

(2) Any judgment obtained where any party does not appear at the trial may be set aside by the Judge upon such terms as he may deem fit.

(3) An application to re-list a cause struck out or to set aside a judgment shall be made within 6 days after the order or judgment or such other larger period as the Judge may allow.

### **Adjournment of trial**

5. The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms, if any, as he shall deem fit.

### **Times of commencement and termination of trial**

6. The Registrar or other proper officer present at any trial or hearing shall make a note of the times at which the trial or hearing commences and terminates respectively and the time it actually occupies on each day it goes on for communication to the Taxing Officer if required.

### **Order of proceedings**

7. The order of proceedings at the trial of a cause shall be as prescribed in the following rules.

### **Burden of proof by party to begin**

8. The party on whom the burden of proof lies by the nature of the issues or questions between the parties shall begin.

#### **Documentary evidence**

9. Documentary evidence shall be put in and may be read or taken as read by consent.

#### **Additional witness.**

10.—(1) A party who desires to call any witness not being a witness whose written statement on oath accompanied his pleading shall apply to the Judge for leave to call such witness.

(2) An application for leave in sub-rule 1 above shall be accompanied by the written statement on oath of such witness.

#### **Close of case of parties**

11.—(1) A party shall close his case when he has concluded his evidence. Either the claimant or defendant may make oral application to have the case closed.

(2) Notwithstanding the provisions of sub-rule 1 above, the Judge may suo motu, where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.

#### **Exhibits during trial**

12. —(1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

(2) The Registrar shall cause a list of all the exhibits in the action to be made.

(3) The list of exhibits when completed shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

(5) In this rule a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

#### **Rejected exhibits**

13.—(1) Where a document or an object is tendered as an exhibit and is rejected by the Court, it shall be marked "Rejected", and shall be retained along with accepted exhibits.

(2) Where more exhibits than one are rejected in the same action, they shall be numbered serially.

### **Custody of exhibit after trial**

14.—(1) An exhibit shall not be released after the trial to the party who has put it in, unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) grants leave to release such exhibit on being satisfied:

- (a) that the exhibit will be kept duly marked and labelled and will be produced, if required, at the hearing of an appeal (if any such appeal is lodged), or
- (b) that the release of the exhibit will not in any way prejudice any other party.

(2) After a notice of appeal has been filed, an exhibit produced at the trial shall not be released by the Court unless leave to release such exhibit is granted by the Court of Appeal.

### **Office copy of list of exhibits on appeal**

15.- (1) Any party may apply for and on payment of the prescribed fee obtain an office copy of the list of exhibits, for the purpose of an appeal.

(2) Where there is an appeal an office copy of the list of exhibits shall be included amongst the documents supplied for the purpose of the appeal.

### **Written address by party beginning**

16. When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his own written address.

### **Written address by the other party**

17. Where the other party calls evidence, he shall within 21 days after the close of evidence file a written address.

### **Written address of party beginning**

18. Upon being served with other party's written address the party beginning shall within 21 days file his own written address.

### **Right of reply**

19. The party who files the first address shall have s right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's address.

### **Indolent prosecution**

20. A Judge may, suo motu or on application, strike out any proceedings not being prosecuted diligently.

**ORDER 31**  
**FILING OF WRITTEN ADDRESS**

**Application.**

1. This Order shall apply to all applications and final addresses.

**Content of written address**

2. A written address shall be printed on white opaque paper and set out in paragraphs numbered serially and shall contain:

- (i) the claim or application on which the address is based;
- (ii) a brief statement of the facts with reference to the exhibit, if any, attached to the application or tendered at the trial;
- (iii) the issues arising from the evidence;
- (iv) a succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each such authority.

**Summation of address.**

3. All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported judgment is relied upon, the Certified True Copy shall be submitted along with the written address.

**Oral argument**

4.-(1) Oral argument of not more than thirty minutes shall be allowed for each party.

(2) Where parties have filed written addresses, the Court may take the written addresses as having been argued or adopted if the parties or any of them fail to appear in Court on the day fixed for oral argument.

(3) Where any party fails to file a written address or comply with the time limits set out above for the filing and serving of written addresses, he shall be deemed to have nothing to urge the Court and shall not be heard in oral argument.

**Copies of written address.**

5. Each party shall file sufficient copies of his written address in Court and serve a copy thereof on every party.

**ORDER 32**  
**EVIDENCE GENERALLY**

### **Facts: how proved.**

1.-(1) Subject to these Rules and to any enactment relating to evidence, any fact required to be proved at the trial of any action shall be proved by written statement on oath and oral examination of witnesses in open court.

(2) All agreed documents or other exhibits shall be tendered from the bar or by the party where he is not represented by a Legal Practitioner.

(3) The oral examination of a witness during his evidence-in-chief shall be limited to confirming his written statement on oath and tendering in evidence all disputed documents or other exhibits referred to in the written statement on oath.

(4) Real evidence shall be tendered during the trial.

### **Particular facts**

2.-(1) A Judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the trial in such manner as may be specified by the order or direction.

(2) The power conferred by sub-rule 1 of this rule extends in particular to ordering or directing that evidence of any particular fact be given at the trial:

(a) by statement on oath of information or belief;

(b) by the production of documents or entries in books;

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

### **Limitation of use of documentary evidence**

3. Unless at or before trial, a Judge for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these Rules.

### **Revocation and variation**

4. Any order or direction under this Order may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of a Judge made or given at or before the trial.

### **Office copies admissible in evidence**

5. Office copies of all writs, processes, records, pleadings and documents filed in the Court shall be admissible in evidence in the same proceedings to the same extent as the original would be admissible.

#### **Examination of witnesses abroad**

6. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which there is a Convention in that behalf the following procedure shall be adopted:

(a) the party obtaining such order shall file in the Registry an undertaking in Form 23 which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used;

(b) such undertaking shall be accompanied by:

- (i) a request in Form 24, with such modifications or variations as may be directed in the order for its issue, together with a translation in the language of the country in which it is to be executed (if not English);
- (ii) (ii) a copy of the interrogatories (if any) to accompany the requests, with a translation if necessary,
- (iii) (iii) a copy of the cross-interrogatories (if any) with a translation if necessary.

#### **Form of order for examination of witnesses abroad: Civil Form 25.**

7. Where an order is made for the examination of a witness or witnesses before a Nigerian Diplomatic Agent in any foreign country with which there is a Convention in that behalf) the order shall be in Form 25. The form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

#### **Order for attendance of person to produce document**

8. The Judge may at any stage of any proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order:  
Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

#### **Disobedience to order for attendance**

9.-(1) Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of Court, and maybe dealt with accordingly.

#### **Contempt of court**



(2) If any person duly summoned by subpoena to attend for examination shall refuse or if having attended, he refuses to be sworn or to answer any lawful question, he shall be in contempt of the Court and may be dealt with accordingly by the Judge.

#### **Expenses of persons ordered to attend**

10. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to payment for expenses and loss of time occasioned by his attendance from the party requiring him to attend:

Provided that a witness who testifies at the instance of the court, acting on its own motion, shall be paid out of public revenue.

#### **Examination of witnesses**

11. When the examination of any witness before any examiner under rule 6 above shall have been conducted, the original depositions authenticated by the signature of the examiner, shall be transmitted by him to the Registry and filed.

#### **Depositions not to be given in evidence without consent or leave of a Judge**

12. Except where by this Order it is otherwise provided or directed by a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Judge is satisfied that the deponent is dead or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the hearing or trial, in any of which case the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.

#### **Oaths**

13. Any officer of the Court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

#### **Attendance of witness under subpoena for examination or to produce documents**

14. A party may by subpoena ad testificandum or duces tecum require the attendance of any witness before an officer of the Court or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used in any proceeding in the cause or matter shall be bound on being so subpoenaed to attend before such officer or person for cross-examination.

#### **Practice as to taking of evidence at any stage of cause or matter**

15. The practice with reference to the examination, cross examination and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

#### **Special directions as to taking of evidence**

16. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

#### **Evidence in proceedings subsequent to trial**

17- Subject to the provisions of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

#### **Form of praecipe of a subpoena: Civil Form 26**

18. Where it is intended to issue out a subpoena, a praecipe for that purpose in Form 26 containing the name or firm and the place of business or residence of the Legal Practitioner intending to issue out the same, and where such Legal Practitioner is agent only, then also the name or firm and place of business or residence of the principal Legal Practitioner, shall in all cases be delivered and filed at the Registry. No subpoena shall be issued unless all Court fees have been paid (including fee for service) and unless sufficient money on the prescribed scale is deposited to cover the first day's attendance.

#### **Forms of subpoena: Civil Form 27,28,29,29A**

19. A subpoena shall be in one of Forms 27, 28, 29 or 29A with such variations as circumstances may require.

#### **Subpoena for attendance of witness in Chambers**

20. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpoena shall issue from the Registry upon the Judge's directive.

#### **Correction of errors in subpoena**

21. In the interval between the issue and service of any subpoena the Legal Practitioner issuing it may correct any error in the names of parties or witnesses, and may have the writ resigned upon leaving a corrected praecipe of the subpoena marked with the words "altered and resigned", with the signature, name and address of the Legal Practitioner.

#### **Personal service of subpoena**

22. A subpoena shall be served personally unless substituted service has been ordered by a Judge in a case where a person persistently evades service. The provisions of Order 7 shall so far as possible apply to service and proof of service of a subpoena.

### **Duration of subpoena**

23. Any subpoena shall remain in force from the date of issue until the trial of the action or matter in which it is issued.

### **Action to perpetuate testimony**

24. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal the right or claim to which cannot be brought to trial by him before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

### **Examination of witnesses to perpetuate testimony**

25. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose.

### **Such action not to be set down for trial**

26. No action to perpetuate the testimony of a witness shall be set down for trial.

## **ORDER 33 AFFIDAVITS**

### **Evidence on motions, etc**

1. Upon any motion, petition, summons or other application, evidence may be given by affidavit, but the Judge may, suo motu or on application, order the attendance for cross-examination of the deponent and where, after such an order has been made the person in question does not attend, his affidavit shall not be used as evidence save by special leave.

### **Title of affidavit.**

2. Every affidavit shall bear the title in the cause or matter in which it is sworn but in every case in which there is more than one claimant or defendant, it shall be sufficient to state the full name of the first claimant or defendant respectively, and that there are other claimants or defendants, as the case may be.

### **Use of defective affidavit**

3. The Judge may receive any affidavit sworn for the purpose of being used in any cause or matter; notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

### **Special time for filing affidavits**

4. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Judge.

#### **Affidavits in support of ex-parte applications**

5. Except by leave of the Judge no order made ex-parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was based was made before the order was applied for, and produced or filed at the time of making the application.

#### **Notice of intention to use affidavit**

6. The party intending to use any affidavit in support of any application made by him shall give notice to the other parties concerned.

#### **Alterations in accounts to be initialed**

7. Every alteration in any account verified by affidavit shall be marked with the initials of the commissioner before whom the affidavit is sworn and such alterations shall not be made by erasure.

#### **Exhibits**

8. Accounts, extracts from registers, particulars of creditors' debt, and other documents referred to by affidavit, shall not be annexed to the affidavit or referred to as annexed, but shall be referred to as exhibits.

#### **Certificate of exhibit**

9. Every certificate on an exhibit referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

#### **Application of Evidence Act**

10. The provisions of the Evidence Act governing affidavits shall be applicable under these Rules.

#### **Affidavit taken in Commonwealth country admissible**

11. A document purporting to have affixed or impressed thereon or subscribed thereto, the seal or signature of a court, Judge, notary public or person having authority to administer oath in any part of the Commonwealth outside Nigeria, in testimony of any affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature of that court, Judge, notary public or person.

### **ORDER 34 NON-SUIT**

#### **Power of court to non-suit**

1. Where satisfactory evidence is not given entitling the claimant or defendant to the judgment of the Court, the Judge may suo motu or on application non-suit the claimant, but the parties' Legal Practitioners shall have the right to make submissions about the propriety or otherwise of making such order.

## **ORDER 35**

### **JUDGMENT, ENTRY OF JUDGMENT**

#### **Delivery of judgment at or after trial**

1. The Judge shall, at the pre-trial conference or after trial, deliver judgment in open court, and shall direct judgment to be entered.

#### **Date of judgment pronounced in court**

2. Where any judgment is pronounced by a Judge, the judgment shall be dated as of the day on which such judgment is pronounced and shall take effect from that date unless the Judge otherwise orders.

#### **Date of judgment directed to be entered**

3. When any judgment is directed to be entered by an order made on application for judgment, the judgment shall, unless the Judge otherwise orders, be dated as of the day on which the order is made and take effect from that date:

Provided that the order may direct that the judgment shall not be entered until a given date, in which case it shall take effect from that date.

#### **Judge may direct time for payment or performance and interest**

4. The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.

#### **Time to be stated for doing any act: Memorandum to be endorsed**

5. Every judgment or order made in any cause or matter requiring any person to do an act shall state the time or the time after service of the judgment or order within which the act is to be done; there shall be endorsed on the judgment or order a memorandum by the Registrar in the following words, viz:

"If you, the within-named A.B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the said judgment (or order)"

and same shall be served upon the person required to obey the judgment or order.

### **Judgment by consent where defendant appears by a Legal Practitioner**

6. In any cause or matter where the defendant has appeared by Legal Practitioner, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his Legal Practitioner or agent.

### **Judgment by consent where defendant has no Legal Practitioner**

7. Where the defendant has no Legal Practitioner such order shall not be made unless the defendant gives his consent in person in open Court.

## **ORDER 36 DRAWING UP OF ORDERS**

### **Date of order: when drawn**

1. Every order shall bear the date on which it was made, unless the Judge otherwise directs and shall take effect accordingly:

### **What orders need not be drawn up**

2.(1) Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave -

- (a) for the issue of any writ other than a writ of attachment;
- (b) for the amendment of any writ or pleading;
- (c) for the filing of any document; or
- (d) for any act to be done by any officer of the Court other than a Legal Practitioner,

it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

(2) A direction that the costs of such order shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this rule.

### **Form of order**

3. An order shall be sealed, and shall be marked with the name and signature of the Judge by whom it is made.

## **ORDER 37 TRANSFERS AND CONSOLIDATION**

### **I. Transfers**

### **Transfer among Judges of same Judicial Division**

1.-(1) The transfer of any cause or matter from one Judge to another Judge in the same judicial division shall lie at the discretion of the Chief Judge or any other Judge designated by the Chief Judge as the Judge In charge of administrative duties in the judicial division concerned.

(2) The transfer under sub-rule (1) may be at the instance of a party to the suit or suo motu at the discretion of the Chief Judge or such other Administrative Judge aforementioned.

(3) A party seeking transfer under sub-rule 1 shall file a written application in Form 30 at the registry of the Court where the suit is pending.

(4) The Registrar shall transmit the application to the Chief Judge or the appropriate Judge, and shall inform the applicant if the application be refused, or both parties if the application be granted.

### **Transfer among Judges of different Judicial Divisions**

2.-(1) The transfer of a cause or matter from one judicial division to another judicial division shall lie at the discretion of the Chief Judge.

(2) Such transfer may be at the instance of a party to the suit or suo motu at the discretion of the Chief Judge.

(3) A party seeking a transfer under this rule shall file a written application in Form 30 at the registry of the Court where the suit is pending.

(4) The Registrar shall transmit the application and shall take similar steps as in sub-rule (4) of rule 1 of this Order when the decision of the Chief Judge is communicated to him.

### **Nature of the transfer**

3. The transfer of a cause or matter may be expressed to be from one court to another court or from a named Judge to another named Judge:

Provided that where a transfer is to a named Judge and such Judge for any reason, fails to conclude the proceedings, his successor can take over the case de novo without further order of transfer.

### **Transfer to or from Magistrates' Courts: Civil Forms 31, 32**

4.-(1) An application for the transfer of any cause or matter from the High Court to a Magistrate's Court or from a Magistrate's Court to a Magistrate's Court in another magisterial district or from a Magistrate's Court to a High Court may be made to the Chief Judge or to the Judge of the High Court designated by the Chief Judge as the Judge in charge of administrative duties in the judicial division as the case may be, in writing, using Form 31, if by a party to the suit, or Form 32, if by a Magistrate, addressed to the Chief Registrar or to the Registrar in charge of the High Court Registry in the judicial division, as the case may be.

(2) The Registrar shall place the application before the Chief Judge, and shall transmit the order (granting or rejecting the application), sealed with the seal of the Court, to the Magistrate's Court concerned and to the new court if the application be granted, for the information of the parties to the suit. The Registrar of the High Court, where the application was made to the Administrative Judge, shall take similar action as the Chief Registrar.

### **Fees**

5. Where a cause or matter is transferred from a Magistrate's Court to the High Court, the fees payable for the commencement of the cause or matter shall be those payable in the High Court, and the Registrar shall cause the difference, if any, between such fees and those paid at the Magistrate's Court to be collected.

### **Effect of order of transfer**

6.-(1) An order of transfer under rule 5, operates from the date of the issue thereof, as the commencement of the proceedings in the court to which the case or matter is transferred.

(2) The Registrar of the High Court, on the receipt of the order of transfer, shall enter the particulars in the Cause Book, number the suit, and issue the appropriate writ of summons to the defendant (irrespective of what stage the suit had reached in the Magistrate's Court).

### **Further effect of order of transfer**

7.-(1) An application for transfer under rules 1,2 and 4 operates, from the date thereof, as a stay of proceedings in the High Court or Magistrate's Court where the suit was pending and renders any proceeding, after such date in such court, null and void.

(2) For the avoidance of doubt, the transfer of a cause or matter under the preceding rules, is an administrative act whether or not the authority to effect the transfer be derived from a statutory provision, and is not subject to review by any Court or appeal.

## **II. Consolidation.**

### **Consolidation of actions**

8.(1) The Judge may on application consolidate several actions pending before him where it appears that the issues are the same in all the actions, and can be properly tried and determined at the same time.

(2) Where actions are pending before different Judges, a party desiring consolidation shall first apply to the Chief Judge or Administrative Judge for transfer of the matter to a Judge before whom one or more of the matters is pending.



(3) An order to consolidate may be made where two or more actions are pending between the same claimant and the same defendant or between the same claimant and different defendants or between different claimants and the same defendant or between different claimants and different defendants:

Provided that where the same claimant brings actions against different defendants, they will not be consolidated without the consent of all parties unless the issues to be tried are identical.

(4) Where an order for consolidation has been made, the Judge shall give such directions as may be necessary for the trial or hearing of the action or matter.

(5) Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

### **ORDER 38**

#### **INTERLOCUTORY ORDERS, ETC.**

#### **Preservation or interim custody of subject matter of disputed contract.**

1.-(1) When by any contract a prima facie case of liability is established and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, a Judge may make an order for the preservation or interim custody of the subject- matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured.

(2) An application for an order under rule 1, sub-rule 1 of this Order may be made by the claimant at any time after his right thereto appears from the pleadings.

#### **Early trial of cause**

2. Whenever an application is made before trial for an injunction or other order and, on the opening of such application, or at any time during the hearing thereof it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the Judge to make an order for such trial accordingly and in the meantime to make such order as the justice of the case may require.

#### **Order for sale of perishable goods, etc**

3. The Judge may upon the application of any party make any order for the sale, by any person or persons named in such order and in such manner and on such terms as the Judge may deem

desirable, of any goods, wares, or merchandise which may be of a perishable nature, or likely to deteriorate if kept, or which for any other just and sufficient reason it may be desirable to sell at once.

#### **Detention, preservation or inspection of property: the subject of an action**

4.-(1) A Judge may upon the application of any party to an action or matter and upon such terms as may be just, make any order for the detention, preservation or inspection of any property or thing, being subject of an the subject of such action or matter or as to which any action. question may arise therein, and for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid authorise any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order for the inspection of any property or thing is made on an application under this rule (including an application made before the commencement of the action or matter) it appears that inspection was requested in writing by the applicant and was not given, then, unless the Judge is satisfied that the respondent did not unreasonably fail or refuse to permit the inspection, the Judge shall order the costs to be paid by the respondent in any event and except where the respondent is a "Poor Person", i.e. *informa pauperis* shall order the costs to be paid forthwith

#### **Inspection by Judge**

(3) The Judge by whom any action or matter may be heard or tried, may inspect any property or thing concerning which any question may arise therein.

#### **Sale of property in possession of Court**

5.-(1) Where any property is in possession of the Court either before or after judgment and it has remained so for a period of 12 months, a Judge may, on application, make an order for the sale of that property and the proceeds thereof to be paid into an interest yielding account in a commercial bank directed by the Judge for the benefit of the person that succeeds at the trial or on appeal.

(2) The money paid after disposal of any goods or chattel shall be withdrawn from the bank by the successful party who shall present to the Chief Registrar a certified true copy of the enrolment of the judgment.

#### **Order for recovery of specific property other than land subject to lien, etc**

6. Where an action or counterclaim is filed to recover specific property and the party whom such recovery is sought does not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Judge may at the pre-trial conference order that the party claiming to recover the property be at liberty

to pay into Court, to await the out come of the action, the amount of money in respect of which the lien or security is claimed and such further sum, if any, for interest and costs as the Judge may direct and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

#### **Allowance of income of property pendente lite**

7. Where any real or personal estate or property forms the subject of any proceedings and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at anytime after the commencement of the proceedings, allow the parties interested therein or anyone or more of them, the whole or part of the annual income of the real estate or a part of the personal estate or property or the whole or part of the income thereof up to such time as the Judge shall direct.

#### **Injunction against repetition of wrongful act for breach of contract**

8. In any action or matter in which an injunction has been or might have been claimed, the claimant may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of or from the commission of any injury relating to the same property or right or arising out of the same contract and the Judge may grant the injunction either upon or without terms as may be just.

#### **Appointment of a receiver by way of equitable execution**

9. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment and may, if the Judge shall deem fit, direct any inquiries on these or other matters before making the appointment.

#### **Receivers: security and remuneration**

10. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the Judge, duly to account for what he shall receive as such receiver, and to pay the same as the Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 33 and 34 with such variations as circumstances may require. The undertaking shall be filed in the Registry and form part of the record of proceedings until it has been duly vacated.

#### **Where receiver appointed in court: Adjournment to give security**

11. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver the Court may adjourn the proceedings then pending, in

order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up.

**Fixing days for receivers to leave and pass their accounts and pay in balances and neglect of receiver.**

12. When a receiver is appointed with a direction that he shall pass accounts, the Judge shall fix for the days upon which he shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him. In respect of any such receiver who neglects to leave and pass his accounts and pay the balances at the times fixed for the purpose as aforesaid, the Judge may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary claimed by such receiver and may also charge him with interest at a rate not exceeding twenty-five per cent per annum upon the balances so neglected to be paid by him during the time the same appears to have remained in his hands.

**Forms of Receivers' accounts: Civil Form 35**

13. Receivers' accounts shall be in Form 35 with such variations as circumstances may require.

**Leaving account at the Registry: Civil Form 36**

14. Every receiver shall deliver to the Registrar his account, together with an affidavit verifying same in Form 36 with such variations as circumstances may require. An appointment shall thereupon be obtained by the claimant or person having the conduct of the action for the purpose of passing such account.

**Consequences of default by receiver**

15. Where any receiver fails to leave any account or affidavit or to pass such account or to make any payment or otherwise, the receiver, or the parties or any of them, may be required to show cause why such account passed or such payment was made or any other proper proceedings taken and thereupon such directions as shall be proper may be given, including the discharge of any receiver and appointment of another and payment of costs.

**Passing of guardian's accounts**

16. The accounts of guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

**ORDER 39**

**MOTIONS AND OTHER APPLICATIONS**

**Application by motion**

- 1-(1). Except as otherwise provided by these Rules where any application is authorized to be made to a Judge, such application shall be made by motion which shall be supported by affidavit and shall state under what rule of Court or Law the application is brought. Every motion shall be served within 5 days of filing by counsel to counsel where parties are represented by Legal Practitioners.
2. Every such application shall be accompanied by a written address in support of the relief sought.
3. Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and, may accompany it with a counter affidavit.
4. The applicant may on being served with the written address of the opposing party file and serve an address in reply on point of law and facts raised by the opposing party within 7 days of being served. Where counter affidavit is served on the applicant, he may file further affidavit with his reply.

#### **Motion may be made orally**

2. The Judge may in appropriate cases allow oral applications to be made provided that the other party is present in court.

#### **Restriction on rule nisi and order to show cause**

3. No motion or application for a rule nisi or order to show cause shall be made in any action.

#### **When notice of motion should be given**

- 4-(1) Except where an application ex-parte is required or permitted under any law or rules, every motion shall be on notice to the other party.
- (2) No application for an injunction shall be made ex-parte unless the applicant files with it a motion on notice in respect of the application.
- (3) An order of injunction made upon an application ex-parte shall abate after 7 days.
- (4) A Judge may upon application extend the effective period of an order made ex-parte if he is satisfied that the motion on notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted.

#### **Motion on arbitral award**

5. - (1) Every motion on notice to set aside, remit or enforce an arbitral award shall state in general terms the grounds of the application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

#### **Special leave**

6. Unless a Judge grants special leave to the contrary, there must be at least 2 clear days between the service of all processes in respect of a motion and the day named in the notice for hearing the motion.
4. An application to set aside or remit any award may be made at any time within 6 weeks after such award has been made, and published to the parties:  
Provided that a Judge may by order extend the said time either before or after the same has elapsed.

#### **Motions may be dismissed or adjourned where necessary notice not given**

7. If on the hearing of a motion or other application the Judge shall be of opinion that any person to whom notice has been given ought to have had such notice, the Judge may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given upon such terms, if any, as the Judge may deem it fit to impose.
8. The hearing of any motion or application may from time to time be adjourned upon such terms, if any as the Judge shall deem fit: Provided that application for adjournment at the request of a party shall not be made more than two times.

#### **Service of motion with writ**

9. A claimant may file any application along with an originating process and may serve both on any defendant simultaneously.

#### **Account by Legal Practitioner**

10. Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account or the payment of monies or the delivery of securities, and a Judge may from time to time order the respondent to deliver to the applicant a list of the moneys and securities which he has in his custody or control on behalf of the applicant or to bring into court the whole or any part of the same, within such time as the Judge may order.  
In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and the payment or security thereof or the protection of the respondent's lien (if any) as he may deem fit.

#### **Interim certificate**

11. If during the taxation of any bill of costs or the taking of any account between Legal Practitioner and client, it shall appear to the taxing officer that there must, in any event be moneys due from the Legal Practitioner to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner. Upon the filing of such certificate, a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

## **APPLICATION FOR JUDICIAL REVIEW**

### **Cases appropriate for application for judicial review**

I.-( 1) An application for:

- (a) an order of mandamus, prohibition or certiorari; or
  - (b) an injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provisions of this Order.
- (2) An application for a declaration or an injunction (not being an injunction in rule (I)(b) of this Rule) maybe made by way of an application for judicial review and the Court may grant the declaration or injunction if it deems it just and convenient to grant it by way of judicial review, having regard to:
- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,
  - (b) the nature of the persons and bodies against whom relief may be granted by way of such an order;
  - (c) all the circumstances of the case,

### **Joinder of claims for relief**

2. On an application for judicial review, any relief mentioned in rule I may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of, relates to or is connected with the same matter.

### **Mode of application.**

3.-(I) An application for judicial review shall be made to the Court by motion.

- (2) The motion shall be supported by -
- (a) a statement which shall contain the following particulars:
    - (i) the full names, description and address for service of the applicant,
    - ii) the facts and ground(s) upon which the applicant relies,
    - (iii) the relief or remedy sought by the applicant, and
    - (iv) the full names, description and address for service of the persons directly affected by the application;
  - (b) an affidavit verifying the facts relied on; and
  - (c) a written address in support of the application.

### **Notice of application**

4.-( 1) Notice of the application shall be served on all parties named in the applicant's affidavit as being directly affected by it.

- (2) The Court may order that notice of the application shall be served on any person not named as being directly affected by the application, if in its opinion, it is desirable that the person should be given notice.

- (3) A person who is served with notice of application shall file an affidavit along with a written address in response to the application not later than 7 days after the service of the notice on the person.
- (4) A respondent who intends to raise an objection to the application, shall raise and argue same in his written address and such objection shall be determined by the Judge along with the application for judicial review.
- (5) An applicant who intends to file further affidavit and reply address, in response to the affidavit and written address of the respondent, shall do so not later than 5 days after the service on him of the respondent's affidavit and written address.
- (6) An applicant shall not rely on any ground at the hearing not set out in the applicant's affidavit in support of the application except by leave of Court.
- (7) The applicant may by leave of the court amend the grounds relied on and upon leave being granted, the applicant shall file a further affidavit setting out the grounds relied on as amended not later than 7 days after the grant of leave or such other time as the court may order.
- (8) When the respondent wishes to file a reply to the applicant's further affidavit, he shall do so within 7 days of service of same.
- (9) No other further affidavits may be filed by either the applicant or any respondent except by leave of the court.
- (10) Each party to the application shall supply to every other party copies of every affidavit the party proposes to use at the hearing of the application.

#### **Hearing of application**

5. The court may on hearing of an application for judicial review allow a person who desires to oppose the application to be heard, notwithstanding that the person has not been served with notice of the application and may direct that person to file an affidavit and a written address.

#### **Time within which to bring application**

6. An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.

#### **On whom to serve**

7. The notice of application shall be served on all persons directly affected and where it relates to any proceedings before a Judge and the object of the application is either to compel the Judge or an officer of the court to do any act in relation to the proceedings, or to quash them or any order made therein, the notice shall be served on the Clerk or



Registrar of the Court and where any objection to the conduct of the Judge is to be made, to the Judge.

#### **Time for entering application for hearing**

8. A motion for judicial review shall be entered for hearing within 14 days after the filing of the motion,

#### **Stay of proceedings**

9. Where the application is for an order of Prohibition or Certiorari, and the case is one of urgency, the applicant may by a motion ex-parte apply for a stay of proceedings to which the application relates, and the Judge may make appropriate orders.

#### **Interlocutory application**

10. Any interlocutory application in proceedings on an application for judicial review may be made to the Judge.

#### **Validity of application and types of orders to be made by a Judge.**

- 11.—(1) Where the relief sought is or includes an order of certiorari to remove any proceeding for the purpose of quashing it, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion, he has filed a copy thereof, verified by affidavit or accounts for his failure to do so, to the satisfaction of the Judge hearing the motion.
- (2) Where an order of certiorari is made in any such case as is referred to in sub-rule 1, the order shall, subject to sub-rule 3, direct that the proceedings shall be quashed forthwith on their removal into the court.
- (3) Where the relief is an order of certiorari and the Judge is satisfied that there are grounds for quashing the decision to which the application relates, the Judge may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.
- (4) Where the relief sought is a declaration, an injunction or damages and the Judge considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making the application, the Judge may, instead of refusing the application, order the proceedings to continue as if they had begun by writ.
- (5) Where the Judge makes an order under sub-rule 4 for the proceedings to continue, he may direct that the parties shall settle the issues for trial and give such further directions for the conduct of the proceedings as he may consider necessary for the just and expeditious disposal of the matter.

#### **Persons acting in obedience to an order Of mandamus**

12. No action or proceeding shall be brought or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

#### **Consolidation of applications.**

13. Where there are two or more applications pending against several persons in respect of the same of matter and on the same grounds, the Judge may order the applications to be consolidated.

### **ORDER 41 JURISDICTION OF CHIEF REGISTRAR**

#### **Chief Registrar**

1. In this Order any reference to the Chief Registrar means the Chief Registrar of the High Court and includes the Deputy Chief Registrar.

#### **Business to be transacted by Chief Registrar**

2. The Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters:
  - (a) applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers;
  - (b) the taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;
  - (c) the taxation of bills of costs;
  - (d) applications leading to the issue of the grant of probate of the Wills or Letters of Administration of the estates of deceased persons in non-contentious or common form probate business.

#### **Chief Registrar may refer matters to the Chief Judge**

3. If any matter appears to the Chief Registrar proper for the decision of a Judge, he may refer the same to the Chief Judge or the Judge who referred the matter to the Chief Registrar. The Chief Judge or the Judge may either dispose of the matter or refer the same back to the Chief Registrar with such directions as he may deem fit.

#### **Appeal from order of Chief Registrar**

4. Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal there from to a Judge. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of

the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

#### **Chief Registrar's list**

5. Lists of matters to be heard by the Chief Registrar shall be made out and published by being posted on the Courts' notice boards.

#### **Legal Practitioner may represent party**

6. In any proceedings before the Chief Registrar under the jurisdiction vested in him by this Order, a Legal Practitioner may represent any party.

#### **I Chief Registrar's Certificate Certificate**

7. Except as otherwise provided for in these Rules, the directions to be given for or concerning any proceedings before the Chief Registrar shall require no particular form, but the result of such proceedings shall be stated in a concise certificate.

#### **Reference to judgment, etc.**

8. The certificate of the Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons but shall refer to the judgment or order, documents and evidence or particular paragraphs thereof) so that it may appear upon what the result stated in the certificate is founded.

#### **Form of certificate: contents of certificate in cases of accounts and transcripts**

- 9.-(1) In case of accounts and inquiries the certificate of the Chief Registrar shall be in Form 37 with such variations as the circumstances may require.
- (2) The certificate shall state the result of the account and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied and shall state what additions (if any) have been made by way of surcharge or otherwise and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account so altered, such transcript may be required to be made by the party prosecuting the judgment or order and shall then be referred to by the certificate. The accounts and transcripts (if any) referred to by certificates shall be filed therewith.

#### **When certificate becomes binding**

10. Every certificate with the accounts (if any) to be filed therewith shall be transmitted by the Chief Registrar to the Registry for filing and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon an application made to a Judge before the expiration of 8 clear days after the filing of the certificate.

### **Bill of costs.**

11. When taxing a bill of costs the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered by him the substance of the modification made by him and at the bottom of the bill of costs he shall certify the net result of the taxation. The bill of costs shall then be transmitted by the Chief Registrar to the Registry for filing and the provisions of rule 10 of this Order shall apply in respect of such certificate.

### **Discharge or variation of certificate after lapse of any time.**

12. The Judge may, if the special circumstances of the case require, upon an application direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

## **ORDER 42**

### **HABEAS CORPUS, ATTACHMENT FOR CONTEMPT**

#### **I Habeas Corpus**

##### **Application: how made**

- 1 An application for an Order of Habeas Corpus Ad Subjiciendum shall be made to the Court, except that:
  - (a) in vacation or at any time when no Judge is sitting in court it may be made to a Judge sitting otherwise than in court;
  - (b) in cases where the application is made on behalf of a child, it shall be made in the first instance to a Judge sitting otherwise than in court.

##### **Affidavit to accompany ex parte application**

- 2.-(1) The application may be made ex-parte and shall be accompanied by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
- (2) Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make the affidavit himself

##### **Power to issue order to release immediately**

- 3.-(1) A Judge to whom the application is made may make the order forthwith.
- (2) Where the application is made to a Judge sitting otherwise than in court he may direct the Order to issue or that an application therefore be made by notice of motion.
- (3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the jailer.

(4) Where the person detained is produced before a Judge, he may discharge him immediately with or without conditions.

#### **Service of notice**

4.-(1) The notice of motion aforesaid shall be served on the person against whom the order is sought and on such other persons as the Judge may direct.

(2) Unless the Judge otherwise directs, there shall be at least 2 clear days between the service of the notice and the date named for the hearing of the application

#### **Copies of affidavits**

5. Every party to the application shall supply to the other party or parties copies of the affidavits which he proposes to use at the hearing of the application.

#### **Service of order to release**

6.-(1) The order or notice of motion may be served personally or by courier on a jailer where the person is confined or restrained or on any other public official and copies of the order or motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

(2) The order shall contain the date on which the person restrained is to be brought before a Judge and that in default of obedience, proceedings for attachment of the party disobeying will be taken.

#### **Statement and verifying affidavit**

7. Upon service of the order or notice of motion on the jailer, he shall within 2 days file a statement stating the reasons for the detention, the period of the detention and any other matter that may be directed by the Judge. The statement shall be verified by an affidavit deposed to by the jailer.

#### **Procedure at hearing**

8.-(1) Where the prisoner is brought up in accordance with the order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the State and then the Legal Practitioner for the prisoner in reply

(2) Where the prisoner is not brought in accordance with the order, a Judge may upon the application of his Legal Practitioner order that he be discharged or make any other order.

## **II. Attachment for Contempt**

#### **Procedure for attachment**

9.-(1) The procedure in applications for attachment for contempt of court in cases to which this rule applies shall be the same as for applications for an order for judicial review under Order 40 so far as may be applicable.

(2) The notice of motion shall be personally served unless the Judge dispenses with such service.

(3) This rule applies to cases where the contempt is committed:

- (a) in connection with proceedings to which this Order relates;
- (b) in connection with criminal proceedings;
- (c) subject to the provisions of the Sheriff and Civil Process Act, any proceedings in the Court or where the contempt consists of disobedience to an Order of the Court;
- (d) in connection with the proceedings in an inferior Court.

Provided that this rule shall not apply where the contempt is committed in facie curiae.

#### **Procedure on disobedience to court order**

10. When an order enforceable by committal has been made against a judgment debtor, and if the order is for delivery of goods without the option of paying their value or is in the nature of an injunction, the Registrar shall when the order is drawn up immediately endorse it as follows:

Notice of Consequence of Disobedience to Court Order.

To..... of.....

TAKE NOTICE that unless you obey the direction(s) contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this..... day of. 20

.....

Registrar

#### **Response.**

11. Upon service of the application for committal issued in a case to which rule 9 of this Order applies, the respondent shall before the return date stated in the application file a statement stating the reasons why an order for attachment should not be issued. The statement shall be verified by an affidavit deposed to by the respondent.

#### **Return**

12. Every order of attachment issued in a case to which rule 9 of this Order applies shall be made returnable before the Judge. If a return of non est inventus (not found) is made, a subsequent order or orders may be issued on the return of the previous order.

### **When relief by interpleader is granted**

1. Relief by way of Interpleader may be granted where the person seeking relief ("the applicant") is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be sued by two or more parties ("the claimants") making adverse claims thereto:

Provided that where the applicant is a Sheriff or other officer charged with the execution of process by or under the authority of the Court, the provisions of Section 34 of the Sheriffs and Civil Process Act and the Rules made thereunder shall apply.

### **Matter to be proved by application**

2. The applicant must satisfy the Judge by affidavit or otherwise that he:
  - (a) claims no interest in the subject matter in dispute other than for charges or costs;
  - (b) does not collude with any of the claimants; and
  - (c) is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct.

### **Adverse titles of claimants**

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

### **When application to be made by a defendant**

4. Where the applicant is a defendant, application for relief may be made at any time after service of the originating process.

### **Summons by applicant**

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

### **Stay of action.**

6. If the application is made by a defendant in an action the Judge may stay all further proceedings in the action.

### **Order upon summons**

7. If the claimants appear in pursuance of the summons, the Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be claimant and which is to be defendant.

### **Questions of law**

8. Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge. If special case is stated, Order 28 shall as far as applicable apply thereto.

### **Failure of claimant to appear, or neglect to obey summons**

9. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons or having appeared, neglects or refuses to comply with any order made after his appearance, the Judge may make an order declaring him and all persons claiming under him, forever barred against the applicant and persons claiming under him but the order shall not affect the rights of the claimants as between themselves.

### **Costs, etc**

10. The Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just.

## **ORDER 44 COMPUTATION OF TIME**

### **1. Rules of computation of time.**

1. Where by any law or order made by a Judge a time is appointed or limited for the doing of any act, the period shall be reckoned:
  - (a) as excluding the day on which the order is made or on which the event occurs;
  - (b) where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday,
  - (c) where the act is required to be done within a period which does not exceed 6 days, holidays shall be left out of account in computing the period.

### **Holiday**

2. In this order holiday means a day which is a Saturday, Sunday or a public holiday.

### **Time of Service**

3. No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00a.m. or after 6.00p.m. Service effected after 6.00p.m. shall be deemed to have been effected the following day, provided that service effected after 6.00p.m. on Friday shall be deemed to have been effected on the following working day.

### **Court may extend time**



4. The Judge may, as often as he deems fit, and either before or after the expiration of the time appointed by these Rules or by any judgment or order of the court, extend or adjourn the time for doing any act or taking any proceedings:

Provided that any party who defaults in performing an act within the time authorised by the Judge or under these Rules, shall pay to the Court an additional fee of N200.00 (two hundred naira) for each day of such default at the time of compliance.

#### **Computation of penalty**

5. Where a Judge deems any process as having been duly filed and/or served the penalty payable shall be computed only up to the time of filing of the application for extension of time.

#### **Waiver of penalty**

6. A Judge may in exceptional circumstances waive either wholly or in part the penalty payable by a defaulting party upon an application by such party.

### **@@#ORDER 45#@@ MISCELLANEOUS PROVISIONS**

#### **I Court Sittings and Vacation**

##### **Days of sitting**

1. Subject to the provision of the Law, the Judge may, in his discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances require.

##### **Public or private sitting of the Court**

2. The sittings of the Judge for the hearing of causes shall ordinarily be public but subject to the provisions of the Constitution of Federal Republic of Nigeria, the Judge may for special reasons, hear any particular cause or matter in the presence only of the parties, with their Legal Practitioners, if any, and the officers of Court.

##### **Office hours**

3. The several offices of the Court shall be open at such times as the Chief Judge shall direct.

##### **Days of sitting and long vacation**

4. Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matters will be held on every week day except:
  - (a) on any public holidays;
  - (b) during the week beginning with Easter Monday;

- (c) during the period beginning on Christmas eve and ending on the 2nd January next following;
- (d) during the long vacation i.e. the period beginning on a date in August and ending on a date not more than 6 weeks later as the Chief Judge may by notification in writing appoint.

### **vacation**

- 5.-(1) Notwithstanding the provisions of rule 4, any cause or matter may be heard by a Judge during any of the periods mentioned in paragraphs (b), (c) or (d) of rule 4 (except on a Sunday or public holiday) where such cause or matter is urgent or a Judge, at the request of all the parties concerned, agrees to hear a cause or matter.
- (2) An application for an urgent hearing shall be made by motion ex parte and the decision of the Judge on such an application shall be final.

### **In time for pleadings Vacation not reckoned**

6. The time for filing and service of pleadings and final written addresses shall not run during the annual vacation unless otherwise directed by the Judge.

## **II. General**

### **Recovery of penalties and costs**

7. All fines, forfeitures, pecuniary penalties and costs ordered to be paid, other than penalties incurred under Order 44, may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.

### **Notice**

8. When the publication of any notice is required the same may be made by advertisement in the Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Judge.

### **Filing**

9. A document shall not be filed unless it has endorsed on it the name and number of the cause, the date of filing and whether filed by claimant or defendant; and on being filed such endorsement shall be initialled by the Registrar and recorded in the Process Register.

### **How processes are addressed**

10. All warrants and orders of whatever description shall be sufficiently addressed for execution by being directed to the Sheriff; but this provision shall not prevent any order or warrant from being addressed to a person by name or to a person named and to officers of Court generally or to a Local Government Authority.

### **No fee where proceedings by Government Department**

11. No fees are to be taken in respect of any proceedings where such fees would be payable by any Government Department:

Provided however that when any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provisions of this rule shall be taken as paid and shall be recoverable from such person.

### **Regulations**

12. The Regulations regarding fees shall govern the payment and disposal of fees and the duties of Court officers in regard thereto.

### **Saving**

13. Where no provision is made by these Rules or by any other written law, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned.

### **What orders to be made**

14. Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

## **ORDER 46**

### **ARREST OF ABSCONDING DEFENDANT**

### **Defendant leaving Nigeria**

1. If in any action the defendant is about to Leave Nigeria the claimant may, either at the institution of the suit or at any time thereafter until final judgment, apply by ex-parte motion to the Judge for an order that the defendant do show cause why security should not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

### **Warrant to arrest.**

- 2.-(1) If the Judge after making such investigation as he may consider necessary shall be of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria and that by reason thereof the execution of any judgment which may be made against him is likely to be obstructed or delayed, the Judge shall issue a warrant to bring the defendant before him, that he may show cause why he should not give good and sufficient bail for his appearance.

- (2) The defendant shall be brought to court within 2 days of the execution of the warrant.

**Bail for appearance or satisfaction**

3. If the defendant fails to show cause, the Judge shall order him to give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed against him in the suit or to give bail for the satisfaction of such judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

**Deposit in lieu of bail**

- 4.-(1) Where a defendant offers to deposit a sum of money in lieu of bail for his appearance, sufficient to answer the claim against him, with costs of the suit, the Judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank.
- (2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim against him, the Judge may accept such security and make such order as he may deem fit in the circumstance.

**Committal in default.**

- 5.-(1) If the defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him into custody until the decision of the suit or if judgment has been given against the defendant, until the execution of the judgment.
- (2) Committal to custody under this rule shall not exceed a period of 6 months.
- (3). The Judge may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.

**Cost of subsistence of person arrested**

6. The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the claimant in the action in advance, and the amount so disbursed may be recovered by the claimant in the suit, unless the Judge shall otherwise order. The Judge may release the person so imprisoned on failure by the claimant to pay the subsistence money, or in case of serious illness order his removal to hospital.

### **Application**

1. This Order shall apply to proceedings in respect of which there is no statutory provision for Legal Aid.

### **Who may sue or defend in forma pauperis**

2. A Judge may admit a person to sue or defend in forma pauperis if satisfied that his means do not permit him to employ legal representation in the prosecution of his case and that he has reasonable grounds for suing or defending as the case may be.

### **Conditions to be fulfilled**

- 3.-(1) A person seeking relief under this Order shall write an application to the Chief Judge accompanied by an affidavit, signed and sworn to by the applicant himself, stating that by reason of poverty he is unable to afford the services of a Legal Practitioner.
- (2) If in the opinion of the Chief Judge the application is worthy of consideration, the Chief Judge shall appoint a Legal Practitioner to act for the applicant.
- (3) Where a Legal Practitioner is so appointed, the applicant shall not discharge the Legal Practitioner except with the leave of the Chief Judge.

### **Fees and costs**

4. Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as a Judge may deem fit and a person so admitted to sue or defend shall not, unless the Judge otherwise orders, be liable to pay or be entitled to receive any costs.

### **Procedure to be followed**

- 5.-(1) The Legal Practitioner shall not, except by leave of the chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant or the action taken or defended thereunder.
- (2) If the applicant pays or agrees to pay any money to any person whatsoever either in connection with his application or the action taken or defended there-under, the order appointing the Legal Practitioner shall be revoked.
- (3) If the Legal Practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Chief Judge.

### **Revocation or order of discontinuance**

- 6.-(1) The Chief Judge may at any time revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of this Order in any proceedings to which the application relates unless otherwise ordered.

- (2) Neither the applicant nor the Legal Practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

#### **Payment to Legal Practitioner**

7. The Judge may order payment to be made to the Legal Practitioner out of any money recovered by the applicant or may charge in favour of the Legal Practitioner upon any property recovered by the applicant, such sum as in all the circumstances the Judge may deem fit.

#### **Duty of Legal Practitioner.**

8. Every order, notice or application on behalf of the applicant, except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or notice is made or given without reasonable cause.

### **ORDER 48 CHANGE OF LEGAL PRACTITIONER**

#### **Legal Practitioner to conduct cause or matter to final conclusion**

1. Every Legal Practitioner who shall be engaged in any cause or matter shall be bound to conduct same on behalf of the party as the case may be, by or for whom he shall have been so engaged until final judgment, unless allowed for any special reason to cease acting therein.

#### **Application for change of Legal Practitioner or withdrawal**

2. A party to a cause or matter who sues or defends by a Legal Practitioner, may change a Legal Practitioner without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served on every other party to the cause or matter and on the practitioner, the former Legal Practitioner shall be considered the Legal Practitioner of the party until the final conclusion of the cause or matter.

### **ORDER 49 COSTS**

#### **Principle to be observed in fixing costs**

- I.-(I) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The Judge may take into account all the circumstances of the case.

- (2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at the time of delivering the judgment or making the order.
- (3) When the Judge deems it to be impracticable to determine summarily the amount of any costs which he has adjudged or ordered to be paid, all questions relating thereto shall be referred by the Judge to a taxing officer for taxation.

#### **Security for costs.**

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such times and in such manner and form as the Judge shall direct.

#### **Security for costs by claimant temporarily With in jurisdiction**

3. A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

#### **Action founded on judgment or bill of exchange**

4. In actions brought by persons resident out of the jurisdiction, when the claimant's claim is founded on a judgment or order or on a bill of exchange or other negotiable instrument, the power to require the claimant to give security for costs shall be exercised at the Judge discretion.

#### **Bond as security for costs**

5. Where a bond is to be given as security for costs, it shall, unless the Judge otherwise directs, be given to the party or person requiring the security and not to an officer of the Court.

#### **Costs as discretion of Court**

6. Subject to the provisions of any applicable law and these Rules the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be at the discretion of the Judge, and the Judge shall have full power to determine by whom and to what extent the costs are to be paid.

#### **Costs as out of fund or property**

7. The Judge may order any costs to be paid out of any fund or property to which a suit or proceeding relates.

#### **Stay of proceedings till cost paid**

8. Where the Judge orders costs to be paid or security to be given for costs by any party, the Judge may order all proceedings by or on behalf of that party in the same suit or proceeding or connected with it, to be stayed until the costs are paid or security given

accordingly but such order shall not supersede the use of any other lawful method of enforcing payment.

### **Stay of proceedings at which costs to be dealt with**

9.-(1) Costs may be dealt with by the Judge at any stage of the proceedings.

- (2) Costs when ordered become payable forthwith and shall be paid within 7 days of the order, otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceedings.

### **When costs to follow the event.**

10. In addition to any penalty payable for default under these Rules, the costs of and occasioned by any application to extend the time fixed by the rules or any direction or order thereunder, for delivering or filing any document or doing any other act, including the costs of any Order made on the application, shall be borne by the party making the application unless the Judge otherwise orders.

### **Matter to be taken into account in exercising discretion**

11. The Judge in exercising his discretion as to costs shall take into account any offer or contribution made by any of the parties and any payment into Court and the amount of such payment.

### **Costs arising from misconduct or neglect**

12.—(1) Where in any proceeding, costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal Practitioner whom he considers to be responsible whether personally or through a servant or agent, an order disallowing the costs as between the counsel and the client of the counsel and:

- (a) direct the Legal Practitioner to repay to the client costs, which the client has been ordered to pay to the other party in the proceedings or
- (b) direct the Legal Practitioner personally to indemnify the other party against costs payable to that party.

(2) Without prejudice to the generality of sub-rule 1 of this rule, the Judge, shall for the purpose of that sub-rule have regard in particular to the following matters, that is to say:

- (a) the omission to do anything the doing of which would have been calculated to save costs;
- (b) the doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs;
- (c) any unnecessary delay in the proceedings.



- (3) The Judge may instead of giving a direction under sub-rule 1 of this rule in relation to anything done or any omission made, direct the taxing officer to inquire into it and if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.
- (4) No order under this rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to appear before the Judge to show cause why the order should not be made.

**Personal liability of Legal Practitioner for costs**

13.—(1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal Practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:

- (a) disallowing the costs as between the Legal Practitioner and his client; and
  - (b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
  - (c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.
- (2) The provisions of rule 13 sub-rule 1 shall apply where proceedings in court cannot conveniently proceed or are adjourned without useful progress being made:
- (a) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or
  - (b) because of the failure of the Legal Practitioner to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.
- (3) No order under this rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to appear before the Judge to show cause why the order should not be made.
  - (4) The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

- (5) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed of£ the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

#### **Taxation of costs**

14. Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which falls to be taxed under the Legal Practitioners Act) shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

#### **Notice to other party**

15. The party applying for taxation shall file the bill and give notice to any other parties entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

#### **Power of taxing officer**

16. A taxing officer shall have power to tax any costs the taxation of which is required by any law or directed by order of a Judge.

#### **Supplementary powers of taxing officers**

17. A taxing officer may in the discharge of his functions with respect to the taxation of costs:
- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so directs;
  - (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
  - (c) examine any witness in those proceedings;
  - (d) direct the production of any document which may be relevant in connection with those proceedings.

#### **Extension of time**

- 18.—(1) A taxing officer may:

- (a) extend the period within which a party is required by or under these rules to begin proceedings for taxation or to do anything in or in connection with proceedings before that officer;
- (b) where no period is specified by or under these rules or by the Judge for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

- (2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer, then unless the Judge otherwise directs, the taxing officer may from time to time extend the period so specified on such terms as he deems fit.
- (3) A taxing officer may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

#### **Power of taxing officer where party liable to be paid and to pay costs**

- 19. Where a party entitled to be paid costs is also liable to pay costs the taxing officer may:
  - (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
  - (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

#### **Mode of beginning proceedings for taxation**

- 20.—(1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least 7 days notice to every other party of the day and time appointed for taxation proceedings and at the same time serve a copy of his bill of costs to the other party if he has not already done so.
- (2) A notice under sub-rule 1 of this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

#### **Provisions as to bills of costs**

- 21.—(1) In any bill of costs the professional charge and the disbursements shall be entered in separate columns and every column shall be cast before the bill is left for taxation.
- (2) Before a bill of costs is left for taxation it shall be endorsed with:
  - (a) the name or firm and business address of the Legal Practitioner whose bill it is;and
  - (b) if the Legal Practitioner is the agent of another, with the name or firm and business address of that other Legal Practitioner.

#### **Provisions as to taxation proceedings**

- 22.—(1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.
- (2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

### **Scale of costs**

- 23.—(1) Subject to rule 20, and the following provisions of this rule, the scale of fees as shall be contained in any legal notice issued pursuant to a law of the Bayelsa State House of Assembly shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.
- (2) Where the amount of a Legal Practitioner's remuneration in respect of non- contentious business connected with sales, purchases, leases, mortgages and other matters of conveyance or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale of fees as shall be contained in any legal notice issued pursuant to a law of the Bayelsa State House of Assembly.

### **Certificate of taxing officer**

24. Upon the completion of the taxation of any bill of costs the taxation officer shall certify the result of his taxation including the costs thereof.

### **Fees in taxation**

25. The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

### **Application for review.**

26. Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer in respect of any item, may apply to a Judge for an order to review the taxation as to that item.

### **Application by summons**

- 27.—(1) An application under the preceding rules shall be made by motion at any time within 14 days after the taxing officer's certificate.
- (2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.
- (3) On an application under this rule the Judge may make such order as the circumstances require and in particular may order the taxing officer's decision to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

## **PROCEEDINGS IN CHAMBERS**

### **I. Proceedings in Chambers**

#### **Representation in chambers**

1- In any proceeding before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner.

#### **Matters to be disposed of in chambers**

2. Unless the opposite party or his Legal Practitioner objects, the Judge may, on application, conduct any proceeding, except actual trial, in Chambers, and may also on application, adjourn any such proceeding from Court to Chambers or vice versa.

### **II. Proceeding Relating to Persons under Legal Disability**

#### **Evidence upon application for appointment of guardians and for maintenance**

3. Upon application for the appointment of guardians of infants and allowance for maintenance, the evidence shall show:

- (a) the ages of the infants;
- (b) the nature and amount of the infants' fortunes and incomes; and
- (c) what relations the infants have.

#### **Guardian with reference to proceedings in chambers**

4. At any time during the proceeding under any judgment Or order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic who has been served with notice of such judgment or order.

### **III Further Consideration**

#### **Further consideration of matter originating in chambers**

5. Where any matter originating in Chambers shall at the original or any subsequent hearing have been adjourned for further consideration in chambers, such matter may, after the expiration of 8 days and within 14 days from the filing of the certificate, be brought on for further consideration by an application to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by application to be taken out by any other party. Such application shall be in the form following:

"That this matter, the further consideration whereof, was adjourned by the order of the on     day of 20     may be further considered",  
and shall be served 7 clear days before the return.

Provided that this rule shall not apply to any matter, the further consideration whereof shall at the original or any subsequent hearing have been adjourned in Court.

#### **IV.    Registering and Drawing up of Orders in Chambers**

##### **Costs**

##### **Notes of proceedings in chambers**

6.    Notes shall be kept of all proceedings in the Judge's Chambers with proper dates so that all such proceedings in such cause or matter may appear consecutively and in chronological order, with a short statement of the question or points decided or ruled at every hearing.

##### **Drawing up any entry of orders made in chambers**

7.    Orders made in Chambers shall unless the judge otherwise directs, be drawn up by the Registrar and signed by the Judge. Such orders shall be entered in the same manner as orders made in Court.

##### **Costs**

8.    Subject to the provisions of the Law and of these Rules, the costs of and incident to all proceedings in Chambers shall be at the discretion of the Judge.

##### **Decisions given in chambers, how set aside or varied**

- 9.-(1) Where any party to proceeding in Chambers does not intend to accept the decision of the Judge in Chambers as final, he shall forthwith request to have the application adjourned into Court for argument.  
If such request is refused, the party may proceed by way of motion with notice in Court to discharge, set aside or vary the order made or the judgment given in Chambers.
- (2) The notice of motion shall be riled not later than 7 days after the drawing up of the order made in Chambers unless the Court grants an extension of time on good and sufficient reason being shown, and the motion shall be heard and determined by the Judge who has dealt with the matter in Chambers, unless this proves impossible or inconvenient owing to such Judge's death or retirement or prolonged absence from the Court.
- (3) This rule shall apply to decisions given by a Judge in Chambers on appeal from the Chief Registrar under rule 4 of Order 41.

**ORDER 51**  
**FORECLOSURE AND REDEMPTION**

**Originating summons for foreclosure**

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is:
  - (a) payment of money secured by the mortgage or charge;
  - (b) sale;
  - (c) fore closure;
  - (d) delivery of possession, whether before or after foreclosure, to the mortgagee or person entitled to the charge; by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;
  - (e) redemption;
  - (f) reconveyance;
  - (g) delivery of possession by the mortgagee.

**Civil Forms 38, 39,40.**

2. Orders for payment and for possession shall be in Forms 38, 39 and 40 of these Rules with such variations as the circumstances of the case may require, and the like Forms shall be used under corresponding circumstances in actions for the like relief commenced by writ.

**Service and execution of judgment.**

3. The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

**ORDER 52**  
**SUMMONS TO PROCEED**  
**I. Summons to Proceed**

**Bringing in judgment etc, directing accounts and inquiries**

1. Every judgment or order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party entitled to prosecute the same within 10 days after such judgment or order shall have been entered or filed, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

### **Summons to proceed with accounts and inquiries: Directions**

2. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:
  - (i) the manner in which each of the accounts and inquiries is to be prosecuted;
  - (ii) the evidence to be adduced in support thereof,
  - (III) the parties who are to attend on the several accounts and inquiries; and,
  - (iv) the time within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

### **Settling deed where parties differ**

3. Where by a judgment or order a deed is directed to be settled by a judge, in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections within 8 days after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of 8 days.

### **Where service of notice of judgment or order dispensed with**

4. Where upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other notice of sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall deem fit, order any substituted service of notice by advertisement or otherwise in lieu of such service.

### **Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order**

- 5.-(1) If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers.
- (2) Adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining service of notice on all necessary parties and until directions shall have been given as to the parties who are to attend the proceedings.

### **Copies for use of Judge**



6. Copies, abstracts, extracts, of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge and where so directed, copies shall be handed over to the other parties: Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

## **II. Summons to Proceed Book**

### **Entry in Summons to Proceed Book**

7. At the time any summons to proceed is obtained, an entry thereof shall be made in the Summons Book, stating the date on which the summons issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

## **ORDER 53 SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNER'S CONSENT**

### **Application of this Order**

- 1.-(1) This Order shall not apply where the person in occupation of land is:
  - (a) a tenant; or
  - (b) a tenant holding over after termination of his tenancy; or
  - (c) a licensee of the owner or person entitled to possession; or
  - (d) a person who had the consent of the predecessor -in- title of the person who is entitled to possession.
- (2) Where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above, proceedings may be brought by originating summons in accordance with the provisions of this Order.

### **Form or originating summons: Civil Form 41**

2. The originating summons shall be in Form 41 and no acknowledgement of service shall be required.

### **Affidavit in support.**

3. The claimant shall file in support of the originating summons an affidavit stating:
  - (a) his interest in the land;
  - (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
  - (c) that he does not know the name of any person occupying the land who is not named in the summons.

### **Service of originating summons**

- 4.-(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him:
- (a) personally or in accordance with Order 7 rule 1 sub-rule 2; or
  - (b) by leaving a copy of the summons and of the affidavit or sending them to him at the premises; or
  - (c) in such other manner as the Judge may direct.
- (2) The summons shall in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this rule, be served, unless the Judge otherwise directs by:
- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and,
  - (b) if practicable inserting through the letter box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".
- (3) Every copy of an originating summons for service under sub-rule 1 or 2 of this rule shall be stamped with the stamp of the Court out of which the summons was issued.

### **Application by occupier to be made a party**

5. Without prejudice to rule 16 of Order 13, a person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

### **Order for possession**

- 6.-(1) An order for possession in proceedings under this Order shall be in Form 42 with such variations as circumstances may require.
- (2) The Judge may forthwith order a writ of possession to issue.
- (3) Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.

### **Writ of possession**

- 7.-(1) No writ of possession to enforce an order for possession under this Order shall be issued after the expiration of 3 months from the date of the order without the leave of the Judge.
- (2) The application for leave may be made *ex parte* unless the Judge otherwise directs.

### **Setting aside of orders**

8.-(l) The Judge may, on such terms as he deems fit, set aside or vary any order made in proceedings under this Order.

(2) In this Order "landed property" means land with or without building thereon.

**ORDER 54**  
**APPEALS**  
**PART 1**  
**APPEALS IN CIVIL PROCEEDINGS**

**Application**

1. Subject to any legislation or rules to the contrary, this Order shall apply to all civil appeals from the decision of any courts, bodies or authorities whose decisions are appealable to the Court.

**Notice of appeal;** 2.-(l) Except for interlocutory appeals, which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal.

**Contents, etc, of notice of appeal,**

(2) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision and the grounds of appeal.

(3) Where the appellant complains only of a part of the decision, the notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.

(4) The notice of appeal shall give an address within Bayelsa State to which notices may be sent to the appellant.

**Form 43**

(5) The notice of appeal shall be in Form 43 and may be varied to suit the circumstances of the case but such that no variation of substance shall be made.

**Record of appeal**

3.-(l) The Registrar of the lower court shall within 14 days of the filing of the Notice of Appeal require the appellant to deposit such sum of money as is likely to cover the cost of preparation and compilation of the Record of Appeal.

(2) The Registrar of the lower court shall within 60 days of the satisfaction of the Conditions of Appeal by the appellant compile, certify and forward the record of appeal to the Court. The Record of Appeal shall be made up of the proceedings, processes and documentary exhibits in the proceedings.

(3) The Registrar of the lower court shall forward along with the record of appeal the following:

- (a) bulky or unwieldy exhibits,
- (b) documentary exhibits which cannot be conveniently reproduced; and
- (c) Non-documentary exhibits.

(4) The Registrar of the lower court shall produce sufficient copies of the record of Appeal for service on the parties and for the use of the Court.

#### **Parties to be supplied with Record of Appeal**

4. When notifying a party of the day fixed for the hearing of an appeal, a Registrar of Court shall send to the party a copy of the proceedings, if the party shall not have received one as at then.

#### **Application for extension of time**

5. An application for extension of time to appeal or for leave to appeal shall be made to the Court.

#### **Where time expires**

6. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out the appeal, or enlarge the time for sufficient reason shown.

#### **Constitution of court hearing appeal**

7. All appeals shall be heard by at least one Judge of the Court.

#### **Time and place for hearing**

8. The appeal shall come up for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

#### **Appeals from court below**

9. Unless the Court gives leave to the contrary-

- (a) all appeals shall be heard and determined on briefs of argument filed and exchanged between the parties.
- (b) the Appellant shall file an Appellant's brief within 30 days of the receipt of the record of appeal from the court below:

- (c) the Respondent shall file and serve a Respondent's brief within 21 days of service on him of the Appellant's brief;
- (d) within 14 days of the receipt of the Respondent's brief; the Appellant may file a reply brief which shall deal with any new issues raised in the respondent's brief;
- (e) every brief shall identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal;
- (f) any issue which is not covered by any ground of appeal shall not be considered by the court in its judgment.

#### **Direction for departure**

10. A Court may direct a departure from these Rules in respect of compilation of records from the lower court upon the application of any party to an appeal.

#### **Where appellant fails to appear**

11.—(1) Where on the day of hearing or at an appointed day of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

(2) The court may, where brief of arguments have been filed by all parties to the appeal, instead of striking out the appeal in the absence of the appellant, treat the appeal as having been duly argued on the written briefs and determine the appeal.

#### **Where appellant appears**

12. Where on the day of hearing and at any appointed day of the case, the appellant appears, the court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment according to the merits of the case without regard to any imperfection or defect of form; but if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal, the Court may strike out the appeal.

#### **Appeal limited to grounds in notice of appeal**

13.—(1) At the hearing, an appellant shall not argue any issue not distilled from the grounds of appeal as stated in the notice of appeal:

Provided that an appellant may with leave of the Court file additional grounds of appeal.

(2) A notice of appeal may with leave of Court be amended.

#### **Request to confirm judgment**

14.—(1) A respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower court for reasons other than those stated by that court.

(2) The notice shall contain those reasons for which the respondent intends to ask the Court to confirm the judgment of the lower court.

(3) Such notice shall be filed in Court within 14 days of service on the respondent of the notice of appeal, and shall be served on the appellant or his Legal Practitioner.

### **Cross appeal**

15.—(1) A respondent may cross appeal by filing a notice of appeal against any part of the judgment of the lower court.

(2) Such respondent's cross appeal shall be filed within 14 days of service on him of the appellant's notice of appeal and be served on the appellant or his Legal Practitioner before the hearing.

### **Objections to form of grounds of appeal**

16.—(1) No objection on account of any defect in the form of stating any ground of appeal shall be allowed, unless the Court is of the opinion that the ground is so incorrectly stated as not to be sufficient to enable the respondent prepare for the hearing.

(2) Where a Court is of the opinion that an objection to any ground of appeal is sustainable, the Court may, if it thinks fit, cause the grounds of appeal to be amended upon such terms and conditions, if any, as the Court may think just.

### **Defects in proceedings of lower court**

17.—(1) No objection as to form not raised at the lower court shall be allowed on appeal.

(2) Where any error or defect in form in the lower court appears to the Court at the hearing of any appeal to have occasioned a miscarriage of justice, the Court shall either refer the case back to the lower court with directions to re-hear and determine it or may reverse the decision appealed from, or make such other order for disposing of the case as justice may require.

### **Defect in notice of appeal or recognisance**

18. No objection as to form shall be allowed with respect to a notice of appeal which is in writing or any recognizance entered into under this Order. But where the error or defect appears to the court to have misled the respondent, the Court shall amend it unless the objection relates to a defect likely to occasion a miscarriage of justice.

### **Additional evidence**

19. The Court may, where it considers necessary that additional evidence should be adduced, either-

- (a) order such evidence to be adduced before the Court on some day to be fixed; or
- (b) refer the case back to the lower court to take fresh evidence, and may in such case either direct the lower court to adjudicate afresh after taking such evidence or direct the lower court to report specific findings of fact for the information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with, as if it were being heard in the first instance.

### **Mode of taking evidence**

20.-(1) Where additional evidence is to be taken By a lower court and specific findings of fact reported, it shall certify the record of such additional evidence and send same to the Court which shall then proceed to dispose of the appeal.

(2) The Respondent or his legal practitioner shall be notified of the day the additional evidence is taken.

(3) Evidence taken in pursuance of rule 19 of this Order shall be taken as if it were evidence taken at the trial before the lower court.

(4) When forwarding to the Court any additional evidence taken by a lower court in pursuance of rule 20, the lower court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

### **Fees on civil appeal**

21. The fees in part II of the First Schedule shall be chargeable in appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower court or the Court waives or remits the fees on the grounds of the poverty of the person chargeable therewith.

### **Allowance to witness**

22. Allowances may be paid to witnesses in accordance with the provisions of these Rules.

### **Stay of execution**

23.-(1) On an application made for stay of execution pending appeal to the Court, the Court may impose one or more of the following conditions-

- (a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;
- (b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;
- (c) that the appellant shall, where the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security, including a deposit or security for expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in court pending determination of the appeal.

(2) An order made on an application for stay of execution shall limit the time (not being more than 30 days) for the performance of the conditions imposed, and direct that in default of the performance within the time so limited execution may issue or proceed.

(3) An application for stay of execution under this Order may be made at any time after lodgment of the notice of appeal and shall in the first instance be made to the lower court.

(4) The application for stay of execution, where made to the Court, shall be on notice to the opposite party and shall be brought within 15 days of the refusal by the lower court.

(5) Where an appellant proposes to give security instead of making a deposit, the application shall be in the nature of the security and the name of the surety proposed.

(6) A party dissatisfied with the conditions imposed by the lower court for stay of execution may apply to the Court by motion on notice for a review of the order.

(7) An appeal shall not operate as a stay of execution of the decision or judgment appealed from except as the lower court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court may direct.

### **Costs**

24. The Court may make such order as to the payment of cost by or to the appellant as it may consider just.

### **Order for security for respondent's costs**

25.-(1) The Court may, in special circumstances, on an application on notice order the appellant to deposit such sum or give such security as may seem fit to meet the respondent's costs on the appeal.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made, and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal stands dismissed under sub-rule 3 of this rule, the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order or may be assessed at any time on application of the respondent.



(4) Where an appeal stands dismissed under sub-rule 3 of this rule the appellant shall take no further step or proceeding except by leave of the Court for the reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice, filed within 30 days of such dismissal.

#### **Enforcement of judgment**

26. After the pronouncement of the judgment of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner and in all respects as if such decision or judgment had been pronounced by itself.

#### **Enforcement of order**

27. Any order given or made by the Court may be enforced by the Court or by the lower court as may be most expedient.

#### **Court may enlarge time**

28. The Court may, if it thinks fit, enlarge any period of time prescribed by this Order.

## **PART II APPEALS IN CRIMINAL PROCEEDINGS**

#### **Notice of appeal.**

29. An appeal shall be commenced by the appellant giving to the Registrar of the lower court notice of appeal either verbally or in writing, within the prescribed period for appeals.

#### **Verbal notice**

30. If notice of appeal is given verbally, it shall be reduced to writing by the Registrar and signed by the appellant.

#### **Verbal notice of appeal in court**

31. Notice of appeal may be given verbally at the time of the pronouncement of the decision before the opposite party or his Legal Practitioner has left the court and shall be recorded by the court with a note of the presence of the respondent or the Legal Practitioner representing him and written notice shall not be necessary thereafter.

#### **Time to appeal**

32. The notice of appeal whether verbal or written shall be given before the expiration of thirty days after the day on which the lower court made the decision appealed against.

#### **Notice of grounds of appeal**

**33.-(1)** Every appellant, shall within thirty days of the date of the decision appealed against, file with the Registrar of the lower court a notice, setting forth the grounds of his appeal.

(2) The grounds of appeal may be filed at the time the notice of appeal is given or at any other time within the time hereinbefore mentioned and may be either included in the notice of appeal or be in a separate document.

#### **Criminal Forms 1& 2**

(3) The notice of appeal may be in Criminal Form 1 or 2 as the case may be and may be varied to suit the circumstances of the case.

#### **Who may sign the notice, etc**

34. Every written notice of appeal shall contain the grounds of appeal and shall be signed by the appellant or the Legal Practitioner representing him.

#### **How prisoner may appeal**

35. If the appellant is in prison he may present his notice and grounds of appeal to the officer in charge of the prison who shall thereupon forward such notice and grounds to the Registrar of the lower court.

#### **Copies to be filed for service**

36. An appellant shall file the original and as many copies of his notice and grounds of appeal, and when notice of appeal is a written notice the original and as many copies of that notice as there are parties to be served.

#### **Grounds of appeal**

37. The grounds of appeal may include all or any of the following grounds, that is to say-

- (a) that the lower court had no jurisdiction in the case: or
- (b) that the lower court has exceeded its jurisdiction in the case: or
- (c) that the presiding officer of the lower court was personally interested in the case;
- (d) that the presiding officer of the lower court has acted corruptly or maliciously in the case; or
- (e) that the decision has been obtained by fraud; or
- (f) that the case has already been heard or tried and decided by or forms the subject of a hearing or trial pending before a competent court:

Provided that it shall not be competent for the court to entertain as a ground of appeal the special plea of autrefois acquit or autrefois convict, unless such special plea was pleaded in the lower court; or

- (g) that admissible evidence has been rejected or inadmissible evidence has been admitted by the lower court and that in the latter case there is no sufficient evidence to sustain the decision after rejecting such inadmissible evidence; or

- (h) that the decision is altogether unwarranted, unreasonable and cannot be supported having regard to the evidence;
- (i) that the decision is erroneous on point of law; or
- (j) that some other specific illegality, not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case; or
- (k) that the sentence passed on conviction is excessive, unless the sentence is one fixed by law.

### **Grounds of appeal to state particulars**

38. The appellant shall set forth in his grounds of appeal the particulars on which he relies or of which he complains.

### **Copies of proceedings**

39.-(1) Within thirty days of the decision appealed against, the appellant shall deposit such sum as the lower court may estimate to be necessary for the cost of the number of certified copies of the proceedings for the use of the Court, the respondent or respondents and the appellant.

(2) Where the lower court is satisfied that owing to poverty the appellant is unable to deposit the full or any of the amount required for the necessary copies of the proceedings, it may direct the acceptance of a specified lesser sum or that the necessary copies of the proceedings be supplied to the appellant free of charge as the case may be.

(3) Where the lower court directs that the necessary documents be supplied free of charge, the date upon which such direction is given shall, for the purposes of sub-rule (1), be deemed to be the date of deposit of the sum referred to therein.

### **Giving security to prosecute the appeal**

40.-(1) Within thirty days of the decision appealed against, the appellant shall, unless he remains in custody and appeals under the provisions of rule 51, enter into a recognisance in the prescribed form, with or without a surety as the lower court may require in such sum as the lower court may specify or, in lieu of furnishing a surety or sureties, as the case may be, deposit with the lower court the sum required.

(2) The condition of the recognisance shall be for the due prosecution of the appeal and for abiding the result thereof, including all costs of the appeal or otherwise.

(3) In estimating the sum aforesaid, the lower court shall take into consideration the amount of any fine imposed and the sum, if any, awarded to the respondent and the cost of the trial in the lower court or, if the appellant has been sentenced to imprisonment without the option of fine, the period of his sentence of imprisonment and in each case a sum not exceeding five thousand naira to cover the cost of the appeal in the court.

(4) If there shall be any breach of the recognisance, the deposit, if any shall be forfeited and shall be applied to discharging the condition of the recognisance.

(5) If the appellant is in custody he shall be released from such custody on bail, on complying with this rule as to security for prosecuting the appeal and abiding the results thereof

(6) If the appellant who is in custody is not within the area of the lower court from whose decision the appeal is made, any court within the area the appellant is residing shall have the powers and functions given and assigned to the lower court by this rule.

### **Record of appeal**

41.—(1) The Registrar of the lower Court shall within 14 days of the filing of the Notice of Appeal require the appellant to deposit such sum of money as is likely to cover the cost of preparation and compilation of the Record of Appeal.

(2) The Registrar of the lower court shall within 3 months of the satisfaction of the Conditions of Appeal by the appellant compile, certify and forward the Record of Appeal to the Court. The Record of Appeal shall be made up of the proceedings, and documentary exhibits in the proceedings.

(3) The registrar of the lower court shall forward along with the Record of Appeal the following:

- (a) Bulky or unwieldy exhibits;
- (b) Documentary exhibits which cannot be conveniently reproduced; and
- (c) Non-documentary exhibits.

(4) The Registrar of the lower court shall produce sufficient copies of the Record of Appeal for service on the parties and for the use of the Court.

### **Respondent to be supplied with Record of Appeal**

42. When notifying a party of the day fixed for hearing of an appeal, a Registrar of the Court shall send to the party a copy of the proceedings, if the party shall not have received one as at then.

### **Application for extension of time to appeal or for leave to appeal.**

43. An application for extension of time to appeal or for leave to appeal shall be made to the Court.

### **Where time expires**

44. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the court to strike out the appeal, and the Court may strike out or enlarge the time for sufficient reason shown.

### **Constitution of court hearing appeal**

45. All appeals shall be heard by at least one judge of the Court.

### **Time and place for hearing.**

46. The appeal shall come up for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

### **Appeals from court below**

47. Unless the court gives leave to the contrary

- (a) all appeals shall be heard and determined on briefs of argument filed and exchanged between the parties;
- (b) the appellant shall file an appellant's brief within 30 days of the receipt of the record of appeal from the court below;
- (c) the respondent shall file and serve a respondent's brief within 21 days of service on him of the appellant's brief;
- (d) within 14 days of the receipt of the respondent's brief the appellant may file a reply brief which shall deal with any new issues raised in the respondent's brief,
- (e) every brief shall identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal;
- (f) any issue which is not covered by any ground of appeal shall not be considered by the Court in its judgment.

### **Direction for departure**

48. A Court may direct a departure from these rules in respect of compilation of records from the lower court upon the application of any party to an appeal.

### **Where appellant fails to appear**

49. Where on the day of hearing or at an appointed day of the case, the appellant does not appear, but has filed his brief, the appeal shall be considered on its merit, unless the Court thinks fit, for sufficient cause to order otherwise.

### **Procedure where appellant defaults in prosecuting appeal.**

50.-(1) If the appellant makes default in duly prosecuting his appeal, the lower court shall thereupon either treat the recognisance as forfeited and deal with the same in accordance with the provisions of the Criminal Procedure Law, relating to forfeited recognisance or make such order as may be just with respect to the amount lodged by the appellant, as the case may be.

(2) If the appellant making such default has been released from custody under the provisions of rule 40 (5) of this Order and if he remains or becomes liable to be kept in custody,

the lower court shall forthwith issue a warrant for his apprehension, in order that he may be committed to prison accordingly.

### **Where surety not found or money not deposited**

51.-( 1) A person sentenced to imprisonment without the option of a fine who gives notice of appeal and is unable to find the necessary surety or sureties, if any, or to deposit money in lieu of a surety or sureties, may nevertheless prosecute his appeal by entering into a recognisance without a surety conditioned for payment of the costs of the appeal provided that he remains in custody pending the hearing of the appeal, and in such case the presiding officer of the lower court shall, by warrant under his hand, direct the appellant to be detained in custody accordingly and shall, in such warrant, inform the officer in charge of the prison that notice of appeal has been given.

(2) The appellant shall in such case be detained in custody pending the determination of his appeal and may be taken without any fresh order or warrant to the Court to attend the hearing of the appeal.

(3) Notwithstanding anything contained in this rule, an appellant may, at any time before his appeal is heard, enter into a recognisance in the form and subject to the conditions set forth in rule 40, and thereupon he shall be released unless he is in custody in respect of any other charge or matter.

(4) Where a conviction is confirmed on appeal and the appellant has been in custody pending the hearing of the appeal, the Court may direct that all of such period of custody shall count as imprisonment towards the term to which the appellant has been sentenced.

### **Transmission of Record of Appeal**

52. On the appellant complying with rules 39, 40,50 and 51 as the case may be, the Registrar of the lower court shall transmit to the Registrar of the Court:

- (a) the notice and grounds of appeal;
- (b) a certified copy of the proceedings in respect of which the appeal is made;
- (c) the recognisance, where the appellant has entered into the same under rule 40 or a certified copy of the warrant of commitment where the appellant has been committed to prison; and
- (d) the exhibits received in evidence in the proceedings except unwieldy, perishable or putrid exhibits together with a copy of documentary exhibits: Provided that where any document exhibited is of unusual length and the copying of it would cause undue delay in effecting such transmission, it shall not be necessary to transmit a copy of the same and where any document contains matter which is partly material and partly immaterial to the charge it shall not be necessary to copy that part which is immaterial.

### **Abandonment of appeal**

53.-(1) An appellant may serve written notice Upon the Registrar of the lower court that he has abandoned his appeal.

(2) The Registrar of the lower court shall give notice to the Registrar of the Court and to the respondent of the abandonment of the appeal, and thereupon the Court shall strike out the appeal.

#### **Abatement of appeal**

54. Every criminal appeal other than an appeal from an order to pay a penalty shall finally abate on the death of the appellant.

#### **Notice of time, place and hearing**

55. The Court, unless the appeal abates or is abandoned, shall cause notice to be given to the appellant and to the respondent and to their respective Legal Practitioners, if any, of the time and place at which such appeal will be heard.

#### **Presence and representation of appellant**

56. In every appeal to which this Order relates, the appellant shall be entitled to be present in court throughout the hearing of his appeal and shall be entitled to present his appeal to the Court in person or by a Legal Practitioner:

Provided that where an appellant misconducts himself in such a way as to render the continuance of his presence impracticable the Court may order him to be removed and kept in custody and may continue the hearing of the appeal in his absence.

#### **Disposal of appeal**

57.-(1) If upon the day appointed for the hearing of an appeal or any day to which such hearing has been adjourned, the appellant shall not appear in person or by a Legal Practitioner the appeal shall be struck out unless the Court orders otherwise.

(2) If upon any such day the appellant appears, the Court may proceed with the hearing and determination of the appeal.

#### **Appeal limited to grounds in notice of appeal with power to allow amendment**

58. On the hearing of an appeal, it shall not be competent for the appellant to raise or put in issue any other grounds of appeal than those specified in his notice and grounds of appeal:

Provided that where, in the opinion of the Court any ground of appeal other than those contained in the notice of appeal might properly have been given, or where the notice of appeal appears to be defective, the Court may, in its discretion, allow the amendment of the notice of appeal subject to such terms and conditions as regards the service of the notice of appeal so amended upon the respondent.

#### **Additional evidence.**

59. Where upon the hearing of an appeal the Court considers that it is necessary or expedient in the interest of justice that further evidence be adduced for the due and proper determination of the appeal, it may order that such evidence be adduced before the court upon a day to be fixed in that behalf and take all such steps as may be necessary for the purpose of securing the attendance of those witnesses whose attendance is required by the Court.

**Allowance to witness.**

60. Allowance may be paid to witnesses.

**Costs**

61. The Court may make such order as to payment of costs by or to the appellant as it may deem just, and an order may be made also in any case where an appeal has been abandoned or withdrawn.

**Fees payable in criminal appeals**

62. Fees as may be prescribed shall be chargeable in criminal appeals save where the same would have to be paid by a public officer acting in his official capacity, or where the lower court or the Court waives or remits the same on ground of poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

**Forms.**

63. In addition to Criminal Forms 1 and 2 forms as may be prescribed for criminal appeals, may in accordance with any printed instructions contained in the said forms and with such variations as the circumstances of any particular case may require, be used in the cases to which they apply and, when so used, shall be good and sufficient in Law.

**Order of Court to be certified to the lower court**

64.-(1) When a case is decided on appeal the Registrar shall certify the judgment or order to the lower court by which the decision appealed against was pronounced.

(2) The lower court shall thereupon make such orders as are necessary to comply with the judgment or order of the Court and the records shall be amended accordingly.

**Interpretation**

65.-(1) In this Order the expression "lower court" includes Customary Courts, Magistrate's Courts or Tribunals or Mobile Courts whose decisions are appealable to the Court.

(2) "Registrar" shall include any officer in charge of the records of the lower court.



### **Stay of execution pending appeal**

1.-(1) Where any application is made to a Judge for a stay of execution or proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or proceedings is sought.

(2) The provisions of Order 39 rule 1 shall apply to an application under this Order.

### **Compilation of record**

2. An applicant for stay of execution of a judgment shall satisfy all the conditions of appeal.

### **Court may grant or refuse order for stay**

3.-(1) The court may make or refuse an order for stay of execution or proceedings.

(2) An order for stay may be made subject to such conditions as shall appear just, including the deposit in court of any money adjudged due to any party in the judgment appealed from.

### **Formal order to be drawn up**

4. Where any application is made to the Judge under this Order, a formal order shall be drawn up embodying the terms of the decision of the Judge and bearing the date upon which the order is made.

### **Non-enforcement of order pending an application for stay.**

5. No judgment or order of the court shall be executed or enforced during the pendency of an application for stay of execution of such judgment or order.

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## **ORDER 56 PROBATE AND ADMINISTRATION**

### **I. Grant of Probate or Administration in General**

#### **Petition to be made to Probate Registrar**

1.(1) Subject to the provisions of rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person with or without a Will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court.

(2) The Chief Judge shall request a Judge of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the Judge under this Order and every Judge shall carry out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration, without the Will annexed, shall issue within 14 days of such death.

### **Preservation of property**

2. The Judge shall, when the circumstances of The case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorise an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

### **Unauthorized persons intermeddling with property**

3. If any person other than the named executor or administrator, or an officer of the Court, or person authorised by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than N50,000.00 as the Judge, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

### **Production of testamentary papers**

4. Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court.

If any person fails to do so within 3 months after having had knowledge of the death of the deceased, he may be liable to a fine of N50,000.00 as the Judge, having regard to the condition of such person in default and other circumstances of the case, deems fit to impose.

### **Judge may order production**

5. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of or under the control of any person, a Judge may upon an ex parte application, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

### **Examination respecting papers**

6. Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary, although it is not shown that the paper is in his possession or under his control, a Judge may upon an ex parte application, whether a suit or proceedings in respect of probate or administration is pending or not, order

that he be examined in respect of the same in Court, or on interrogatories, and that he attend for that purpose, and after examination that he produce the paper and bring it into Court.

#### **Notice to executor to come in and prove**

7. The Judge may on the application of any person claiming an interest under a Will, give notice to the executors therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall within 21 days after notice, come in and prove or renounce accordingly.

#### **Liability of executor neglecting to apply for probate**

8. If any named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 3 months after the death, or after the termination of any suit for or dispute in respect of probate or administration, he may, independent of any other liability be deemed to be in contempt of court, and shall be liable to such fine of not less than N50,000.00 only, as the Judge deems fit to impose.

#### **Evidence of identity**

9. The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant or in respect of any other matter which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Judge may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Judge.

#### **Judge may refuse grant until all persons interested are given due notice**

10. Where it appears to the Judge that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, Judge may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in respect of the application:

Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

#### **Value of property**

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on Letters of Administration, the value of the property in respect of which the grant is made shall be deemed not to include:

- (a) any gratuity payable by the Government of the Federation of Nigeria, or of a State or Local Government Council to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;
- (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

#### **Answers required before grant**

12. All inquiries, a Judge sees fit to institute, shall be answered to his satisfaction before the issuance of Letters of Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

#### **Form of suits**

13. Suits in respect of administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

#### **Testator may deposit Will**

14. Any person may deposit his Will for safe custody in the Probate Registry, sealed under his own seal and the seal of the Court.

#### **Custody of Wills of which probate is granted**

15. Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.

#### **Will not given out without order of Judge**

16. No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

#### **Examination of Will as to its execution**

17.—(1) On receiving an application for administration with Will annexed, a Judge shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence, and by his direction, and its execution subscribed by two witnesses

according to the applicable law and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wording thereof states the Will to have been in fact executed in accordance with those enactments.

#### **Evidence as to due execution of Will**

18.—(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is some doubt about the due execution of the Will, he shall before admitting it in proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

- (2) If no affidavit can be obtained in accordance with sub-rule 1 of this rule, the Judge may, if he deems fit, having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will:
  - (a) accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased; or
  - (b) accept evidence on affidavit on any other matter which may raise a presumption in favour of the due execution of the Will.
- (3) If the Judge, after considering the evidence, is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly.

#### **Evidence on failure of attesting witnesses**

19. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons present at the execution of the Will; but if no such witnesses affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the will.

#### **Evidence as to terms conditions and date of execution of Will**

20.—(1) Where in a Will, there is any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by law or by the re-execution of the Will or by the execution of a codicil, the Judge shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this sub-rule shall not apply to any alteration which appears to the Judge to be of no practical importance.

(2) Where from any mark on the Will it appears to the Judge that some other document has been attached to the Will or if a Will contains any reference to another

document in such terms as to suggest that it ought to be incorporated in the Will, the Judge may require the document to be produced and may call for such evidence in respect of the attachment or incorporation of the document as he may deem fit.

(3) Where there is doubt as to the date on which a Will was executed, the Judge may require such evidence as he deems necessary to establish the date.

### **Attempted revocation of a Will**

21. Any appearance of attempted revocation of a will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the satisfaction of the Judge.

### **Affidavit as to due execution, terms, etc, of Will**

22. The Judge may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in rules 18, 19, '20, 21 and 27. In any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

### **Will of persons in military service and seamen**

23. Where it appears to the Judge that there is prima facie evidence that a Will is one to which Section 6 of the Wills Law, Cap. W4, Vol. 4 of the Laws of Bayelsa State, 2006 or any provision in equivalent enactments in force in the State applies, the Will may be admitted to proof if the Judge is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

### **Evidence of foreign law**

24. Where evidence of foreign law is required on any application for a grant, the Judge may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

### **Order of priority for grant where deceased left a will**

25. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the Will annexed shall be determined in accordance with the following order of priority:

- (a) the executor;
- (b) any residuary legatee or devisee holding in trust for any other person;
- (c) any residuary legatee or devisee for life;
- (d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person:

Provided that:

- (i) unless the Judge otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and
- (ii) where the residue is not in terms wholly disposed of, the Judge may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made subject to rule 68 of this Order to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;
- (e) any specific legatee or devisee or any creditor, or subject to rule 3 of rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it;
- (f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

#### **Joinder of Administrator**

26.-(1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, may be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require;

(2) An application to join with a person entitled to a grant of administration, a person having no right to it, shall be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require:

Provided that there may, without any such application be joined with a person entitled to administration:

- (a) on the renunciation of all other persons entitled to join in the grant, any kin of the (deceased having no beneficial interest in the estate;
- (b) unless the Probate Registrar otherwise directs, any person whom the guardian of a minor may nominate for the purpose;
- (c) a trust corporation.

#### **Will of blind or illiterate testator**

27. Where the testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

#### **Interlineations, erasures, obliterations**

28.-(1) The Judge, on being satisfied that the Will was duly executed, shall inspect it to see whether there are any interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the Will or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will, unless duly executed or recited in or otherwise identified by the attestation clause, an affidavit in proof of their having existed in the Will before its execution shall be filed.

(4) Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

#### **Documents referred to in a Will or annexed or attached thereto**

29.-(1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the Will, the Judge shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non production shall be given. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at sometime annexed or attached thereto, a satisfactory account of them shall be required, and if it is not produced, a satisfactory account of its non-production shall be given.

#### **Executor dying without proving or not appearing**

30. Where a person appointed executor in a Will survives the testator but either dies without having taken probate or having been called on by the Court to take probate and does not appear, his right in respect of the executorship wholly ceases; and, on further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

#### **Marking of wills**

31. Every Will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will:



Provided that where the Judge is satisfied that compliance with this rule might result in the loss of thy Will, he may allow a photocopy to be marked c: exhibited in lieu of the original document.

### **Viva voce examination of persons making affidavit**

32. In every case where evidence is directed or allowed to be given by affidavit, the Judge may require the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce respecting the content of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Judge deems fit.

### **Letters of Administration**

33.-(1) A Judge in granting Letters of Administration shall proceed as far as may be as in cases of probate.

(2) The Judge shall ascertain the time and place of the deceased's death and the value of the property to be covered by the administration.

### **Administration bond**

34. \_ (1) The person to whom administration is granted shall give a bond with two or more responsible sureties to the satisfaction of the Judge. The bond shall affirm that the administrator shall be duly conditioned to collect, getting in and administering the personal property of the deceased.

(2) The Judge may, if he deems fit, take one surety only where the gross value of the estate does not exceed N250, 000.00 or where a corporation is proposed as a surety.

(3) The bond shall be in form of a penalty which is twice the sum or value of the estate of the deceased unless the Judge deems it expedient to reduce the amount.

(4) The Judge may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court deems reasonable.

### **Guarantee**

35.-(1) The Judge shall not require a guarantee as a condition of making a grant where it is proposed to make it:

- (a) by virtue of rule 25(e) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
- (b) under rule 61 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
- (c) under rule 63 to the attorney of a person entitled to a grant;
- (d) under rule 64 for the use and benefit of a minor;

- (e) under rule 66 for the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing his affairs;
- (f) to an applicant who appears to the Judge to be resident elsewhere than in the State; or
- (g) except where the Judge considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation

#### **Probate form 1**

(3) Every guarantee entered into by a surety for the purpose of the Order shall be in Probate Form 1 with such variations as circumstances may require.

(4) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Judge that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

#### **Assignment of bond**

36. The Judge may, on being satisfied that the condition of the bond has been broken, assign to some person, and that person may thereupon sue on the bond in his own name as if it had been originally given to him, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

- (d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;
- (e) every surety other than a corporation, shall justify his eligibility.

#### **Administration summons**

37. Any person claiming to be a creditor or legatee or the next of kin or one of the next of kin of a deceased may apply for and obtain a summons from the Court requiring the executor or administrator, as the case may be of the deceased to attend the Court and show cause why an order for the administration of the property of the deceased should not be made.

#### **Order for administration**

38.-(1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things as the Judge may direct, the Judge may, if he deems fit, make an order for the administration of the property of the deceased.

(2) The Judge may make or refuse any such order or give any special directions in respect of the carriage or execution of it and where there are applications for such an order by

two or more different persons or classes of persons, to grant the same to such one or more of the claimants or classes of claimants, as the Judge deems fit.

(3) Where the Judge deems fit the carriage of the order may subsequently be given to such person, and on such terms, as he may direct.

#### **Order relating to property**

39. Where the Judge makes such an order or at any time afterwards, he may, if he deems fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe keeping and disposal of the property or any part thereof

#### **Administration may be granted to officer**

40. In a case of intestacy, where the special circumstances of the case require, the Judge may, if he deems fit on the application of any person having interest in the estate of the deceased or of his own motion, grant Letters of Administration to an officer of the Court, to a Consular Officer or to a person in the service of the Government.

#### **Officer to act under the direction of judge**

41.-(1)The officer or person so appointed shall act under the direction of the Judge, and shall be indemnified thereby.

(2) The Judge shall require and compel him to file in Court the accounts of his administration at intervals not exceeding 3 months.

#### **Court may appoint person to be administrator**

42. Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate or where the executor shall, at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Judge to be necessary or convenient in any such case to appoint some person as administrator of the estate of the deceased or of any part thereof, the Judge may appoint such person as he shall deem fit to be such administrator upon his giving such security, if any, as the Judge shall direct, and every such administrator may be limited as the Judge shall deem fit.

#### **Remuneration to administrators**

43. The Judge may direct that any administrator (with or without the Will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as he shall deem fit not exceeding 10% per centum on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by the Will:

Provided that where the Judge is satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, he may allow in respect of such property a higher rate of remuneration.

#### **Securing and collection of estate**

44. Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next of kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased, and shall then inform the nearest Consular officer of such country of the death, and transmit to him a list of the money and property of the deceased.

#### **Application by consular officer or person authorised by him to administer estate**

45. Application may be made to the Court by any such Consular Officer or by any person authorised by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Judge may make such order as to security for payment of debts and the method of administration as the Judge shall deem fit and vary such order when and so often as it is expedient.

#### **Accounts to be filed.**

46.-(1) Every person to whom a grant of probate or Letter of Administration shall have been made, and every administrator appointed by the Judge shall file in Court the accounts of his administration every 3 months from the date of the grant or the appointment until the completion of the administration.

(2) Any executor or administrator who fails to file his accounts within the prescribed period as aforesaid shall be liable to a penalty of N100,000.00 for every day of default. A fine for non-payment shall be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding 6 months.

(3) When an account is filed in Court under this rule, the Judge shall scrutinise such account and if it appears to the Judge that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Judge shall require the

person filing the account to remedy such defects as there may be within such time as the Judge may deem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly

(4) The Registrar shall bring to the notice of the Judge the fact that any executor or administrator has failed to file his accounts as required by this rule.

(5) The Judge may, on the motion of any party interested, or suo motu, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(6) The Judge may for good cause shown extend the time for such filing of accounts.

(7) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(8) The accounts shall be open to the inspection of any person who satisfies the Registrar that he is interested in the administration.

(9) In this rule, the word "accounts" includes an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto and an affidavit in verification.

#### **Court may refuse application to review**

47. The Judge may refuse to entertain any application under rule 2 of this Order if he considers that there has been unreasonable delay by the applicant in making the application.

#### **Grant to be signed by probate registrar**

48. The grant of Letters of Administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

## **II. Probate (Non-Contentious) Procedure**

### **Application**

49. In this Part, rules 1,4,5,6,7,8,11,12,14, 15,16,17,19,26,27,28,29,30,31 of this Order shall also apply.

### **Application for grant through Legal Practitioner**

50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business within the jurisdiction.

### **Personal applications**

51.-(1) An applicant for a grant may apply in person.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be represented by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:

- (a) it becomes necessary to bring the matter before the Court by motion or by action;
- (b) an application has already been made by a Legal Practitioner on behalf of the applicant and has not been withdrawn;
- (c) the Judge otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Judge so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Judge may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry or may himself prepare such papers and lodge them unsworn.

(7) Unless the Judge otherwise directs, every oath, affidavit or guarantee required of a personal applicant shall be sworn or executed by all the deponents or sureties before an authorised officer.

### **Duty of Registrar on receiving application for grant**

52.-(1) The Judge shall not allow any grant to issue until all inquiries which he may deem fit to make, have been answered to his satisfaction.

(2) The Judge may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall issue within 3 months of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 3 months of such death.

### **Oath in support of grant**

53.-(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other persons as the Judge may require.

(2) Unless otherwise directed by the Judge, the oath shall state where the deceased was domiciled at the time of death.

#### **Grant in additional name**

54. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose, that some part of the estate, specifying it, was held in the other name; or as to any other reason that there may be for the inclusion of the other name in the grant.

#### **Engrossment for purposes of record**

55.- (1) Where the Judge considers that in any particular case a photocopy of the original Will would not be satisfactory for purposes of record, he may require that an engrossment suitable for photo reproduction be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule 2 of this rule applies, it shall be made book wise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will, or of the pages or sheets containing the pencil writing in which there shall be underlined in red ink those portions which appear in pencil in the original.

#### **Grant to attesting witnesses etc**

56. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will without prejudice to his right to a grant in any other capacity.

#### **Right of assignee to a grant.**

57.-(1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in order of priority for a grant of probate the assignor or if there are two or more assignors the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to any one or more but not exceeding four of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

### **Additional personal representatives**

58.—(1) An application to add a personal representative shall be made to the Judge and shall be supported by an affidavit by the personal applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Judge may require.

(2) On any such application the Judge may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such order as the circumstances of the case may require.

### **Grants where two or more persons entitled in the same degree**

59.—(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Judge.

(3) If an application under this rule is brought before the Judge, he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Judge otherwise directs, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

### **Prevention of grant**

60.—(1) Nothing in rules 25, 26 and 59 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the State, except in a case to which the provisions of rule 63 apply.

### **Grants to person having spes successions**

61. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more but not exceeding four of such persons:

Provided that a surviving spouse shall not be regarded as person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate whatever its value may be.



### **Grants where deceased was domiciled outside the State.**

62. Where the deceased was domiciled outside the State the Judge may order that the grant should issue:

- (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;
- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;
- (c) if there is no such person as is mentioned in paragraph (a) or (b) of this rule or if in the opinion of the Judge the circumstances so require, to such person as the Judge may direct;
- (d) if a grant required to be made to or if the Judge in his discretion considers that a grant should be made to, not less than two administrators to such person as the Judge may direct jointly with any such person as is mentioned in paragraph (a) or (b) of this rule or with any other person:

Provided that, without any such order as aforesaid:

- (a) probate of any Will which is admissible to proof may be granted:
  - (i) Where the Will is in English or in the local language to the executor named therein;
  - (ii) Where the Will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person;
- (b) where the whole of the estate in the State consists of immovable property a grant limited thereto may be made in accordance with the law that would have been applicable if the deceased had died domiciled in the State.

### **Grant to attorney.**

63.- (1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawful attorney for his use and benefit until such person shall obtain a grant or in such other way as the Judge may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Judge is satisfied by affidavit that it is desirable for a grant to be made to the lawful attorney of a person entitled to a grant and resident in the State, he may direct the grant to be made to the attorney for the use and benefit of such person, until such person obtains a grant or in such other way as the Judge may direct.

### **Grants on behalf of minors**

64.-(1) Where the person to whom a grant would otherwise be made is a minor a grant for his use and benefit until he attains the age of 18 years shall, subject to sub-rules 3 and 5 of this rule, be granted:

- (a) to both parents of the minor jointly or to any guardian appointed by a Judge; or
- (b) where there is no such guardian able and willing to act and the minor has attained the age of 16 years, to any next of kin nominated by the minor or where the minor is a married woman to any such next of kin or to her spouse if nominated by her.

(2) Any person nominated under sub-rule 1(b) of this rule may represent any other minor whose next of kin he is, being a minor below the age of 16 years entitled in the same degree as the minor who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the minor until he attains the age of 18 years may be granted to any person assigned as guardian by order of a Court in default of or jointly with or to the exclusion of any such person as is mentioned in sub-rule 1 of this rule and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Judge otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where a minor who is sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the minor until he attains the age of 18 years shall, unless the Judge otherwise directs, be granted to the person entitled to the residuary estate.

(6) A minor's right to administration may be renounced only by a person assigned as guardian under sub-rule 3 of this rule and authorised to renounce by the Judge.

#### **Grants where minor is co-executor**

65.—(1) Where one of several executors is a minor, probate may be granted to the adult executors with power reserved for making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the minor until he attains the age of 18 years may be granted under rule 64 only if the adult executors renounce or on being cited to accept or refuse a grant fail to make an effective application.

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

#### **Grants in case of mental or physical incapacity**

66- (1) Where the Judge is satisfied that a person entitled to a grant is by reason of mental or

physical infirmity incapable of managing his affair, a grant for his use and benefit, during his incapacity maybe made:

(a) in the case of mental incapacity, to the person authorised by the Judge to apply for the grant;

(b) where there is no person so authorized or in the case of physical incapacity :

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased to the person entitled to such residuary estate;

(ii) where the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or to such other person as the Judge may by order direct.

(2) Unless the Judge otherwise directs no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been considered and excluded.

(3) Where legal disability arises out of unsoundness of mind or insanity notice of intended application for a grant under this rule shall, unless the Judge otherwise directs, be given to his guardian.

(4) Where there is physical disability, notice of intended application for a grant under this rule shall, unless the Judge otherwise directs, be given to the person alleged to be incapable.

### **Renunciation of probate and administration**

67.—(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some capacity unless he expressly renounces such right.

(2) Unless the Judge otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Judge:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to such other person entitled in a lower degree.

### **Notice to state of intended application of grant**

68. Where the State is pr may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Bayelsa State Attorney-General and the Judge may direct that no grant shall issue within a specified time after the notice has been given.

### **Resealing.**

69.-(1) An application for the resealing of Resealing. probate or administration with the Will attached granted by a Court outside the State shall be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application:

- (a) an Inland Revenue Affidavit shall be lodged as if the application were one for a grant in the State;
- (b) the application shall be advertised in such manner as the Judge may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant:

(a) the Judge shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (f) of rule 35(1) or except where he considers that there are special circumstances making it desirable to require sureties:

- (b) rules 35(2), (4), (5), (6) and 51(4) shall apply with any necessary modifications; and
- (c) a guarantee entered into by a surety shall be in Probate Form 2 with such variations as circumstances may require.

(4) Except by leave of the Judge, no grant shall be resealed unless it was made to such a person as is mentioned in paragraph (a) or (b) of rule 62 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Judge.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a copy certified as correct by or under the authority of the Court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

#### **Amendment and revocation of grant**

70. If a Judge is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

#### **Notice to prohibit grant; caveats**

71.-(1) A notice to prohibit a grant of administration may be filed in Court.

(2) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(3) Any person who wishes to enter a caveat, in this rule called "the caveator", may do so by completing Probate Form 3 in the appropriate book at the Registry and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk a notice in Probate Form 3 to the Registry in which he wishes the caveat to be entered.

(4) Where the caveat is entered by a Legal Practitioner on behalf of the caveator, the name of the caveator shall be stated in Probate Form 4.

(5) Except as otherwise provided by this rule, a caveat shall remain in force for 3 months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been entered against the sealing of a grant for which application has been made.

(7) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:  
Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(8) A warning in Probate Form 5 may issue from the Registry against a caveator at the instance of any person interested, in this rule called "the person warning", which shall state his interest and, if he claims under a Will, the date of the Will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(9) A caveator having an interest contrary to that of the person warning may, within 8 days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule 12 of this rule, enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall forthwith serve on the person warning a copy of Probate Form 6 sealed with the seal of the Registry.

(10) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall then cease to have effect and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within 8 days of service of the warning upon him inclusive of the day of such service, or at anytime thereafter if no affidavit has been filed under sub-rule 12 of this rule, issue and serve a notice, which shall be returnable before the Registrar.

(12) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing sub-rule and thereupon the caveat shall cease to have effect.

(13) Upon commencement of a probate action the Probate Registrar shall, if a caveat is in force, other than a caveat entered by the claimant give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Judge otherwise directs:

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule 9 of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the judge in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under sub-rule 13 of this rule, shall cease to have effect.

(15) Except with the leave of the Judge, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under sub-rule 12 or 14 of this rule.

## **Citations**

72.-(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require shall be verified by an affidavit sworn to by the person issuing the citation, in this Order called "the citor", or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn to by the citor's Legal Practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless a Judge, on cause shown by affidavit, directs some other mode of service which may include notice by advertisement.

(5) Every Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Judge is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under sub-rule 5 of rules 73 and 74 of this Order enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall thereafter serve on the citor a copy of Form 5 sealed with the seal of the Registry.

#### **Citation to accept or refuse a grant**

73.-(1) A citation to accept or refuse a grant May be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the Will or the executors of the last survivor of the deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of 6 months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceeding as to the validity of the Will is pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the Judge for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

- (a) in the case of a citation under sub-rule 1 of this rule apply to the Judge for an order for a grant to himself;

- (b) in the case of a citation under sub-rule 2 of this rule, apply to the Judge for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights or interest in respect thereof have ceased;
- (c) in the case of a citation under sub-rule 3 of this rule, apply to the Judge by summons, which shall be served on the person cited, for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under sub-rule 5 of this rule shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule 4 of this rule, or has failed to prosecute his application with reasonable diligence, the citor may:

- (a) in the case of a citation under sub-rule 1 of this rule, apply by summons to the Judge for an order for a grant to himself;
- (b) in the case of a citation under sub-rule 2 of this rule, apply by summons to the Judge for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this rule;
- (c) in the case of a citation under sub-rule 3 of this rule, apply by summons to the Judge for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons; and the summons shall be served on the person cited in each case.

### **Citations to propound a Will**

74.-(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested thereunder, and may be issued at the instance of any citor having any interest contrary to that of the executors or such other persons.

- (2) Where the time limited for appearance has expired, the citor may:
  - (a) where no person cited has entered an appearance, apply to the Judge for an order for a grant as if the Will were invalid;
  - (b) in the case of a citation under sub-rule 2 of rule 73 of this Order apply by summons to the Judge for an order striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of rule 73 of this order;
- (c) in the case of a citation under sub-rule 3 of rule 73 of this Order apply by summons to the Judge for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons; and the summons shall be served on the persons cited in each case.

### **Address for service**



75. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

#### **Application for order to bring or to attend for examination**

76.-(1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Judge of a subpoena to bring in a Will shall be supported by an affidavit setting out the grounds for the application, and if any person served with the subpoena denies that the Will is in his possession or control he may file an affidavit to that effect.

#### **Limited grant**

77. An application for an order for a grant limited to part of an estate may be made to the Judge and shall be supported by an affidavit stating:

- (a) whether the application is made in respect of the real estate only or any part thereof or real estate together with personal estate, or in respect of a trust estate only;
- (b) whether the estate of the deceased is known to be insolvent;
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and excluded.

#### **Grants ad colligenda bona**

78. An application for an order for grant of administration where the goods in the estate are of perishable nature may be made to the Judge, and shall be supported by an affidavit setting out the grounds of the application.

#### **Application for leave to swear to death of a person**

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Judge and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

#### **Grants in respect of codicil and copies of Wills**

80. -(1) An application for an order admitting to proof a codicil or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available may be made to the Judge.

#### **Grants durans absentia**

81. An application for an order for a grant of Grants special administration where a personal representative resides outside the State shall be made to the Judge by a motion.

**Notice of election by surviving spouse to redeem life interest: Probate Form 7**

82.-(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Probate Form 7 with such variations as circumstances may require.

(2) A notice filed under this rule shall be notice on the grant and the record shall be open to inspection.

**Photocopy of Wills or other documents may be certified and sealed**

83.-(1) Where copies are required of original will or other documents deposited under the provisions of any written law, such copies may be photocopies sealed with the seal of the Registry and issued as office copies, and where such office copies are available, copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photocopies of original wills or other documents deposited as aforesaid, shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

**Power to require application to be made by summons or motions**

84. The Registrar may require any application under this Order to be made by motion or summons to a Judge.

**Service of notice of motion or summons.**

85.-(1) A Judge may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge may direct.

(2) Where, by the provisions of this Order or by any direction given under sub-rule 1 of this rule, a notice of motion or summons is required to be served on any person, it shall be served not less than 5 days before the hearing of the motion or summons.

**Service of notice, etc. at the person's address**

86. Unless the Judge otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by courier to that person's address for service, or if he has no address for service, his last known address.

### **Affidavits**

87. Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 33.

### **Time**

88. The provisions of Order 44 shall apply to the computation, enlargement and abridgement of time under this Order.

### **Application**

89. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these Rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

### **Contentious probate; form of suits**

90. Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of civil claims.

## **III. Proceeding Generally**

### **Probate actions**

91. In probate actions the originating process shall state whether the claimant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity.

### **Service of writ of summons**

92. In probate actions service of a writ of summons may by leave of a Judge be allowed out of Nigeria.

### **Pleadings and further actions**

93. In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely, and -further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and except by leave of a Judge no evidence shall be given of any other instances at the trial.

### **Where claimant disputes defendant's interest**

94. In probate actions where the claimant disputes the interest of the defendant he shall allege in his statement of claim that he denies the defendant's interest.

### **Notice of opposition to Will**

95. In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

### **Inquiry as to outstanding personal estate**

96. Every Judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

### **Discretion to order costs**

97. Where a person is or has been a party to Any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders be entitled to the costs of such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Judge may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

### **Originating summons relating to deceased person**

98. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next of kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

- (a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next of kin, or heir- at-law or cestui que trust;
- (b) the ascertainment of any class of creditors, beneficiary, next of kin, or others;
- (c) the furnishing of any particular accounts by the executors or administrators or trustees and the vouching, when necessary, of such accounts;
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

### **Order for administration of estate of deceased and of trust**

99. Any of the persons named in rule 98 of this Order may in like manner apply for and obtain an order for

- (a) the administration of the personal or real estate of the deceased;
- (b) the administration of the trust;
- (c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

### **Person to be served**

100. The persons to be served with the summons under rules 98 and 99 of this Order in the first instance shall be the following:

Where the summons is taken out by an executor or administrator or trustee:

- (a) for the determination of any question under paragraph (a), (c), (f) or (g) of rule 98 of this Order, the persons or one of the persons whose rights or interests are sought to be affected;
- (b) for the determination of any question under paragraph (b) of rule 98 of this Order, any member or alleged member of the class;
- (c) for the determination of any question under paragraph (c) of rule 98 of this Order, any person interested in taking such accounts;
- (d) for the determination of any question under paragraph (d) of rule 98 of this Order, any person interested in taking such money;
- (e) for relief under paragraph (a) of rule 99 of this Order, the residuary legatees, or next of kin, or some of them, or the residuary devisees, or heirs, or some of them, as the case maybe;
- (f) for relief under paragraph (b) of rule 99 of this Order, the Cestui que trust or some of them;
- (g) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;
- (h) Where the summons is taken out by any person other than the executors, administrators or trustees, the executors, administrators or trustees, or some of them must be served.

### **Judge not bound to order administration**

101. It shall not be obligatory on the Judge to pronounce or make judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined.

### **Order which may be made on application for administration or execution of trust, where no account or insufficient accounts have been rendered**

102. Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may in addition to the powers already existing:

- (a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;
- (b) when necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

#### **Interference with discretion of trustee**

103. The issue of a summons under rule 98 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustee. except so far as such interference or control may necessarily be involved in the particular relief sought.

#### **Application by summons**

104. Any of the following applications may be made by summons:

##### **appointment of new trustees and vesting order**

- (a) an application for the appointment of a new trustee with or without a vesting or other consequential order;

##### **vesting order on sale, etc**

- (b) an application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by a Judge.

##### **payment out of Court**

- (c) an application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;
- (d) an application relating to a fund paid into Court in any case coming within the provisions of rule 8 of this Order.

#### **Interpretation Law in force in Bayelsa State**

105. -(1) The provisions of the Interpretation Law shall apply to the interpretation of this Order.

- (2) In this Order, unless the context otherwise requires:

"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction \ for debts, encumbrances, funeral expenses or estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a Legal Practitioner;

"personal application" means an application by a personal applicant;

"Registrar" means the Probate Registrar,

"Registry" or "Probate Registry" means the Probate Registry of the Court;

"Will" includes a codicil and any testamentary document or copy or reconstruction of it.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

#### HIGH COURT RULES, 2010

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