

**KANO STATE HIGH COURT (CIVIL PROCEDURE) EDICT  
1988**

ARRANGEMENT OF ORDERS

1. Form and commencement of Action
2. Effect of Non-compliance
3. Particulars of Claim
4. Causes of Action
5. Writ of Summons
6. Originating Summons
7. Petition—General Provisions
8. Interlocutory applications
9. Affidavits
10. Place of instituting and trial of Suits
11. Parties
12. Service of Process
13. Appearance
14. Default of Appearance
15. Arrest of Absconding Defendant
16. Interim Attachment of property
17. Detention of Ships and Reparation for needless Arrest, etc
18. Accountants and Inquiries
19. Reference to Arbitrator
20. Reference to referees
21. Receivers

22. Computation of time
23. undefended List
24. Proceedings in lieu of Demurrer
25. Pleadings
26. Amendment
27. Default of Pleadings
28. Interpleader
29. Withdrawal and Discontinuance
30. Admissions
31. Payment into and out of Court
32. Discovery and Inspection of Documents
33. Interlocutory Injunctions and Interim preservation of Property
34. Transfers and Consolidation
35. Settlement and Trial of Issues
36. Applications and Proceedings in Chambers
37. Trial Proceedings in General
38. Originating Summons Proceedings
39. Procedure Relating to Evidence
40. Judgments and Orders
41. Habeas Corpus Proceedings
42. Committal for contempt of Court
43. Application for Judicial Review
44. Appeals from Magistrate's Courts Etc.
45. Appeals to the High Court from Decision of Auditors
46. Stay of Execution Pending Appeal to the Federal Court Of Appeal
47. Miscellaneous Provisions

- 48. Sittings of the Court and Vocation
- 49. Probate and Administration
- 50. Probate (Non-Contentious) Procedure
- 51. Proceedings under the Legitimacy Law
- 52. Proceedings in Forma Pauperis
- 53. Costs
- 54. Fees and Allowances

## SCHEDULE

### Section 2(1)

## CONTENTS

### ORDER 1

#### FORM OF COMMENCEMENT OF ACTION

- 1. Mode of beginning Civil Proceedings
  - 2. Proceedings which must be begun by writ
  - 3. Proceedings which may be begun by originating summons
- Proceedings to be begun by motion or petition

### ORDER 2

#### EFFECT OF NON-COMPLIANCE

- 1. Effect of non-compliance
- 2. Application to set aside for irregularity

### ORDER 3

#### PARTICULARS OF CLAIM

- 1. Further particulars

2. Effect of particulars
3. Papers annexed in what cases
- Inspection of papers annexed
4. Amendment of particulars
5. Amendment at trial

#### ORDER 4

##### CAUSES OF ACTION

1. All causes of action may be joined
2. Counter-claim against plaintiff
3. Court may order separate trials etc.

#### ORDER 5

##### WRIT OF SUMMONS

1. Writ of summons to be issued by the Registrar
2. Contents of writ of summons
3. Alteration of writ
4. Several causes of action in one suit
5. Consolidation of causes or matters
6. Leave to issue out of jurisdiction
7. Printing
8. Forms of writ

##### Provisions for framing additional form

9. Sealing of writ
10. Endorsement of claim
11. Endorsement as to capacity

12. Endorsement as to legal practitioner and address
13. Concurrent writ
14. Writ for service out of jurisdiction
15. "Issue" when affected
16. Duration and renewal

## ORDER 6

### ORIGINATING SUMMONS

1. Application
2. Forms for originating summonses
3. Content of summons
4. Endorsement as to capacity
5. Endorsement as to legal practitioner and address
6. Concurrent originating summons
7. Summons for service out of jurisdiction
8. "Issue" when affected
9. Duration and renewal
10. Ex-parte originating summonses

## ORDER 7

### PETITION: GENERAL PROVISIONS

1. Application
2. Contents of petition
3. Presentation of petition
4. Fixing time for hearing petition
5. Certain applications not to be made by petition

## ORDER 8

### INTERLOCUTORY APPLICATIONS

#### 1— Motions Generally

1. Time to apply
2. Application by motion

#### Motion list

3. Affidavits
4. Affidavit to be served with motion
5. Hearing of motions
6. Adjournment
7. Motion to be on notice except in emergency

#### 2— Ex-parte Motions

8. Affidavit in support of ex-parte motion
9. Arguments on motion
10. Orders on ex-parte motions
11. Court may vary or discharge order

#### 3—Orders to show cause

12. Return day to be specified
13. Counter-evidence
14. Further service in certain cases
15. Appearance or proof of service
16. General Powers as to orders

#### 4—Notice of Motion

17. Notice of motion
18. Service of notice

19. Service on solicitor
20. Copy of affidavit to be served with notice
21. Order for service
22. Service with writ of summons
- 5—Evidence in Interlocutory Proceedings
23. Oral evidence
24. Evidence in addition to or in lieu of affidavits
25. Notice to parties and interested persons
26. Evidence, how taken
27. Affidavit not filed with motion paper
28. Registrar to have powers of a judge
29. Only registrars legally qualified to hear applications
30. Where no legally qualified registrar, judge to hear applications
31. Persons dis-satisfied with ruling of Registrar may apply to the Court or Judge in Chambers

## ORDER 9

### AFFIDAVITS

1. Evidence on motion
2. Title of affidavits
3. Use of defective affidavits
4. Special time for filling affidavits
5. Affidavit in support of ex-parte applications
6. Notice of intention to use affidavit in Chambers
7. Use in Chambers of affidavits used in Court
8. Alterations in accounts to be initialed

9. Exhibits
10. Certificate on exhibits
11. Application of Evidence Act
12. Affidavit taken in common-wealth country admissible without proof of seal, etc.

## ORDER 10

### PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. Suits relating to land and personal property distrained or seized
2. Suits for penalties
3. Suits upon contract
4. Other suits
5. Suits commenced in wrong Division
6. Transfer of proceedings

## ORDER 11

### PARTIES

1. Persons claiming jointly, severally or on the alternatively may be plaintiffs
2. Action in name of wrong plaintiff
3. All persons may be joined as defendants
4. Counter-claim: mis-joinder
5. Non-Joinder

### Mis-joinder of parties

6. Joint and several demand
7. Suit on behalf of others
8. Where joint interest, parties may be authorized to sue or defend for others
9. Partners



10. Infants as parties
11. Lunatics etc.
12. Appearance by infant, Form 14
13. Next friend
14. Trustees, executors, etc. may be sued as representing the estate
15. Where defendant added
16. Application to add or strike out party
17. Third party notice

How leave obtained

18. Form and issue of notice. Forms 23 and 24
19. Effect of notice
20. Appearance
21. Default by third party
22. Procedure after default
23. Third party directions
24. Leave to defend
25. At trial or after

Where no trial

26. Person trading as a firm
27. Probate intervention
28. Recovery of land
29. Landlord appearing
30. Recovery of land, person not named defendant: fees
31. Plaintiff to assign place for service
32. Court may require security in respect of counter-claim
33. Act may be done by legal practitioner or agent

## B—Alteration of Parties

34. Where change of interest court may make order enabling suit to proceed
35. When suit does not abate
36. When cause of action survives
37. When cause of action accrues to survivors
38. Death of sole or surviving plaintiff
39. Dispute as to legal representative
40. Death of one of several defendants or of a sole or surviving defendant
41. Bankruptcy of plaintiff
42. Legal practitioner of plaintiff to give notice of abatement
43. Abated cause etc., to be struck out

## ORDER 12

### SERVICE OF PROCESS

#### A—Service within Jurisdiction

1. By whom service is to be effected
2. Service of process: how effected
3. When process need not be served
4. Special bailiff
5. Substituted service
6. Service on employee of Government
7. Service on partners
8. Service on corporation or company
9. Service on board ship
10. Service on prisoners and lunatics
11. Service on infants

12. Service on local agent of principal who is out of jurisdiction

B—Service out of Jurisdiction

13. Service of writ out of jurisdiction

14. Interpretation

15. Application to be supported by affidavit

16. Order to fix time for appearance

17. Notice of writ

Service of notice

18. Service of originating summons, etc.

19. Service abroad by letter of request

20. Service out of the jurisdiction under the Civil Aviation Act

21. Service of documents abroad

22. Saving for other modes of service

23. Airmail

24. Service for foreign tribunals

25. Substituted service

26. Order thereon

C—General Provisions

27. Where violence threatened

28. Affidavit of service

29. Expenses of service

30. Service on Sunday or public holiday

31. Recording of Service

ORDER 13

APPEARANCE

1. Mode of entry of appearance
2. Defendant's address for service
3. Fictitious address
4. Defendants appearing by same legal practitioner
5. Time for appearance
6. Recovery of Land. Limited defence. Form 13
7. Summons to set aside writ, etc.
8. Application

#### ORDER 14

##### DEFAULT OF APPEARANCE

1. Claim for liquidated demand
2. Liquidated demand: several defendants
3. Recovery of Land, etc.
4. Judgments for costs where satisfaction etc.
5. Default of appearance in action not specially provided for
6. Setting aside judgment
7. Default of appearance to originating summons
8. Default of appearance by infant or person of unsound mind
9. Leave in actions by money-lender
10. Application

#### ORDER 15

##### ARREST OF ABSCONDING DEFENDANT

1. Defendant leaving jurisdiction or removing property
2. Warrant to arrest

3. Bail for appearance or satisfaction
  4. Deposit in lieu of bail
  5. Defendant may be committed to custody
- In what Division proceedings may be taken
6. Cost of subsistence of persons arrested

## ORDER 16

### INTERIM ATTACHMENT OF PROPERTY

1. In what cases
2. Application for attachment
3. Form of order
4. Where defendant fails to show cause or give security
5. Rights of third parties not to be affected
6. Removal of attachment
7. In what courts proceedings may be taken

## ORDER 17

### DETENTION OF SHIPS AND REPARATION FOR NEEDLESS ARRESTS, etc.

1. In what cases
2. Release of ships detained
3. Court may require security or impose other terms on making orders
4. Cases in which compensation may be awarded
5. No action for damages where compensation awarded

## ORDER 18

### ACCOUNTANTS AND INQUIRIES

1. Summary order for account
2. Court may direct taking of accounts, etc.
3. Directions as to manner of taking account
4. Account to be made, verified, etc.
5. Erroneous account
7. Delay in prosecution of accounts, etc.
8. Distribution of fund before all persons entitled are ascertained
6. Allowances

## ORDER 19

### REFERENCE TO ARBITRATOR

1. Nomination of arbitrators and appointment
2. Court may appoint arbitrator
3. Form of Order of reference
4. Umpire where necessary
5. Attendance of witnesses
6. Extension of time for making award
7. Power of court in case of death incapacity or refusal to act
8. Finding
9. Special case for opinion of the court
10. Court may modify or correct award
11. Power as to costs
- 12 Power of Court to remit award for reconsideration
13. Setting aside award
14. Filing award effect of

## ORDER 20

### REFERENCE TO REFEREES

1. Instruction to referee
2. Interim inquiries or accounts
3. General Powers of the referee
4. Evidence
5. Referee's authority in the inquiry
6. Limitation in certain particulars
7. Reports made in pursuance of reference

## ORDER 21

### RECEIVERS

1. Application for receiver and injunction
2. Giving of security by receiver
3. Remuneration of a receiver
4. Receiver's account
5. Payment of balance, etc. by receiver
6. Default by receiver

## ORDER 22

### COMPUTATION OF TIME

1. Computation of time
2. No enlargement of time by consent of parties
3. Court may extend time
4. Notice of intention to proceed after a year's delay Time for applications to set aside awards

## ORDER 23

### THE UNDEFENDED LIST

1. The undefended List: Affidavit
2. Copy of Affidavit to be served
3. Notice of intention to defend
4. Judgment in undefended suit
5. Oral evidence

## ORDER 24

### PROCEEDINGS IN LIEU OF DEMURRER

1. Demurrer abolished
2. Points of Law may be raised by pleadings
3. Dismissal of action
4. Striking out pleading where no reasonable cause of action disclosed
5. Declaratory judgment

## ORDER 25

### PLEADINGS

1. Service of statement of claim
2. Service of defence
3. Service of reply and defence to counter-claim
4. Pleadings to state material facts and not evidence  
How facts, to be stated
5. Particulars to be given where necessary
6. Matters which must be specifically pleaded



## 7. Further and better statement or particulars

Letter for particulars

Particulars before evidence

## 8. Order for particulars not a stay

## 9. Specific denial

## 10. Denial by joinder of issue

## 11. Pleading to be consistent

## 12. Grounds of claim founded on separate facts to be separately stated

The relief claimed to be stated

## 13. Allegations shall not be made generally but specifically

## 14. Denial of fact must answer point of substance

## 15. Admissions

## 16. Set-off or counter-claim to be pleaded

## 17. Evidence in denial of allegation or in support of defence not set up in pleading

## 18. Further pleadings

## 19. Costs in certain cases

## 20. Striking out pleadings

## 21. Denial of contract

## 22. Effect of documents to be stated

## 23. Malice, knowledge, or other condition of mind

## 24. Notice

## 25. Implied contract or relationship

## 26. Presumptions of law

## 27. Pleadings: probate actions

## 28. Technical objection

## 29. Application

30. Claim beyond endorsement
31. Stated or settled account
32. Defence of tender
33. Defence of set-off
34. Judgment for balance
35. Close of pleadings

## ORDER 26

### AMENDMENT

1. General power to amend
2. Amendment of endorsements and pleadings
3. Application for leave
4. Failure to amend after order
5. Amendments how made
6. Date of order of amendment to be marked
7. Clerical mistakes and accidental omissions

## ORDER 27

### DEFAULT OF PLEADINGS

1. Default of plaintiff in filing statement of claim
2. Claim for debt or liquidated demand
3. Several defendants: one default
4. Default of defence: claim for unliquidated damages
5. Default of defence: claim in detinue
6. Default of defence: claim for possession of land
7. Default of defence: mixed claims

8. Default of defence: other claims
9. Default of defence to counter-claim
10. Setting aside judgment
11. Interpretation

## ORDER 28

### INTERPLEADER

1. Entitlement to relief by way of inter-pleader
2. Claim to goods, etc., taken in execution
3. Mode of application
4. Matters to be proved
5. When application to be made by defendant
6. Stay of action
7. Order upon summons
8. Failure of claimant to appear; or neglect to obey summons
9. Costs etc.

## ORDER 29

### WITHDRAWAL AND DISCONTINUANCE

1. Withdrawal of appearance
2. Discontinuance of action without leave
3. Discontinuance of action, etc. with leave
4. Effect of discontinuance
5. Stay of subsequent action until costs paid
6. Withdrawal of summons

## ORDER 30

### ADMISSIONS

1. Admission of case of other party
2. Notice to admit
3. Judgment on admissions of facts
4. Admission and production of documents specified in list of documents

## ORDER 31

### PAYMENT INTO AND OUT OF COURT

1. Payment into court. Form 26
2. How far admission of claim
3. Acceptance of sum paid
4. Non-acceptance of sum paid
5. Payment into court with denial of liability
6. Custody of money payment into Bank
7. Payment by plaintiff
8. No payment without order
9. Payment out: small intestate estate

## ORDER 32

### DISCOVERY AND INSPECTION OF DOCUMENTS

1. Discovery by interrogatories
2. Application for leave to deliver interrogatories
3. Form of application. Form 30
4. Corporation or companies
5. Affidavit in answer: filing

6. Form of affidavit in answer. Form 31
7. Objections to answering interrogatories
8. Order to answer or answer further
9. Application for discovery of documents
10. In action on marine insurance policies
11. Affidavit of documents
12. Power to order list of documents in lieu of affidavit
13. Production of documents
14. Inspection of documents referred to in pleadings or affidavit
15. Notice to produce. Form 33
16. Time for inspection when notice given under rule 14
17. Order of inspection

Affidavit in support of application, when required

18. Verified copies

Power to order discovery of particular document or class of documents

19. Premature discovery
20. Non-compliance with order for discovery
21. Service on legal practitioner of order for discovery
22. Liability of legal practitioner
23. Using answer to interrogatories at trial
24. Discovery against sheriff
25. Order to apply to infants
26. Power to revoke order made

ORDER 33

INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

1. Application for injunction
2. Detention, preservation etc., of subject matter of action
3. Power to order samples to be taken
4. Sale of perishable property, etc.
5. Order for early trial
6. Recovery of personal property subject to lien etc.
7. Directions
8. Allowances of income of property pendente lite

## ORDER 34

### TRANSFER AND CONSOLIDATION

#### Transfers

1. Order transferring proceedings from the Magistrate to High Court or to Magistrate
2. Payment of fees for filing
3. Duties of Registrar
4. Party failing to attend
5. Construction
6. Consolidation

## ORDER 35

### SETTLEMENT AND TRIAL OF ISSUES

#### Settlement of Issues

1. At or before hearing
2. Court may give directions
3. When to be settled

4. Court may amend or frame additional issues
5. Time, etc. of trial of questions or issues
6. Dismissal of action, etc. after decision of preliminary issue
7. Provisions subject to other written laws

## ORDER 36

### APPLICATION AND PROCEEDINGS IN CHAMBERS

1. Business to be disposed of in chambers
2. Procedure on applications in chambers
3. Effect of order in chambers

## ORDER 37

### TRIAL PROCEEDINGS IN GENERAL

#### Attendance of parties at hearing

1. Attendance by proxy

#### Failure to appear by both parties

2. Default of appearance by defendant at trial
3. Default of appearance by plaintiff
4. Judgment by default may be set aside on terms
5. Adjournment of trial
6. Evidence in mitigation of damages in action for defamation
7. Judgment to be entered at or after trial
8. Times of trial to be entered at or after trial
9. Trial with assessors
10. Order of proceeding
11. Burden of proof: party to begin evidence

12. Summing up
13. Case of other party
14. Evidence in reply
15. Address thereon
16. Documentary evidence
17. List of exhibits
18. Rejected exhibits
19. Custody of exhibit after trial
20. Office copy of list of exhibits
21. Where written pleading not filed or parties are illiterate
22. Disallowance of various questions

#### ORDER 38

##### ORIGINATING SUMMONS PROCEEDINGS

1. Power to make declarations on summons
2. Construction of enactment
3. Service
4. Evidence
5. Discretion of court
6. Court may make the order prayed for
7. Applications affecting party in default of appearance
8. Counter-claim by defendant

#### ORDER 39

##### PROCEDURE RELATING TO EVIDENCE

1. Witnesses to be examined orally



2. Evidence by affidavits
3. Particular facts
4. Limitation of medical and expert evidence
5. Limitation of plans, etc. in evidence
6. Plan and expert evidence in accident actions
7. Revocation and variation
8. Extension to all proceedings
9. Office copies admissible in evidence
10. Court or judge in chambers may order depositions to be taken
11. Power to order deposition to be taken
12. Letters of request
13. Examination of witness abroad
14. Form of order for examination of witnesses abroad. Form 67
15. Order for attendance of person to produce
16. Disobedience to order for attendance
17. Expenses of persons ordered to attend
18. Examiner to have copy of writ and pleadings
19. Examination how taken
20. Depositions to be taken down in writing etc.
21. Refusal of witnesses to attend or be sworn
22. Objection by witness to question
23. Costs occasioned by refusal or objection
24. Depositions to be transmitted to Registry
25. Special report by examiner
26. Depositions not to be given in evidence without consent or by leave of judge
27. Oath

28. Attendance of witness under subpoena for examination or to produce
29. Practice as to taking evidence at any stage of action
30. Special directions as to taking evidence
31. Notice to use affidavit or depositions at trial
32. Evidence in proceedings subsequent to trial
33. Form of praecipe for subpoena. Form 86
34. Form of writ of subpoena. Forms 40, 41 or 42
35. Subpoena for attendance of witness in Chambers
36. Correction of errors in subpoena
37. Service of subpoena
38. Duration of Subpoena
39. Facilities for proving deeds, etc.
40. Obtaining evidence for foreign tribunals
41. Banker's book: Court may order inspection
42. Marking of rejected document
43. Powers of court to order Prisoner be brought as witness

## ORDER 40

### JUDGEMENTS AND ORDERS

1. Delivery of judgments in open Court
2. Notice when judgment reserved
3. When parties deemed to have had notice
4. Minute of judgment: its effect
5. Where set-off allowed
6. Decree to be obeyed without demand
7. Court may direct time for payment or performance and interest

8. Payment by installment
9. Date of order, when drawn
10. What orders need to be drawn up
11. Filing of orders

#### ORDER 41

##### HABEAS CORPUS PROCEEDINGS

1. Habeas corpus ad subjiciendum
2. Application for leave
3. Producing person detained in court
4. Service of order
5. Return to the order for release
6. Procedure at the hearing
7. Order to be clear
8. Bringing up prisoner to give evidence etc.

#### ORDER 42

##### COMMITTAL FOR CONTEMPT OF COURT

1. Committal for contempt of court
2. Application to court
3. Saving for power to commit without application
4. Provisions as to hearing
5. Contempt in face of Court saving for
6. Power to suspend execution of committal order
7. Discharge of person committed
8. Saving for other power

## 9. Return

### ORDER 43

#### APPLICATION FOR JUDICIAL REVIEW

1. Cases appropriate for application for judicial review
2. Joinder of claims for relief
3. Grant of leave to apply for judicial review
4. Delay in applying for relief
5. Mode of applying for judicial review
6. Statements and affidavits
7. Claims for damages
8. Application for discovery, interrogatories, cross-examination, etc.
9. Hearing of application for judicial review
10. Saving for person acting in obedience to mandamus
11. Consolidation of applications

### ORDER 44

#### APPEALS FROM MAGISTRATE'S COURT, ETC.

1. Notice of appeal
2. Contents, etc., of notice of appeal
3. Copies of proceedings
4. Appeal to Judge of high court
5. Respondent to be supplied with copy of proceedings
6. Proceedings time
7. Where time expires
8. Constitution of court hearing appeals

9. Time and place for hearing
10. Where appellant fails to appear
11. Where appellant appears
12. Appeal limited to grounds given in notice
13. Request to confirm judgment on other grounds
14. Counter appeal
15. Objections to form of grounds for appeal
16. Defects in proceedings under appeal
17. Defects in notice of appeal or recognizance
18. Additional evidence
19. Mode of taking evidence
20. Fees First Schedule
21. Allowances to witnesses. Third Schedule
22. Stay of execution
23. Costs
24. Security for costs
25. Orders of high court to be certified to Magistrate's court
26. Enforcing of judgment
27. Enforcement of Orders
28. High Court may enlarge time
29. Interpretation

## ORDER 45

### APPEALS TO THE HIGH COURT FROM DECISION OF AUDITORS

1. Application
2. Method of appeals

3. Evidence
4. Service
5. Contents of notice, date of hearing
6. Reason for appeal to be filed
7. Copy of affidavits to be served on the parties
8. Service on auditor other than the auditor who gave the decision

#### ORDER 46

##### STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Stay of execution pending appeal
2. Court may grant or refuse order for
3. Formal order to be drawn up

#### ORDER 47

##### MISCELLANEOUS PROVISIONS

1. What orders to be made?
2. Recovery of penalties and costs
3. Notices
4. Filing
5. Forms
6. Provisions for additional forms
7. How process addressed
8. Sealing of writs
9. Fees: Fourth Schedule

#### ORDER 48

## SITTINGS OF THE COURT AND VOCATION

1. Days of sittings
2. Public or private sittings of the Court
3. Office hours
4. Days of sittings
5. Long vocation
6. Vacation Court
7. Vocation not reckoned in time for pleading

## ORDER 49

### PROBATE AND ADMINISTRATION

#### Grant of Probate or Administration in general

1. Petition to be made to Probate Registrar
  2. Preservation of property
  3. Unauthorized persons inter-meddling with property
  4. Production of testamentary papers
  5. Court may order production
  6. Examination respecting papers
  7. Notice to executor to come in and prove
  8. Liability of executor neglecting to apply for probate
  9. Identity
  10. Court may refuse grant until all persons interested are given due notice
  11. Oath of executor. Form 161
- Oath for administrator (with will annexed) Form 162
- Oath of administrator (without will) Form 163
- Value of property. Form 164

12. Answers required before grant
13. Notice to prohibit grant
14. Effect of notice
15. Form of Suits
16. Testator may deposit will
17. Custody of wills of which probate granted
18. Will not given out without order of Court
19. Examination of will as to its execution
20. Proof of execution where attestation clause is defective
21. Where will not executed according to law
22. Evidence on failure of attesting witnesses
23. Will of blind or illiterate testator
24. Interlineations, erasures, obliterations
25. Documents referred to in a will
- Or annexed or attached
26. Executor dying without proving or not appearing
27. Marking of will or copy sworn to Codicils
28. Viva voce examination of persons making affidavits
29. Form of administration not with will annexed
30. Administration bond
31. Assignment of bond
32. Administration summons
33. Order for administration
34. Orders relating to property
35. Administration may be granted to officer
36. Officer to act under direction of Court



37. Court may appoint person to be administrator
38. Remuneration of Administrator
39. Securing and collection of estate
40. Application by consular officer or person authorized by him to administer estate
41. Accounts to be filed
42. Duties and powers to be performed and exercised by Probate Registrar
43. Court may refuse application
44. Grant to be signed by Probate Registrar

## ORDER 50

### PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Production of testamentary papers
2. Court may order production
3. Examination respecting papers
4. Notice to executor to come in and prove
5. Liability of executor to come in and prove
6. Petition to be made to Probate Registrar
7. Application for grants through legal practitioners
8. Personal applications
9. Duty of Registrar on receiving application for grant
10. Oath in support of grant
11. Grant in additional name
12. Marking of wills
13. Engrossment for purposes of record
14. Evidence as to due execution of will
15. Execution of will of blind or illiterate testator

16. Evidence as to terms conditions and date of execution of will
17. Attempted revocation of will
18. Affidavit as to due execution terms, etc., of will
19. Wills of persons on military service and seamen
20. Evidence of foreign law
21. Order of priority for grant where deceased left a will
22. Grants to attesting witnesses, etc.
23. Value of property
24. Answers required before grant
25. Notice to prohibit grant
26. Effect of notice

#### Citations

27. Form of suits
28. Testator may deposit will
29. Custody of wills of which probate granted
30. Will not be given without order of Court
31. Examination of will as to its execution
32. Proof of execution where attestation clause is defective
33. Where will not executed according to Law
34. Evidence on failure attesting witnesses
35. Will of blind or illiterate testator
36. Interlineations, erasures, obliterations
37. Documents referred to in a will
38. Executor without proving or not appearing
39. Marking of will or copy sworn to Codicils

40. Viva voce examination of person making affidavits
41. Right of assignee to a grant
42. Joinder of administrator
43. Additional personal representatives
44. Grants where more persons entitled in same degree
45. Exceptions to rules as to priority
46. Grants to person having special successions
47. Grants where deceased died domiciled outside the state
48. Grants to attorneys
49. Grants on behalf of infants
50. Grants where infant co-executor
51. Grants in case of mental or physical incapacity
52. Renunciation of probate and administration
53. Notice to State of intended application for grant
54. Guarantee
55. Resealing
56. Amendment and revocation of grant
57. Caveats
58. Citations
59. Citation to accept or refuse to take grant
60. Citation to propound a will
61. Address for service
62. Application for order to bring in a will or to attend for examination
63. Limited grants
64. Grants and Colligenda bona
65. Application for leave to swear to death

66. Grants in respect of codicils and copies of wills
67. Grants Durante absentia
68. Notice of election by surviving spouse to redeem life interest
69. Issue of copies of original wills and other documents
70. Taxation of costs
71. Power to require application to be made by summons or motion
72. Exercise of powers of Judge
73. Appeals from Registrars
74. Service of notice of motion and summons
75. Notices etc.
76. Affidavits
77. Time
78. Application to pending proceedings
79. Contentious probate: Form of suit
80. Interpretation

## ORDER 51

### PROCEEDINGS UNDER THE LEGITIMACY LAW

1. Definition
2. Practice and rules
3. Matters to be stated
4. Petitioner resident outside the state
5. Security for costs by petitioner resident outside the State
6. Persons to be respondents
7. Affidavit of verification
8. Copies of petition to be filed

9. Copies of papers to be sent to Attorney-Generals
10. Personal service on other respondents
11. Filing of answers
12. Evidence
13. Costs
14. Copy of order to be supplied

## ORDER 52

### PROCEEDINGS IN FORMA PAUPERIS

1. Duration of provisions
2. Who may sue or depend in forma pauperis
3. Conditions to be fulfilled
4. Fees and costs
5. Assignment of legal practitioner
6. Procedure to be followed
7. Revocation of order; discontinuance, etc.
8. Payment to legal practitioner
9. Duty of legal practitioner
10. Appeals

## HIGH COURT (CIVIL PROCEDURE) EDICT 1988

THE MILITARY GOVERNOR OF KANO STATE OF NIGERIA hereby makes the following Edict:—

1. This Edict may be cited as the High Court (Civil Procedure) and Edict 1988, and shall come into operation on the 31st day of October, 1988.
2. (1) The provisions contained in the Rules set out in the Schedule to this Edict and hereinafter called "the Rules" shall be the Rules of Civil Procedure to be followed in the High Court of Kano State.
- (2) The Rules may be cited as the Kano State High Court (Civil Procedure) Rules.

3. Where a matter arises in respect of which no provisions or no adequate provisions are made in the Rules, the Court shall adopt such procedure as will in its view do substantial justice between the parties concerned.
4. (1) Any reference in this Edict to anything done under this Construction Edict includes a reference to the thing being done before the commencement of the Edict under any corresponding law or rule of court ceasing to have effect on the commencement of this Edict.
- (2) Except where the context otherwise requires, any reference in this Edict to any enactment shall be construed as, a reference to that enactment as amended, extended or modified by or under any other enactment.
5. The Forms in the Appendix shall be used where applicable Forms, with such variations as the circumstances of the particular case require.
6. In the Schedule to this Edict unless the context otherwise requires:—  
"The Court" means the High Court of Kano State.
7. The following enactments are hereby repealed:—
  - (a) the High Court (Civil Procedure) Rules 1976; and
  - (b) the High Court (Civil Procedure) Rules 1983.

#### SCHEDULE

#### ORDERS

#### ORDER 1 - FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of any Act, Civil Proceedings maybe begun by writ, originating summons, originating motion or petition as hereinafter provided.
2. Subject to any provision of an Act or of these rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings shall be begun by writ, that is to say, proceedings—
  - (a) in which a claim is made by a plaintiff for any relief or remedy for any tort or other civil wrong;
  - (b) in which a claim made by the plaintiff is based on an allegation of fraud;
  - (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or include damages in respect of death of any person or in respect of personal injuries to any person or in respect of damage to any property;

- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent, trade mark, copy-right, intellectual or any other proprietary interest of whatever kind;
- (e) in which a claim for a declaration is made by an interested person;

Provided that any proceedings except those that are expressly required to be begun otherwise than by writ and which do not fall under any of the categories listed (a) to (e) above, may also be begun by writ.

- (2) Proceedings may be begun by originating summons where—
  - (a) the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or
  - (b) there is unlikely to be any substantial dispute of fact.
- (3) Proceedings may be begun by originating motion or petition whereby these rules or under any written law the proceedings in question are required or authorized to be so begun, but not otherwise.

## ORDER 2 - EFFECT OF NON-COMPLIANCE

- 1. (1) Where in beginning or purporting to begin any proceedings or at any state in the course of 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, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.
- (2) The court may on the ground that there has been such a failure as mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these rules to allow such (if any) to be made and make such order (if any) dealing with the proceedings generally as it thinks fit.
- 2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or Order therein shall not be allowed unless it is made within a reasonable time.

- (2) Any application under the foregoing paragraph may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons or notice of motion.

#### ORDER 3 - PARTICULARS OF CLAIM

1. The Court may, on the application of the defendant, or on its own motion, order further or better particulars to be supplied by the plaintiff.
2. Subject to any amendment granted by the Court, the plaintiff shall not at the hearing, obtain a judgment for any sum exceeding that stated in the particulars, except for subsequent interest and the costs of suit notwithstanding that the sum claimed in the writ for debt or damages exceeds the sum stated in the particulars.
3. (1) Where a party seeks (in addition to or without any order for the payment of money) to obtain as against any person any general or special declaration of his rights under any contract or instrument, or to set aside any contract or to have any bond, bill, note, or instrument in writing delivered up to be cancelled or to restrain any defendant by injunction, or to have an account taken between himself and any other party, and in such other cases as the nature of the circumstances makes it necessary or expedient, the plaintiff or defendant may, in the writ of summons or in any pleading, refer to and briefly describe any documents on the contents of which he intends to rely, and annex copies of such documents to the writ or pleading, or may state any reason for not annexing copies which he may have to allege.
  - (2) Such party shall allow the opposite party to inspect any such documents as are in his possession or power.
4. Particulars of claim shall not be amended except by leave of the court, and the court may, on any application for leave to amend, grant the same on its appearing that the defendant will not be prejudiced by the amendment. Otherwise the Court may refuse leave to grant the same. Leave to amend shall be granted, where appropriate, on such terms as to notice, postponement of trial or costs as justice requires.
5. Any variance between the items contained in the particulars, and the items proved at the hearing, may be amended at the hearing, either at once or on such terms as to notice, adjournment or costs, as justice requires.

#### ORDER 4 - CAUSES OF ACTION

1. (1) Subject to rule 3, a plaintiff may in one action claim relief against the same defendant in respect of two or more causes of action-
  - (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action; or



- (b) if the plaintiff claims, or the defendant is alleged to be liable, in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of the other or others; or
  - (c) with leave of the court.
- (2) An application for leave under this rule shall be made ex-parte by motion before the writ or originating summons, as the case may be, is issued and the affidavit in support of the motion shall state the grounds of the application.
- 2. (1) Subject to rule 2 (2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising), may, instead of bringing a separate action, make a counter-claim in respect of that matter; and where he does so he shall add the counter-claim to his defence.
- (2) Rule 1 shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made a defendant.
- (3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action, or that the action is stayed, discontinued or dismissed.
- 3. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter-claim or if two or more plaintiffs or defendants are parties to the same action and it appears to the Court that the joinder of such causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.
- (2) If it appears on the application of any party against whom a counter-claim is made that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient.

#### ORDER 5 - WRIT OF SUMMONS

- 1. A writ of summonses shall be issued by the Registrar or other officer of the Court empowered to issue summons, on application. The application shall ordinarily be made in writing by the plaintiff's Solicitor by completing Form 1 in the Appendix to these rules; but the Registrar or other officer as aforesaid, where the applicant for a writ of summons is illiterate, or has no solicitor, may dispense with a written application and instead himself record full

particulars of an oral application made and on that record a writ of summons may be prepared, signed and issued.

2. The writ of summons shall contain the name and place or abode of the plaintiff and of the defendant so far as they can be ascertained; it shall state briefly and clearly the subject matter of the claim, and the relief sought for, and the date of the writ, and place (called the return-place) of hearing.
3. Any alteration of a writ without leave of the court shall render the writ void.
4. A plaintiff may unite in the same suit several causes of action, but the court if it thinks that such causes of action, or some of them cannot be conveniently tried together, may order separate trials or may make such other order as to adjournment and costs as justice requires.
5. Causes or matters pending in the same Court may by order of the court be consolidated and the court shall give such direction as may be necessary with respect to the hearing of the causes or matters so consolidated.
6. Subject to the provisions of these rules or of any written law in force in the state, no writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of court or a judge in chambers.
7. Writ of summons shall be printed of opaque foolscap size paper of good quality.
8. (1) Every writ shall be in form 1, 2, 3, or 4 or forms to the like effect in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.
- (2) In proceedings for which forms are not provided or prescribed by these rules or by any subsequent Rules or Orders of Court, the Chief Registrar may subject to the approval of the Court, from time to time, frame the forms required.
9. The sealing of any writ or Process shall not be necessary in addition to the signature of the Registrar or other officer by whom the same shall be signed, except in cases where sealing may be expressly directed by these rules or any written law or Rule of Court or by any prescribed form.
10. Before a writ is issued, it shall be endorsed—
  - (a) with a statement of claim or if the statement of claim is not endorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

- (b) where the claim made by the plaintiff is for a debt or a liquidated demand only, with a statement of the amount claimed in respect of the debt or demand, and for costs.

11. (1) Before a writ is issued it shall be endorsed—

- (a) where the plaintiff sues in a representative capacity with a statement of the capacity in which he sues;
- (b) where a defendant is sued in a representative capacity with a statement of the capacity in which he is sued.

(2) Before a writ is issued in an action brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person so resident.

12. Where a plaintiff sues by a legal practitioner the writ shall be endorsed with the plaintiff's address and the legal practitioner's name or firm and a business address of his within the jurisdiction and also if the legal practitioner is the agent of another, the name of firm and business address of his principal.

(2) Where the plaintiff sues in person, the Writ shall be endorsed with-

- (a) the address of his place of residence and if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;
- (b) His occupation; and
- (c) an address for service.

13.(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

- (2) without prejudice to the generality of the provisions of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which or notice of which, is to be served out of the jurisdiction; and a writ which or notice of which is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.
- (3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

14. No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court:

Provided that if any claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against, whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provisions shall not apply to the writ.

15. Issue of a writ takes place upon its being signed by the Registrar or other officer of the Court duly authorized to sign the writ.
16. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.  
  
(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.  
  
(3) Before a writ, the validity of which has been extended under this provision is served, it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.  
  
(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the Order.

#### ORDER 6 - ORIGINATING SUMMONS

1. The provisions of this order shall apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any Act or other written law.
2. (1) Every originating summons shall be in Forms 54, 55, 56, 57 or 58 in the Appendix whichever is appropriate.  
(2) The party taking out an originating summons (other than an ex-parte summons) shall be described as plaintiff and the party against whom it is taken out shall be described as defendant.

3. (1) Every originating summons shall include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or as the case may be, concise statement of the relief or remedy claimed in the proceeding begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.
4. (1) Before an originating summons is issued it shall be endorsed-
  - (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
  - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.
- (2) Before an originating summons is issued in an action brought by a plaintiff who is bringing it acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person so resident.
5. (1) Where a plaintiff sues by a legal practitioner, the originating summons shall be endorsed with the plaintiff's address and the practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.
- (2) Where the plaintiff sues in person, the originating summons shall be endorsed with-
  - (a) the address of his place of residence and if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;
  - (b) his occupation; and
  - (c) an address for service.
6. An originating summons for service within the jurisdiction may be issued and marked as concurrent originating summons with one for service out of the jurisdiction; and an originating summons for service out of jurisdiction may be issued and marked as a concurrent originating summons with one for service within the jurisdiction.
7. No originating summons which, or notice of which is to be served out of jurisdiction shall be issued without leave of the Court: Provided that if any claim made by an originating summons is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of

the Court or that the wrongful act neglect or default giving rise to the claim did not take place Within its jurisdiction, the foregoing provisions shall not apply to the summons.

8. Issue of an originating summons takes place upon its being signed by the Registrar or other officer of the Court duly authorized to sign summonses.
9. (1) For the purpose of service, an originating summons (other than a concurrent one) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent originating summons is valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.
- (2) Where an originating summons has not been served on a defendant, the court may by order extend the validity of the summons from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order; if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.
- (3) Before an originating summons, the validity of which has been extended under this provision is served, it shall be marked with an official stamp showing the period for which the validity of the summon has been so extended.
- (4) Where the validity of an originating summons is extended by order made under this rule the order shall operate in relation to any other summons (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other summons until the expiration of the period specified in the order.
10. Rules 2 (1) and 3 (1) shall, so far as applicable, apply to an ex-parte originating summons; but save as aforesaid, the foregoing provisions of this Order shall not apply to ex-parte originating summonses.

#### ORDER 7 - PETITION: GENERAL PROVISIONS

1. This Order shall apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by or under any act or Law.
2. (1) Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings petition, begun thereby.
- (2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

- (3) Where a person brings a petition by a legal practitioner, the petition shall be endorsed with that person's address and the legal practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.
- (4) Where a person brings a petition in person, the petition shall be endorsed with—
  - (a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;
  - (b) his occupation; and
  - (c) an address for service
- 3. A petition shall be presented in the Court Registry.
- 4. (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.
- (2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for the hearing of the petition.
- 5. No application in any pending cause or matter may be made by petition.

## ORDER 8 - INTERLOCUTORY APPLICATIONS

### 1. MOTIONS GENERALLY

- 1. Interlocutory applications may be made at any stage of an action.
- 2. (1) Where by these Rules any application is authorized to be made to the Court or a Judge in Chambers or a Registrar, such application may be made by motion.
- (2) The Registrar shall make up, for each day on which there are any motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving, and the terms of the order sought by him.
- 3. Every motion shall be supported by affidavit setting out the grounds on which the party moving intends to rely; and no affidavit shall be used at the hearing unless it is duly filed.

4. Where service of a motion is required by these rules or directed by the Court or Judge, such motion shall be served together with all affidavits on which the party moving intends to rely.
5. A motion may be heard at any time while the Court is sitting.
6. The hearing of any motion may from time to time be adjourned upon such terms as the Court may deem fit.
7. (1) No motion shall be made without previous notice to the Motion to parties affected thereby.
- (2) Notwithstanding paragraph (1), the Court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, may make an order ex-parte upon such terms as to costs or otherwise and subject to such undertakings, if any, as the justice of the case demands.

## 2-EX-PARTE MOTIONS

8. A motion ex-parte shall be supported by affidavit which, in addition to the requirements of rule 3, shall state sufficient grounds why delay in granting the order sought would entail irreparable damages or serious mischief to the party moving.
9. Any party moving the Court ex-parte may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceeding, although present, other than the party moving, shall be entitled to be then heard.
10. Where a motion is made ex-parte, the Court may make, or refuse to make the order sought, or may grant an order to show cause why the order sought should not be made, or may direct the motion to be made on notice to the parties to be affected thereby.
11. Where an order is made on a motion ex-parte, any party affected by it, may, within seven days after service of it, or within such further times as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court, on notice to the party obtaining the order, either may refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.

## 3-Orders to show cause

12. An order to show cause shall specify a day when cause is to be shown, to be called the return-day to the Order, which shall ordinarily be not less than three days after service.



13. A person served with an order to show cause may before the return-day, produce evidence to contradict the evidence used in obtaining the order, or setting forth other facts on which he relies to induce the Court to discharge or vary such order.
14. On the return-day, if the person served does not appear and it appears to the Court that the services on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such other order as seems just.
15. If the person served appears, or the Court is satisfied that service has been duly effected, the Court may proceed with the matter
16. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

#### 4-Notice of Motion

17. Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.
18. Notice of motion may without leave of the Court, be served by any person, notwithstanding that such person is not an officer of the Court.
19. Where a party acts by a solicitor, service of notice of motion on such solicitor shall be deemed good service on such party.
20. Along with the notice of motion there shall be served a copy of any affidavit on which the part moving intends to rely at the hearing of such motion.
21. If at the hearing of any motion, the Court shall be of opinion that any person, to whom notice has not been given, ought to have or to have had such notice, the Court may either dismiss the motion, or adjourn the hearing thereof in order that such notice may be given, upon such terms as the Court may deem fit.
22. The plaintiff may, by leave of the Court, cause any notice of motion to be served upon any defendant with the writ of summons

#### 5—Evidence in Interlocutory Proceedings.

23. Oral evidence shall not be heard in support of any motion unless by leave of the court where the party moving is illiterate, the court may direct evidence to be taken by the Registrar, or other fit officer of Court, and the minutes of such evidence may be used as an affidavit,

24. In addition to or in lieu of affidavits the court may, if it thinks it expedient, examine any witness viva voce, or receive documents in evidence and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.
25. Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the court considers entitled to inspect the documents to be produced, or to examine the person summoned or to be present at his examination, as the case may be.
26. The evidence of a witness on any such examine shall be taken in like manner as nearly as may be as at the hearing of a suit.
27. Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may deem fit, allow any additional affidavit to be used after such affidavit has been duly filed and served on the opposite side.
28. A registrar hearing any application by virtue of the provisions of these rules shall have and exercise all the powers conferred by these Rules on the Court or a judge when dealing with such applications.
29. No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these rules is conferred upon a Registrar.
30. In any judicial division where there is no legally qualified Registrar, any application which by these rules is authorized to be determined by a registrar shall be made to a judge who in his absolute discretion may take such application in Court or in chambers.
31. (1) Upon the determination of any application by a Registrar, any party dissatisfied with the ruling or decision of the Registrar in the matter may within fourteen days of the decision or ruling apply to the Court or to a Judge in chambers for a redress in the following manner and circumstance
  - (a) where the aggrieved party is the mover of the application before the Registrar, he shall renew his application before the Court or a Judge.
  - (b) where the aggrieved party is the respondent to the application before the Registrar, he shall apply to the Court or a Judge for an order setting aside the order of the Registrar about which he is dissatisfied.

- (2)(a) any application under sub-paragraph (a) or (b) of paragraph (1) of this rule shall be supported by affidavit showing the grounds upon which redress is sought.
- (b) There shall be attached to the application a copy of the ruling or decision of the Registrar with which the party is dissatisfied and copies of all affidavits and documents used in support of the application before the Registrar.

#### ORDER 9 - AFFIDAVITS

1. Upon any motion, petition or summons, evidence may be given by affidavit; but the Court or a Judge in Chambers may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit and where, after such an order has been made, the person in question does not attend his affidavit shall not be used as evidence unless by special leave of the Court or a Judge in Chambers.
2. Every affidavit shall be titled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name or the first plaintiff and first defendant respectively, and indicate that there are other plaintiffs or defendants, as the case may be.
3. The Court or a Judge in Chambers may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription 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.
4. Where a special time is limited for filling affidavits, no affidavit, after that time shall be used, unless by leave of the Court or a judge in chambers.
5. Except by leave of the Court or a Judge in Chambers, no order made ex-parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made, was actually made before the order was applied for, and produced or filed at the time of making the motion.
6. The party intending to use any affidavit in support of any application made by him in chambers shall give notice to the other parties concerned in that behalf.
7. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in Chambers.
8. Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the Commissioner before whom the affidavit is sworn, and such alterations shall not be made by erasure.

9. Accounts, extracts from registers; particulars of creditors' debts and other documents referred to by affidavit shall not be annexed or referred to in the affidavit as so annexed but it shall be referred to as exhibits.
10. 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.
11. Sections 77 to 89 of the Evidence Act which set out provisions governing affidavits shall apply as if they were part of these rules.
12. 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 an 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 10 - PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. All suits relating to land, or any mortgage or charge thereon, or any other interest therein, or for any injuries thereto, and also all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division detraigned or in which the land is situated, or the distress or seizure took place.
2. All actions for recovery of penalties and forfeitures, and also all actions against public officers, shall be commenced and tried in the Judicial Division in which the cause of action arose.
3. All suits for specific performance, of upon the breach of any contract, shall 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.
4. All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on business or in which the cause of action rose. If there are more defendants than one resident in different Judicial Divisions, the suit may be commenced in any one of such Judicial Divisions; subject, however, to any order which the Court may, upon the application of any of the parties or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of such suit.
5. In case any suit shall be commenced in any other Judicial Division than that in which it ought have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall have been so commenced, unless the court shall otherwise direct, or the defendant shall plead specially

in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in such cause.

6. No proceedings which may have been taken previously to such plea in objection shall be in any way affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or, failing such proof, that it be retained and proceed in the court in which it has been commenced, and such order shall not be subject to appeal.

## ORDER 11 - PARTIES

### A. GENERAL

1. All persons may be joined in one action as plaintiffs in whom any right to relief (in respect of or arising out of the same transaction or in a series of transactions) is alleged to exist whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

Provided that if, upon the application of any defendant, it shall appear that such joinder may embarrass any of the parties or delay the trial of the action, the Court or a Judge in Chamber may order separate trials, or make such other order as may be expedient in the circumstances.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge in Chambers, may, if satisfied that it has been so commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.
3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.
4. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, such defendant may obtain the benefit thereof by establishing his set or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

5. (1) If it shall appear to the Court, at or before the hearing of a suit, that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may likely be affected by the result, have not been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case the Court shall issue a notice to such persons which shall be served in the manner provided by these rules for the service of a writ of summons or in such other manner as the court thinks fit to direct; and on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause;

Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may at any time before judgment in the suit, apply to the Court for leave to appear, and such leave may be given upon such terms (if any) as the Court shall think fit.

- (2) The Court may, at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name or names of any party or parties, whether as plaintiffs or defendants, improperly joined, be struck out.
6. Where a person has a joint and several demand against more persons than one, either as principals or sureties, it is not necessary for him to bring before the Court as parties to a suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of the persons severally or jointly and severally liable.
7. If the plaintiff sues, or any defendant counter-claims, in any representative capacity, it shall so be expressed on the writ. The Court may order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties.
8. Where more persons than one have the same interest in one suit, one or more of such persons may, with the approval of the Court, be authorized by the other persons interested to sue or to defend in such suit for the benefit of or on behalf of all parties so interested.
9. Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Court may direct.
10. Infants may sue as plaintiffs by their next friends and may defend by guardians appointed for that purpose.

11. Lunatics and persons of unsound mind may respectively sue as plaintiffs by their committees or next friends, and may in like manner defend any action by their committees or guardians appointed for that purpose.

12. An infant shall not enter an appearance except by his guardian ad litem.

No order for the appointment of such guardian shall be necessary if the legal practitioner applying to enter such appearance shall make and file an affidavit in Form 14 in the Appendix with such variations as circumstances may require.

This provision shall also apply in cases where an infant is served with a petition or notice of motion, or a summons, in any matter.

13. Before the name of any person shall be used in any action, as next friend of any infant or other party, or as relator, such person shall sign a written authority for that purpose, and the authority shall be filed in the Registry.

14. 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 persons; but the Court or a Judge in Chambers may at any stage of the proceedings, order any such persons to be made parties either in addition to or in lieu of the previously existing parties. This rule shall also apply to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

15. Where Defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless otherwise ordered by the Court or a Judge in Chambers, file an amended writ and cause the new defendant to be served and the proceedings shall be continued as if the new defendant had originally been made a defendant.

16. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge in Chambers at any time before trial by motion or summons, or in a summary manner at the trial of the action.

17. (1) Where in any action a defendant claims as against any person not already a party to the action (in this section called "the notice-third party"):—

- (a) that he is entitled to contribution or indemnity; or
- (b) that he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be

determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them. The court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

- (2) The Court or a Judge in Chambers may give leave to issue and serve a third party notice on an ex parte application supported by affidavit, or, where the Court or Judge in Chambers direct a summons to the plaintiff to be issued, upon the hearing of the summons:

Provided that leave shall not be granted in cases where the action was begun and an order for pleadings made before the date of the commencement of this rule.

18 (1) The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with Form 23 or Form 24 with such variations as circumstances may require, and shall be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

- (2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time limited for delivering the defence, or, where the notice is served by a defendant to a counterclaim, the reply, and with it also shall be served a copy of the writ of summons or originating summons and of any pleadings filed in the action

19. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

20. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge in Chambers as specified in the notice (where the third party is served in Nigeria outside the jurisdiction of the High Court of the state, the period for entering appearance shall be at least thirty days):

Provided that a third party failing to appear within such time may apply to the Court or Judge in Chambers for leave to appear, and such leave may be given upon such terms, if any, as the court or Judge in Chambers shall think fit.

21. If a third party duly served with a third party notice does not enter an appearance or makes default in filing any pleading which he has been ordered to file, he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment given in the action, whether by consent or otherwise, and by any decision therein or any question specified in the action, and when contribution or indemnity or other relief or remedy is claimed against him in the notice, he shall be deemed to



admit his liability in respect of such contribution or indemnity or other relief or remedy.

22. Where a third party makes default in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers judgment by default, such defendant shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or, a Judge in Chambers, to enter Judgment against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a Judge in Chambers to enter such judgment in respect of any other relief or remedy claimed as the Court or a Judge shall direct:—

Provided that it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgment against the third party upon such terms as may seem just.

23. (1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended applications has been served upon the plaintiff, the third party and on other defendant, apply to the Court or a Judge in Chambers for the directions and the Court or Judge in Chambers may :—
- (a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgment as the nature of the case may require to be entered against the third party in favor of the defendant giving the notice; or
  - (b) if satisfied that there is a question or issue properly to be tried as between the plaintiffs and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed in notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order such question or issue to be tried in such manner as the court or judge in Chambers may direct; or
  - (c) dismiss the application.
- (2) Any direction given pursuant to this rule may be -given either before or after any judgment has been entered in favour of the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.
- (3) The third party proceedings may at any time be set aside by the Court or Judge in Chambers.

24. The Court or a Judge in Chambers upon the hearing of the application for directions may, if it shall appear describable to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon such terms as maybe just; or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken , pleadings or documents to be filed, or amendments to be made, and give such directions as to the court or Judge in chambers shall appear proper of having the question and the rights and the liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgement in the action.
- 25 (1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgement as the nature of the case may require for or against the defendant giving the notice or against the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant.
26. Any person carrying on business within the jurisdiction in a name 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 provisions relating to proceedings against firms shall apply.
27. In probate actions, any person not named in the writ may intervene and appear in the action on the filing an affidavit showing how he is interested in the state of the deceased.
28. Any person not named as a defendant in a writ of summons for the recovery of land may be leave of the court or a Judge in Chambers appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.
29. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.
30. Where a person not named as defendant in any writ of summon for the recovery of land has obtained leave of the Court or a Judge in Chambers to appear and defend, he shall enter an appearance, according to the foregoing rules of this Order, and shall forthwith pay the proper fees for notice of such appearance to be given by the Registrar to the plaintiff's legal practitioner, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as party defendant to the action.
31. Where a plaintiff, on whose behalf or by whom a suit is instituted or carried on, either alone or jointly with another person, is out of the jurisdiction, or is

only temporarily therein, he shall assign a fit place within the jurisdiction where notices or other papers issuing from the Court may be served on him.

32. If it shall be made to appear on oath or affidavit to the satisfaction of the Court that the defendant has a bona fide counter-claim against such plaintiff which can be conveniently tried by the Court, it shall be lawful for the Court in its discretion to stay proceedings in the suit instituted by such plaintiff until he shall have provided such security to comply with the orders and judgement of the court with respect to such counter-claim as the Court shall think fit.
33. Where by these rules any act may be done by any party in action, such act may be done either by the party in person, or by his legal practitioner, or by his agent(unless an agent is expressly debarred under these rules or any written law in force in the state).

#### B. Alteration of Parties

34. (1) Where after the institution of a suit any change or transmission of interest or liability occurs in relation to any party to the suit; or any party to the suit dies or becomes incapable of carrying on the suit, or the in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court any order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.
- (2) Any persons served with such an order may, within such time as the Court in the order directs, apply to the Court to discharge or vary the order.
35. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.
36. If there be two or more plaintiffs or defendants, and one of them dies, and if the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving, defendant or defendants, alone, the suit shall proceed at the instance of the surviving, plaintiff or plaintiffs, and. against the surviving, defendant or defendants.
37. If there be two or more plaintiffs and one of them dies and if the cause of action shall not survive to the surviving plaintiff or plaintiffs alone, but shall survive to them and legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative of the deceased plaintiff. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased plaintiff the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and the legal representative of the deceased plaintiff shall, after notice to appear, be interested in, and shall be bound by the judgement

given in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs, unless the Court shall see cause to direct otherwise.

38. In case the death of a sole plaintiff, or sole surviving plaintiff, the Court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff in the suit, and the suit shall thereupon proceed; If no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent for the Court to make an order that the suit shall abate, and to award to the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate, of the, deceased sole plaintiff or surviving plaintiff; or the Court may, if it thinks proper, on the application of the defendant and upon such terms as to costs as may seem just, make such order for bringing in the legal representative of the deceased: sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.
39. If any dispute arises as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting that suit.
40. If there be two or more defendants and when one of them dies the cause of action survives but does not survive against the surviving defendant or defendants alone, and also in the case of the death of a sole defendant, or sole surviving defendant, where the action survives, the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom the plaintiff alleges to be the legal representative of such defendant and whom he desires to be made the defendant in his stead; and the Court shall thereupon enter the name of such representative in the suit in the place of such defendant, and shall issue an order to him to appear on a day to be therein mentioned to defend the suit and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit.
41. The bankruptcy of the plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the creditors, shall not be a valid objection to the continuance of such suit, unless the assignee or trustee shall decline to continue the suit, or shall neglect or refuse to give security for the costs thereof, within such reasonable time as the Court may order; if the assignee or trustee neglects or refuses to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days

after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.

42. Where any cause or matter becomes abated or in the case of any such change of interest as is by these rules provided for the legal practitioner for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the registrar, who shall cause an entry thereof to be made in the cause opposite to the name of such cause or matter.
43. Where any cause or matter shall have been standing for one year in the Cause Book, marked as "abated" or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

#### ORDER 12 - SERVICE OF PROCESS (A) SERVICE WITHIN JURISDICTION

1. Service of writs of summons, notices, petitions, pleadings, orders, summonses, warrants and of all other proceedings, documents, or written communications of which service is required, shall be made by the Sheriff or a deputy Sheriff, bailiff, officer of the Court, or by a person appointed therefore either especially or generally by the Court or by a Judge in Chambers, unless another mode of service is prescribed by these rules, or the Court or a Judge in Chambers otherwise directs:

Provided that when a party is represented by a legal practitioner, service of notices, pleading, petitions, orders, summonses, warrants and of all other proceedings, documents or written communications of which personal service is not required may be made by or on such legal practitioner or his clerk under his control.

2. Save as otherwise prescribed by any of these rules, an originating process shall be served personally by delivering to the person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original thereof.
3. No service of a writ of summons or other process on the defendant shall be necessary when the defendant by his legal practitioner undertakes in writing to accept service.
4. The Court may in any civil case, for reasons which shall seem to it sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court. The expense of such special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees reason to vary this rule.

5. Where it appears to the Court (either after or without an attempt at personal service) that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either—
  - (a) by delivery of the document to some adult inmate at the usual or last known place of abode or business of the person to be served; or
  - (b) by delivery thereof to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served;
  - (c) by advertisement in the State Gazette, or in some newspaper circulating within the jurisdiction; or
  - (d) by notice put up at the principal court-house of, or some other place of public resort in, the Judicial Division where in the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode or of business, of the person to be served.
6. When a party to be served is in the service of any Ministry or non-Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service is the party to be served, and such officer, or Local Government shall cause the same to be served on the proper party accordingly.
7. Where partners are sued in the name of their firm, the writ or other document shall be served either upon any one or more of the partners, or at the principal place within the judicial division of the business of the partnership upon any person having at the time of the service the control or management of the partnership business there; and such service shall be deemed good service upon the firm.
8. When the suit is against a corporation or a company authorized to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served, subject to the enactment establishing such corporation or company or under which it is registered as the case may be, by giving the same to any director, secretary, or other principal officer, or by leaving it at the office, of the corporation or company.
9. Where the person on whom service is to be effected is living or serving on board of any ship, it shall be sufficient to deliver the writ or other document to the person on board who is at the time of such service apparently in charge of such ship.

10. Where the person on whom service is to be effected is a prisoner in a prison, or a lunatic in any asylum, it shall be sufficient service to deliver the writ or other document at the prison or asylum to the superintendent or person appearing to be the head officer in charge.
11. - Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall unless the Court or a Judge in Chambers otherwise orders, be deemed good personal service on the infant:

Provided that the Court or Judge may order that service made or to be made on an infant personally shall be deemed good service.

12. Where service is to be made upon a person residing out of, but carrying on business within, the jurisdiction in his own name or under the name of a firm through an authorised agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the writ or other document may be served by giving it to such agent, and such service shall be equivalent to personal service.

(b) Service out of Jurisdiction

13. Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever—
  - (1) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or
  - (2) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
  - (3) any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or
  - (4) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in the jurisdiction; or
  - (5) the action is one brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of a breach of a contract—
    - (a) made within the jurisdiction; or

- (b) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
  - (c) by its terms or by implication to be governed by the law in force in the jurisdiction, or is brought against the defendant in respect of a breach committed within the jurisdiction of a contract wherever made, even though such breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction; or
- (6) the action is founded on a tort or other civil wrong committed within the jurisdiction; or
  - (7) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
  - (8) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction; or
  - (9) the action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks relief of the nature or kind following that is to say: 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 (5) of this rule) any personal judgement or order for payment of any moneys due under the mortgage; or
  - (10) the action is one brought under the Civil Aviation Act or any regulations made in pursuance of such Act or any law relating to carriage by air.
- 14. "Out of Jurisdiction" in this Order means out of the Federal Republic of Nigeria.
  - 15. Every application for leave to serve such notice or writ on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a Common-Wealth citizen or not, and the grounds upon which the application is made, and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or a Judge in Chambers that the case is a proper one for service out of the jurisdiction under these rules.
  - 16. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within



which the writ is to be served or the notice given, and on whether the air mail is available to such defendant.

- 17.(1) When the defendant is neither a Commonwealth citizen nor that of any country which is a member of either the O.A.U. or ECOWAS and who is not in any such country, notice of the writ and not the writ itself, is to be served upon him.
  - (2) Where leave is given under the fore-going provision to serve notice of the writ of summons out of the jurisdiction, such notice shall be served in the manner in which writs of summons are served.
- 18.(1) Service out of the jurisdiction may be allowed by the Court or a Judge in Chambers of the following processes or of notices thereof, that is to say—
- (a) an originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons within these rules;
  - (b) any originating summons, petition, notice of motion or other originating proceedings—
    - (i) in relation to an infant or lunatic or person of unsound mind; or
    - (ii) under any law or enactment under which proceedings can be commenced otherwise than by writ of summons; or
    - (iii) under any Rule of Court whereunder proceedings can be commenced otherwise than by writ of summons,
  - (c) without prejudice to the generality of the last foregoing paragraph, any summons, order or notice in any interpleader proceedings or for the appointment of an arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction:
  - (d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or other such originating process as aforesaid.
- (2) Where the person on whom an originating summons, petition, notice of motion, or other originating proceedings or a summons, order, or notice is to be served is neither a Commonwealth citizen nor residing within the Commonwealth countries, a copy of the document concerned shall be served, together with an intimation in writing that a process in the form of copy has been issued, or otherwise launched.

- (3) The provisions of rules 15, 16 and 17 (2) of this Order shall apply mutatis mutandis to service under this rule.
19. Where leave is given to serve a writ of summons or a notice of a writ of summons in any foreign country other than a country with which a convention in that behalf has been made, the following procedure may be adopted—
- (a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the Permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for transmission to the Minister responsible for External Affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given. Such request shall be in Form 7 in the Appendix with such variations as circumstances may require;
  - (b) the party bespeaking a copy of a document for service under this section shall, at the time of bespeaking the same, file a request in Form 8 of the Appendix;
  - (c) an official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served Upon the defendant in accordance with the law of such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed as record and be equivalent to, an affidavit of service within the requirements of these rules in that behalf;
  - (d) where an official certificate or declaration, transmitted to the Court in manner provided in the last preceding paragraph certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the ex-parte application of the plaintiff, order substituted service of such document, and the document and copy of the same, and the order shall be sealed and transmitted to the Permanent Secretary to the Ministry of Justice in manner aforesaid together with a request in Form 9 of the Appendix, with such variations as circumstances may require. Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, chooses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise 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 an opportunity of claiming, opposing or otherwise intervening.

20. (1) Where, for the purpose of an action under the civil Aviation Act and the convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria, the provisions of this rule shall apply.
- (2) The notice shall specify the time for entering an appearance as limited in pursuance of rule 16.
  - (3) The notice shall be sealed with the seal of the Court for service out of the jurisdiction, and shall be transmitted to the Ministry of Justice, together with a copy thereof translated into the language of the country of the defendant, and with a request for transmission to the Minister responsible for further transmission of the same to Government of that country.
  - (4) The request shall be in Form 10 in the Appendix, with such variations as circumstances may require.
  - (5) The party bespeaking a copy of a document for service under this rule shall at the time of bespeaking the same file a praecipe in Form 9 in the Appendix.
  - (6) An official certificate from the Minister External Affairs transmitted by the Ministry of Justice or otherwise to the Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed as a record and be equivalent to, an affidavit of service within the requirements of these rules in that behalf.
  - (7) After entry of appearance by the defendant, or, if no appearance is entered, after expiry of the time limited for appearance the action may proceed to judgement in all respects as if the defendant had for the purposes of the action waived all privileges and submitted to the jurisdiction of the Court.
  - (8) Where it is desired to serve or deliver a summons, order or notice in to proceedings on the defendant out of the jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.
21. Where leave is given in a civil cause or matter or where such leave is not required, and it is desired to serve any writ of summons, originating summons, notice, or other document in any document in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in to Convention, be adopted:-
- (a) the party bespeaking such service shall file in the registry a request in Form 8 or Form 66 in the Appendix, which form may be varied as may be necessary to meet the circumstances of the particular case, in which it is used. Such request shall state the medium through which it is desired the service shall be effected, i.e., whether

- (i) directly through the diplomatic channels; or
    - (ii) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be affected, 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 the 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);
  - (b) 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 Registrar to the Permanent Secretary for External Affairs for transmission to the foreign country;
  - (c) 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 such service, and shall be filed as record and be equivalent to; an affidavit of service with the requirements of these rules in that behalf.
22. Rule 21 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the proceedings of the Court and which is not expressly excluded by the Convention made with such foreign country.
23. The Court or Judge, in giving leave to serve a document out of the jurisdiction under these rules, may in an appropriate case direct that the air mail service shall be used by the party effecting service.
24. Where in any civil cause or matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of such country the following procedure shall, subject to any special provisions contained in the Convention, be adopted—
- (a) the service shall be affected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the translation, to the party or person to be served in person by an officer of the court, unless the Court or a Judge in Chambers thinks fit otherwise to direct;

- (b) no court fees shall be charged in respect of the service. The particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect thereof;
  - (c) the Chief Judge shall transmit to the consular or other authority making the request a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b) hereof;
25. Upon the application of the Attorney - General, the Court or a Judge in Chambers may make all such order for substituted service or otherwise as may be necessary to give effect to rules 13 to 23.
26. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after such service within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

(c) General Provisions

27. Where the officer of Court or person charged with the service of any writ or document or any person is prevented by the violence or threats of such person, or any other person in concert with him, from personally serving the writ or documents, it shall be sufficient to inform the persons to be served of the nature of the writ or document as near such person as practicable.
28. In all cases where service of any writ or document shall have been effected by a bailiff or other officer of Court an affidavit of service sworn to by such bailiff or other officer shall on production, without proof of signature, be prima facie evidence of service.
29. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring such execution, and the sheriff shall not (except by order of the court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.
30. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the document to be served.
31. A book shall be kept at every Court recording service or process, in such form as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the registrar, the names of the plaintiff or complainant and the defendant, the particular Court issuing the process, the method, whether personal or otherwise of the service, and the manner in

which the person ascertained that he served the process on the right person, and where any process shall not have been duly served, then the cause of failure shall be stated and every entry in such book or an office copy of any entry shall be prima facie evidence of the several matters therein stated.

#### ORDER 13 - APPEARANCE

1. (1) A defendant shall within the time limited in the writ or other originating process enter an appearance in the manner hereinafter prescribed.

Provided that where a defendant is illiterate and is not represented by a legal practitioner and the Registrar shall fill the requisite documents as aforementioned that is to say Forms 11, 12 or 14 in the appendix whichever is applicable.

- (2) On receipt of the requisite documents, the registrar shall in all cases enter the appearance in the Cause book and stamp the copies of the memorandum of appearance with the official stamp showing the date on which he received those documents and deliver one sealed copy thereof to the plaintiff or, as the case may be, his legal practitioner.
2. (1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within the jurisdiction.
- (2) Where 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 the jurisdiction, and where any legal practitioner is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.
3. If the memorandum does not contain an address for service it shall not be accepted. If any such address is illusory or fictitious or misleading, the appearance may be set aside by the Court or a Judge in Chambers on the application of the plaintiff.
4. If two or more defendants in the same action shall appear by appearing by the same legal practitioner and at the same time, the names of all the defendants so appearing may be inserted in one memorandum.
5. A defendant may appear at any time before judgement. If he appears at any time after the time limited by the writ for appearance he shall not, unless the Court or a Judge in Chambers shall otherwise order be entitled to any further time for delivering his defence, or for any purpose, than if he had appeared according to the writ or other originating process.
6. Any person appearing to an action for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the action, described that part with reasonable certainty in his memorandum of appearance. Such appearance shall be in Form 13.

7. A defendant before entering an unconditional appearance shall be at liberty (without obtaining an order to enter, or entering, a conditional appearance) to take out a summons to set aside the service upon him of the writ or other process, or to discharge the order authorising such service.
8. The provisions of this Order shall not apply in actions commenced before the coming into operation of these rules.

#### ORDER 14 - DEFAULT OF APPEARANCE

1. Where a writ of summons is endorsed for a liquidated demand whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may have entered in his favour final judgement for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of six per cent per annum, to the date of the judgement, and costs:

Provided that this rule shall not apply to an action by a money lender or an assignee for the recovery of money lent by a money lender, or to an action for the enforcement of any agreement or security relating to any such money.

2. Where the writ of summons is endorsed for a liquidated demand, whether specially or otherwise, and there are several defendants of whom one or more appear to the writ, and another or others of, them fail to appear, the plaintiff may have final judgement entered, as in the preceding rule, against those that have not appeared, and may issue execution upon such judgement without prejudice to his right to proceed with the action against those who have appeared.
3. (1) Where the action is for the recovery of land, with or without any other related claim, and no appearance is entered within the time limited for appearance, the plaintiff shall be at liberty to have judgement entered for him.
- (2) If an appearance is entered but the defence is limited to part only, the plaintiff may have judgement entered for him for the undefended part of his claim, and the rest of the claim may be proceeded within the normal way.
4. In any case to which rules 1, 2 and 3 apply, in which the defendant fails, or all the defendants, if more than one, fail, to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary for the plaintiff to proceed with the action, he may, by leave of the Court or a Judge in Chambers to be obtained on summons in Chambers, have judgement entered for costs.

Provided that such summons shall be filed and shall be served in the manner in which service of the writ has been effected or in such other manner as the Court or a Judge in Chambers shall direct.

5. In all actions not specially provided for by this Order, if the defendant fails to enter appearance within the stipulated time, the plaintiff may apply for the case to be set down for hearing, and upon such hearing, the Court may give any judgement that the plaintiff appears to be entitled to on the facts.
6. Where judgement is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgement upon such terms as may be just.
7. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the Court or a Judge in Chambers for an appointment for the hearing of such summons and upon a certificate that no appearance has been entered, the Court or Judge in Chambers shall appoint a time for the hearing of such summons, upon such conditions (if any) as it or he shall think fit.
8. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not adjudged a lunatic, the plaintiff shall before further proceeding with action against the defendant, apply to the Court or a Judge in Chamber for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the action. But no such order shall be made unless it appears that application was, after the expiration of the time allowed for appearance, and at least six clear days before the day named in such notice for hearing the application served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian (if any) of such infant, unless the Court or Judge in Chambers at the time of hearing such application shall dispense with such last mentioned service.
9. (1) In an action brought by a money lender or an assignee for the recovery of money lent by a money lender or the enforcement of any agreement or security relating to any such money, an application for leave to enter judgement in default of appearance shall be made by notice returnable not less than four clear days after service of the notice,
  - (2) The notice shall not be issued until the time limited for entering appearance has expired, and a proper affidavit of service of the writ has been filed.
  - (3) The notice shall be in accordance with Form 60 in the Appendix with such variations as circumstances may require, and shall be Served personally.



- (4) At the hearing of the application, whether the defendant appears or not, the Court or Judge in Chambers may exercise the relevant powers of the Court under the Money-Lenders Law.
10. The provisions of this Order shall not apply in actions commenced before the coming into operation of these rules.

#### ORDER 15 - ARREST OF ABSCONDING DEFENDANT

1. If in any suit for an amount or value of one thousand naira or upwards the defendant is about to leave the jurisdiction of the Court or has disposed of or removed from the jurisdiction, his property, or any part thereof, or is about to do so, the plaintiff may, either at the institution of the suit or at any time thereafter until final judgement, make an application to the Court that security be taken for the appearance of the defendant to answer and satisfy any judgement that may be-passed against him in the suit.
2. If the Court, after making such investigation as it may consider necessary, shall be of opinion that there is probably cause for believing that the defendant is about to leave the jurisdiction of the Court, or that he has disposed of or removed from the jurisdiction his property or any part thereof, or is about to do so, and that in either case by reason thereof the execution of any decree which may be made against him is likely to be obstructed or delayed, it shall be lawful for the Court to issue a warrant to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.
3. If the defendant fails to show such cause, the Court 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 judgement that may be passed against him in the suit, or to give bail for the satisfaction of such judgement; 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.
4. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property, sufficient to answer the claim against him with costs of the suit, the Court may accept such deposit.
5. (1) In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit or, if judgement be given against the defendant, until the execution of the decree, if the Court shall so order:

Provided that the Court 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.

- (2) The application may be made to the Court in any Judicial Division in which the defendant may be and such Court may issue the warrant for detaining and bringing the defendant before the Court where the suit is pending, and may make such further order as shall seem just.
- (3) In case the warrant shall be issued by a different Court from that in which the suit is pending, such Court shall, on the request of either of the parties, transmit the application and the evidence therein to the Court in which the suit is pending, and take sufficient security for the appearance of the defendant in that Court, or send him there in custody of an officer or court, and the Court in which the suit is pending shall thereupon examine into and proceed in the application in accordance with the foregoing provisions, in such manner as shall seem just.
6. The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action in advance, and the amount so disbursed may be recovered by the plaintiff in the suit unless the Court shall otherwise order. The Court may release the person so imprisoned on failure by the plaintiff to pay the subsistence money, or in case of serious illness order his removal to hospital.

#### ORDER 16 - INTERIM ATTACHMENT OF PROPERTY

1. (a) Where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof or to remove any such property from the jurisdiction; or
- (b) where, in any suit founded on contract or for detinue or trover in which the cause of action arose within the jurisdiction—
  - (i) the defendant is absent from the jurisdiction, or there is probable cause to believe that he is concealing himself to evade service ;and
  - (ii) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other person in the State, or such person is indebted to the defendant. Then in either such case the plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final judgement to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and on his failing to give such security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.
2. The application shall contain a specification of the property required to be attached, and the estimated value thereof so far as the plaintiff can reasonably ascertain the same, and the plaintiff shall, at the time of making the application, declare that to the best of his information and belief the

defendant is about to dispose of or remove his property with such intent as aforesaid.

3. If the Court after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of any decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required the said property, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or appear and show cause why he should not furnish security. Pending the defendant's compliance with such order, the Court may by warrant direct the attachment until further order of the whole, or any portion, of the property specified in the application.
4. If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order. If the defendant shows such cause, or furnishes the required security, and the property specified in the application or any portion of it, shall have been attached, the Court shall order the attachment to be withdrawn.
5. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being preferred to the property attached before judgement, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.
6. In all cases of attachment before judgement, the Court shall at any time remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment or upon an order for a non-suit or striking out the cause or matter.
7. The application may be made to the Court in the Judicial Division where the defendant, or in case of urgency, where the property proposed to be attached, may be, and such Court may make such order as shall seem just. In case an order for the attachment of property shall be issued by a different Court from that in which the suit is pending, such Court shall, on the request of either of the parties, transmit the application and evidence therein to the Court in which the suit is so pending, retaining the property in the meantime under attachment or taking sufficient security for its value and the Court in which the suit is pending shall thereupon examine into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

ORDER 17 - DETENTION OF SHIPS AND REPARATION FOR NEEDLESS ARRESTS, ETC.

1. Where the circumstances of a case appear to the Court so to in require, it shall be lawful for the Court on the application of any plaintiff, by warrant under the seal of the Court to stop the clearance or to order the arrest and detention by the sheriff of any ship about to leave the jurisdiction (other than a ship enjoying immunity from civil process), and such clearance shall be stopped, or the ship arrested and detained accordingly.

Provided that no such warrant shall be issued at the instance of any plaintiff unless the application shall be supported by an affidavit of the facts.

2. The Court may at any time release a ship detained under this order upon such terms as it shall deem reasonable.
3. The Court upon making any order to hold to bail, or of sale, injunction or attachment, or any warrant to stop the clearance of, or to arrest any ship as aforesaid, may impose such terms and conditions as the court shall deem just, and in particular it may require the person applying for any such order to provide adequate security for his being answerable in any damages that may accrue through the order or warrant.
4. In any case in which an order as aforesaid shall have been made—
  - (a) if it shall afterwards appear to the Court that the arrest of any defendant, or any order of attachment, sale, or injunction, or any warrant to stop the clearance of, or to arrest any, ship, was applied for on insufficient grounds; or
  - (b) if the suit in which any such application was made is dismissed, or judgement is given against the plaintiff by default or otherwise, and it shall appear to the Court that there was no reasonable ground for instituting such suit; The Court may (on the application of the defendant made at any time before the expiration of six months from termination of the suit), award against the plaintiff, such amount as it may deem reasonable compensation to the defendant for any loss, injury, or expenses which he may have sustained by reason of such arrest, attachment, order of sale or injunction, as aforesaid.
5. The provisions of this order shall not take away any right of action or other right which would otherwise have existed, but no action shall be commenced or continued in respect of the same cause on which the Court has made an award of compensation under rule 4.

#### ORDER 18 - ACCOUNTANTS AND INQUIRIES

1. (1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.

- (2) An application under this rule shall be made by summons and supported by affidavit or other evidence.
  - (3). On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party to him within a time specified in the order.
2. (1) The Court may, on application made by summons at any stage, of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.
  - (2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgement or order so that, as far as may be, each distinct account and inquiry maybe designated by a number.
3. (1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regard to the manner in which the account is to be taken or vouched.
  - (2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.
4. (1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.
  - (2) The items on each side of the account shall be numbered consecutively.
  - (3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.
5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.
  6. In taking any account directed by any judgement or order, all just allowances shall be made without any direction to that effect.

7. (1) If it appears to the Court that there is delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgement or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for the costs as the circumstances require.
- (2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in questions made by an order under this rule and may make such order h thinks fit as to the payment of legal practitioners costs.
8. Where some of the persons entitled to are in a fund ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of these shares to meet the subsequent costs of ascertaining those other persons.

#### ORDER 19 - REFERENCE TO ARBITRATOR

1. In any case in which a matter is referred to one or more arbitrators under the provisions of the High Court Law, the arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.
2. If the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint arbitrators.
3. The Court shall by an order under its seal refer to the arbitrators the matters in difference in the suit which they may be required to determine, shall fix a time for the delivery of the award, and the time so fixed shall be stated in the order.
4. If the reference be two or more arbitrators, provision shall be made in the order for a difference of opinion among them, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed between the parties, or, they cannot agree, as the Court may determine.
5. When a reference to arbitrator is made by an order of Court, the same process to the parties and witnesses, whom the arbitrators or umpire may desire to have examined, shall issue as in ordinary suits; and persons not attending in compliance with such process or making any other default, or refusing to give evidence, or being guilty of any contempt of the arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

6. When the arbitrators are not able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court, may from time to time enlarge the period for delivery of the award, if it shall think proper. In any case in which an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time, or their extended time to expire without making an award or shall have delivered to the Court, or to the umpire, a notice in writing stating that they cannot agree.

Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

7. If, in any case of reference to arbitration by an order of Court the arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators, or umpire in the place of the person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms to the order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court upon the application of the party having been served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names has been inserted in the original order of reference.
8. The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to. It shall comprehend a finding on each of the several matters referred.
9. It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they shall think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.
10. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, (provided such part can be separated from the other part, and does not affect the decision on the matter referred), or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

11. The Court may also, on such application, make such order as it thinks just respecting the costs of the arbitration, if any question arises about such costs or their amount, and the award contains no sufficient provision concerning them.
12. In any of the following cases the Court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper:—
  - (a) if the award has left undetermined some of the matters referred to arbitration;
  - (b) if it has determined matters not referred to arbitration;
  - (c) if the award is so indefinite as to be incapable of execution;
  - (d) if an objection to the legality of the award is apparent upon the face of the award.
13. No award shall be liable to be set aside except on the ground of perverseness or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within fifteen days after the publication thereof.
14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has refused any such application, either party may file the award in Court and the award shall thereupon have the same force and effect for all purposes as a judgement.

#### ORDER 20 - REFERENCE TO REFEREES

1. In any case in which a matter is referred to a referee under the provisions of the High Court Law, 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. The instructions shall specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.
2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken notwithstanding that it may appear that there is some special or further relief sought for, 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.
3. The referee may, subject to the order of the Court, 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, as far as practicable, proceed with the inquiry from day to day.

4. Subject to any order to be made by the Court 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 Court in the same manner as such attendance may be enforced before the Court; and every such inquiry shall be conducted in the same manner as nearly as circumstances will admit as trials before a judge of the Court, but not so as to make the tribunal of the referee a public court of justice.
5. Subject to any order of Court, the referee shall have the same authority in the conduct of any inquiry as a Judge of the Court when presiding at any trial.
6. Nothing in these provisions contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise, but the Court may, in respect of matters before a referee, make any order of attachment or committal it may consider necessary.
7. (1) The report made by a referee in pursuance of a reference under these rules shall be made to the Court and notice thereof served on the parties to the reference.
- (2) A referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.
- (3) On the receipt of a referee's report, the Court may—
  - (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) require an explanation from the referee;
  - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or
  - (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

#### ORDER 21 - RECEIVERS

1. (1) An application for the appointment of a receiver may be made by motion on notice.

- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.
  - (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so *ex parte* on affidavit in an appropriate case.
  - (4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property pending the hearing of a summons for the appointment of a receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.
2. (1) Where a judgement is given, or order made, directing the appointment of a receiver, then, unless the judgement or order otherwise directs, a person shall not be appointed a receiver in accordance with the judgement or order until he has given security in accordance with this rule.
  - (2) Where, by virtue of paragraph (1), or any judgement or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule, he shall give security approved by the Court duly to account for what he receives as a receiver and to deal with it as the Court directs.
  - (3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed two thousand naira, by an undertaking.
  - (4) The guarantee or undertaking shall be filed in the Court Registry.
3. A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.
  4. (1) A receiver shall submit account to the Court at such intervals or on such dates as the Court may direct in order that they may account be passed.
  - (2) Unless the court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it The receiver's account and affidavit (if any) shall be left at the Registrar's office, and the plaintiff or party having the conduct of the cause or matter shall thereupon obtain an appointment for the purpose of passing such account.
  - (3) The passing of a receiver's account shall be certified by the Registrar.
5. The days on which a receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

6. (1) Where a receiver fails' to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed-may be required to attend in Chambers to show cause for the failure, and the Court, may, either in Chambers or after adjournment into court, give such directions as it thinks proper including if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charged him with interest at the rate of ten percent per annum on that sum while in his possession as a receiver.

#### ORDER 22 - COMPUTATION OF TIME

1. Where by any written law or any special order made by the Court in the course of any proceedings, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply—
  - (a) the limited time does not include the day of the date of or the happening of the event, but commence at the beginning of the day next following that day;
  - (b) the act or proceeding shall be done or taken at latest on the last day of the limited time;
  - (c) where the time limited is less than five days, no public holiday, Saturday or Sunday shall be reckoned as part of the time;
  - (d) when the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being a public holiday, Saturday or Sunday.
2. The parties may not by consent enlarge or abridge any of the times fixed by the provision of these rules for taking any step, filing any document, or giving any notice.
3. (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these provisions, or by any judgement, order or direction, to do any act in any proceedings.

- (2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.
4. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed shall give to every other party not less than 30 days notice of his intention to proceed. A summons on which no Order was made is not a proceeding for the purposes of this provision.
5. Application to set aside or remit an award may be made at any time within six weeks after such award has been made and published to the parties:

Provided that the Court or Judge in Chambers may by order extend the said time either before or after it has elapsed.

#### ORDER 23 - THE UNDEFENDED LIST

1. Whenever application is made to a court for the issue of a writ of summons in respect of a claim to recover a debt or liquidate money demand and such application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List", and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstances of the particular case.
2. There shall be delivered by the plaintiff to the Registrar upon the issue of the writ of summons as aforesaid, as many copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one such copy to each copy of the writ of summons for service, together with a copy of rules 1 to 4 inclusive of this Order.
3. (1) If the party served with this writ of summons and affidavit delivers to the Registrar a notice in writing that he intends to defend the suit together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.
- (2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings, or proceed to hearing without further pleadings.
4. Where any defendant neglects to deliver the notice of defence and affidavit prescribed by rule 3 (1) or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and judgement given thereon, without calling upon the plaintiff to summon witnesses before the Court to prove his case formally.

5. Nothing herein shall preclude the Court from hearing or requiring oral evidence, should it so think fit, at any stage of the proceedings under rule 4.

#### ORDER 24 - PROCEEDINGS IN LIEU OF DEMURRER

1. No demurrer shall be allowed.
2. Any party shall be entitled to raise by his pleading any points of law, and any points so raised shall be disposed of by the judge who tries the cause at or after the trial:

Provided that by consent of the parties, or by order of the court or a Judge on the application of either party the same may be set down for hearing and disposed of at any time before the trial.

3. If, in the opinion of the court or a judge the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action ground of defense, set-off, counter-claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just.
4. The court or judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgement to be entered accordingly, as maybe just.
5. No action or proceedings shall be open to objection of the ground that a merely declaratory judgement or order is sought thereby and the court may make binding declaration of right whether any consequential relief is or could be claimed or not.

#### ORDER 25 - PLEADINGS

1. Unless the Court gives leave to the contrary, or a statement of claim is endorsed on the writ, the plaintiff shall serve a statement of claim on the defendant, or, if there are two or more defendants, on each defendant, and shall do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 30 days after that defendant enters an appearance.

Provided that in land cases the plaintiff shall serve his statement of claim on a defendant not later than 60 days after that defendant enters an appearance, unless the Court gives leave to the contrary.

2. (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action shall, unless the Court gives: leave to the

contrary, serve a defence on the plaintiff before the expiration of 30 days after the statement of claim is served on him.

Provided that in land cases, unless the Court gives leave to the contrary, a defendant shall serve his defence on the plaintiff not later than 60 days after the statement of claim is served on him.

- (2) If a summons under order 23 rule 1 is served on a defendant paragraph (1) shall not have effect in relation to him unless by the order of court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 30 days after the making of the order or within such other period as may be specified in the order.
3. (1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant if it is needed for compliance with rule 6, and, if no reply is served rule 10 shall apply.
- (2) A plaintiff on whom a defendant serves a counter-claim shall if he intends to defend it, serve on that defendant a defence to counter-claim.
- (3) Where a plaintiff serves both a reply and a defence to counter-claim on any defendant, he shall include them in the same documents.
- (4) A reply to any defence shall be served by the plaintiff before the expiration of 30 days after the service on him of that defence, and a defence to counter-claim shall be served by the plaintiff before the expiration of 30 days after the service on him of the counter-claim to which it relates.
4. (1) Every pleading shall contain, and contain only, 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. Dates, sums and numbers shall be expressed in figures but may also be expressed in words. Pleadings shall be signed by a legal practitioner, or by the party if he sues or defends in person.
- (2) The facts shall be alleged positively, precisely and distinctly and as briefly as is consistent with a clear statement.
5. (1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings.
- (2) In an action for libel or slander, if the plaintiff alleges that the words or matter complained of were used in defamatory sense other than their

ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

6. (1) A party shall plead specifically any matter for example, performance, release, any relevant statute of limitation, fraud or any pleaded fact showing illegality which, if not specifically pleaded might take the opposite party by surprise.
  - (2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly-specified in; his pleading by the plaintiff or the defendant, as the case may be: and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or, the defendant shall be implied in his pleading.
  - (3) Without prejudice to paragraph (1), a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
7. (1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.
  - (2) Before applying for particulars by summons or notice, a party may apply for them by letter. The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation. In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Judge in Chambers.
  - (3) Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Judge in Chamber's shall be of the opinion that they are necessary or desirable to enable the defendant to plead, or Ought for any other special reason to be so delivered.
8. The party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars upon him that he had initially. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.
  9. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not adjudged a lunatic.

10. (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to paragraph (3) —
  - (a) there is at the close of the pleadings an implied joinder of issue on the pleadings last served; and
  - (b) a party may in his pleading expressly join issue on the next preceding pleading.
- (3) There can be no joinder of issue, implied or expressed, on a statement of claim or counter-claim.
- (4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other such allegation.
11. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.
12. (1) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinct. The same rule shall apply where the defendant relies upon several distinct grounds of set-off or counterclaim founded upon separate than distinct facts.
- (2) Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief; and the same rule shall apply to any counterclaim made or relief claimed by the defendant in his defence.
13. It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge or (as the case be) stating that he does not know whether any given, allegation is true or otherwise.
14. When a party denies an allegation of fact he shall not do so evasively, but shall answer the point of substance. And when a matter of fact is alleged with diverse circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a full -and substantial answer shall be given.



15. The defence shall admit such material allegations in the statement of claim as the defendant knows to be true, or desires to be taken as established without proof thereof.
16. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counterclaim, he shall, in his statement of defence, state specifically that he does so by way of setoff or counterclaim as the case may be, and the particulars of such set-off or counter-claim shall be given.
17. The defence of a defendant shall not debar him at the hearing from disproving any allegation of the plaintiff not admitted by the defence, or from giving evidence in support of a defence not expressly set up to the defence, except where the defence is such as, in the opinion of the Court, ought to have been expressly set up by the defence or is inconsistent with the statements thereof, or is, in the opinion of the Court, likely to take the plaintiff by surprise or to raise new issues not fairly arising out of the pleadings, as they stand, and such as the plaintiff ought not to be then called upon to meet,
18. The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the Teal issues between the parties, may order such further pleadings to be filed -as it may deem necessary for the purpose of bringing the parties to an issue.
19. Where the Court is of the opinion that any allegations of facts denied or not admitted by any pleading, ought to have been admitted, the Court shall make such order as may be just with respect to costs.
20. The Court may at any time, on the application of either party, strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defence to the action, as the case may be or on the ground that it is embarrassing, or scandalous, or vexatious, or an abuse of the process of the Court; and the Court may either give leave to amend such pleading, or may proceed to give judgement for the plaintiff or the defendant, as the case may be, or may make such other order, and upon such terms and conditions, as may seem just.
21. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to any statute or otherwise.
22. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as ^stated0 possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

23. (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) Notwithstanding paragraph (1), 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 plaintiff 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 statements of facts, 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 words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that, the words are true.
24. Wherever it is material to allege notice to any person of any Notice, 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 is material.
25. Whenever 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. And 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
26. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (e.g. consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).
27. (1) In probate actions it shall be stated with regard to every defence which is pleaded what is the substance of the case on which 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 the Court or a Judge in Chambers, no evidence shall be given of any other instances at the trial.

- (2) In a probate action 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 shall be of opinion that there was no reasonable ground for opposing the will.
28. No technical objection shall be raised to any pleading on the ground of any alleged want of form.
29. The provisions of the foregoing rules of this Order shall not apply in actions where a summons has been issued before the date of commencement of these rules, in such cases, the former High Court rules shall be applied as if they were still in force.
30. Whenever a statement of claim is filed, the plaintiff may there in alter, modify, or extend his claim without any amendment of the endorsement of the writ;

Provided that this rule shall not apply where the writ has been specially endorsed: Provided further that the plaintiff may not completely change the cause of action endorsed on the writ without amending the writ.

31. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in any 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 need not be alleged in the pleadings.
32. Where in any action a defence of tender before action is pleaded, the defendant shall pay into Court in accordance with rule 1 of Order 31 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.
33. Where a claim by a defendant to a sum of money (whether of Defence of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff; it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counter-claim.
34. (1) Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgement for the defendant for such balance, or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.
- (2) Paragraph (1) shall apply mutatis mutandis where the balance is in favour of the plaintiff.

35. (1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 30 days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or
  - (b) if neither a reply nor a defence to a counter-claim is served, at the expiration of 30 days after service of the defence.
- (2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

#### ORDER 26 - AMENDMENT

1. The Court or a Judge in Chambers may at any time, and on such terms as to costs or otherwise as the Court or Judge may think 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.
2. The Court or a Judge in Chambers may, at any stage of the proceedings allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all pleadings, such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
3. Application for leave to amend may be made by either party to a Judge in Chambers or to the court at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.
4. If a party who has obtained an order for leave to amend does ordered not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge.
5. Whenever any indorsement or pleading is amended, the court or the Judge in Chambers, as the case may be, may order that a copy of the document as amended shall be filed in the Registry and served on all parties to the action.
6. Whenever any indorsement or pleading is amended, the same when amended shall be marked with the date of the order, if any, under which it is so amended, and of the day on which such amendment is made, in manner following viz:—

"Amended.....day of....., pursuant to order of  
.....  
dated the .....of....."

7. Clerical mistakes in judgements or orders, or errors arising accidental therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge in Chambers on motion or summons without an appeal.

#### ORDER 27 - DEFAULT OF PLEADINGS

If the plaintiff, being bound by these rules or an order of Court or a Judge in Chambers to file a statement of claim, does not file it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge in Chambers to dismiss the action with costs, for want of prosecution; and on hearing of such application the Court or Judge may, if no statement of claim shall have been filed, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

2. (1) If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed by these rules or an order of Court or a Judge in Chambers for that purpose, file a defence, the plaintiff may, at the expiration of such time, apply for final judgement for the amount claimed, with costs.
- (2) In actions by a money-lender or an assignee for the recovery of money lent by a money-lender or the enforcement of any agreement or security relating to any such money, judgement shall not be entered in default of defence except in accordance with the provisions of Order 14 rule 9,
3. When in any action for a debt or liquidated demand there are several defendants if one of them makes default as mentioned in default rule 2(1), the plaintiff may, subject to rule 2 (2), have final judgement entered against the defendant so making default, and issue execution upon such judgement without prejudice to his right to proceed with his action against the other defendants.
4. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant makes default in pleading, the plaintiff may, after the expiration of the period fixed as aforesaid liquidated for service of defence, have judgement entered against that defendant for damages to be assessed by the Court and costs, and may proceed with the action against the other defendants, if any.
5. Where the plaintiff's claim against the defendant relates to default of the detention of goods only, then, if that defendant makes default in defence: pleading, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, have entered either—

- (a) judgement against the defendant for the delivery of the goods or their value to be assessed by the Court and costs; or
  - (b) judgement for the value of the goods to be assessed by the Court and costs; and in either case he may proceed with the action against the other defendants, if any.
6. (1) Where the plaintiff's claim against a defendant is for the possession of land only, then, if that defendant makes default in plea- claim for ding, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, and on producing a certificate by his legal practitioner or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature of mortgage action, have judgement entered for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.
- (2) Where there is more than one defendant, judgement entered under this rule shall not be enforced against any defendant unless and until judgement for the possession of the land has been entered against all the defendants.
7. Where the plaintiff makes against a defendant two or more of the claim mentioned in rules 2 to 6, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, have entered against that defendant such judgement in respect of each such claim as he would be entitled to under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.
8. (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 6, then if the defendant or all the defendants (where there are more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence apply to the Court for judgement, and on the hearing of the application the Court shall give such judgement as the plaintiff appears entitled to on his statement of claim
- (2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—
- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgement against that defendant, and proceed with the other defendants; or
  - (b) set down the action on motion for judgement against the defendant in default at the time when the action is set down for trial or is set down on motion for judgement against the other defendants.

- (3) An application under paragraph (1) shall be by summons or motion on notice.
9. A defendant who counter-claims against a plaintiff shall be treated for the purposes of rules 2 to 8 as if he were a plaintiff who had made against a defendant the claim made in the counter-claim and, accordingly, where the plaintiff or any other person against whom the counter-claim is made fails to serve a defence to the counter-claim, those rules shall apply as if the counter-claim were a statement of claim, the defence to the counter-claim a defence and the parties making the counter-claim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to counter-claim.
10. The Court may, on such terms as it thinks just, set aside vary any judgement entered in pursuance of this order.
11. In this Order, a party makes default in pleading when he fails to file and serve his statement of claim or defence, as the case may be, on the opposite party within the time fixed for doing so by these rules or by the order of the Court or a Judge in Chambers.

#### ORDER 28 - INTERPLEADER

1. (1) Where—
  - (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
  - (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is is-sued, the person under liability as mentioned in paragraph (1) (a) or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.
- (2) References in this Order to sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court. "
2. (1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken under process of the Court or to the proceeds or value of any such goods or chattels, shall give notice of his claim to the sheriff charged with the execution of the process and shall include in his notice a statement of his address, and that address shall be his address for service.

(2) (a) On receipt of a claim made under this rule, the sheriff shall forthwith give notice thereof to the execution creditor and the execution creditor shall, within 7 days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.

(6) An execution creditor who gives notice in accordance with this provision admitting the claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before the receipt of that notice.

(3) Where—

(a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph to give the required notice; and

(b) the claim made under this rule is not withdrawn, the sheriff may apply to the Court under this Order.

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this provision shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this provision of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

3. (1) An application for relief under this Order shall be made by originating summons unless made in a pending action, in which case it shall be made by motion in the action.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (4), the summons shall be served on any person who made a claim under rule 2 (1) to or in respect of that money, or goods or chattels, and that person may attend the hearing of the application.

(3) No appearance need be entered to an originating summons under this provision.

4. (1) The applicant shall satisfy the Court or a Judge in Chambers by affidavit or otherwise—

(a) that the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and

(b) that the applicant does not collude with any of the claimant; and



- (c) that the applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or a Judge in Chambers may direct.
- 5. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.
- 6. If the application is made by a defendant in an action, the Court or a Judge in Chambers may stay all further proceedings in the action.
- 7. If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers 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 plaintiff, and which the defendant.
- 8. If a claimant, having been duly served with summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects to or refuses to comply with any order made after his appearance, the Court or a Judge in Chambers 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.
- 9. The Court or a Judge in Chambers 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 and reasonable.

#### ORDER 29 - WITHDRAWAL AND DISCONTINUANCE

- 1. A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court.
- 2. (1) The plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.
- (2) A defendant may, without leave of the Court:—
  - (a) withdraw his defence or any part of it at any time;
  - (b) discontinue a counter-claim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made at any time not later than 14 days after service on him of a defence to the counter-claim or, if the counter-claim is made against

two or more parties, of the defence to the counter-claim last served, by serving a notice to that effect on the plaintiff or other party concerned.

- (3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff and the period fixed by or under this rule for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.
  - (4) Paragraph (3) shall apply in relation to a counter-claim as it applies in relation to an action, with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counter-claim, to the defendant and to paragraph (2) respectively.
  - (5) If all the parties to an action consent, the action may be withdrawn without leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties, and the action shall thereafter be struck out.
3. (1) Except as provided by rule 2, a party may not discontinue an action or counter-claim, or withdraw any particular claim made by him therein without leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counter-claim to be discontinued or any particular claim made therein to be struck out, as against any or all of the parties against whom, it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
- (2) An application for the grant of leave under this rule may be made by summons or motion on notice.
4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counter-claim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.
5. Where a party has discontinued an action or counter-claim or withdrawn any particular claim made by him therein, and he is liable to pay costs to any other party of the action or counter-claim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same or substantially the same cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.
6. A party who has taken out a summons or filed a motion in a pending cause or matter may not withdraw it without leave of the Court.

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

- 2.(1) Any party may, by leave of Court obtained in a motion on notice, call upon any other party to admit any document or fact, admit' saving just exceptions.
- (2) A notice containing a list and where possible true copies of the documents or, as the case may be, a clear statement of each fact, to be admitted shall be filed with the motion papers and served on the party being called upon to admit the same.
- (3) The Court, if it grants such leave, shall fix the terms and conditions thereof, including the time within which the admission is to be made.
- (4) If a party on whom a notice under paragraph (2) is served desires to deny the existence or the authenticity of any fact or document therein specified he shall, before the day fixed for hearing the motion, serve on the party by whom it was given a notice stating that he does not admit the facts or the authenticity of the documents and that he requires that the same be proved at the trial.
- (5) A party who fails to give a notice of non-admission in accordance with paragraph (4) in relation to any fact or document shall be deemed to have admitted that fact or the authenticity of that document unless the court otherwise orders.
- (6) Except where rule 4 (3) applies, a party to a cause or matter may serve on any other party a notice requiring them to produce the documents specified in the notice at the trial of the cause or matter.
3. Where admissions of fact are made by a party either by his pleadings or otherwise, any other party may apply to the Court for such judgement or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgement, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion or summons.
4. (1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of the provisions of order 32, shall, unless, the Court otherwise orders, be deemed to admit—
  - (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

- (b) that any document described therein as a copy is a true copy This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.
- (2) If before the expiration of 14 days after inspection of the documents specified in a list of documents or after the time limited for inspection expires, whichever is the later, the party on whom the list is served, serves on the part whose list it is, a notice stating in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at trial he shall not be deemed to make any admissions in relation to that document under paragraph (1)
- (3) A party by whom a list of documents is served on any other party in pursuance of any provision of order 32 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified inline list as are in his possession custody or power.
- (4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under the provisions of Order 32 as they apply in relation to a list of documents served in pursuance to any provision of that Order.

#### ORDER 31 - PAYMENT INTO AND OUT OF COURT

- 1. (1) In any action for a debt or damages the defendant may, at any time after he has entered appearance in the action, pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.
- (2) On making any payment into Court under this rule and on increasing any such payment already made, the defendant shall give notice thereof in form 26 to the plaintiff and every other defendant (if any), and within 7 days after receiving the notice the plaintiff shall send to the defendant a written acknowledgement of its receipt.
- 2.(1) Payment into Court whether made in satisfaction of the mission of plaintiffs claim generally or in satisfaction of some specific part thereof operate, unless the defendant in his defend denies liability, as an admission of liability to the extent of the amount paid in and no more, and for no other purpose.
- (2) When money is paid into Court with a defence denying liability it shall be subject to the provision of rule 5.
- 3. Where the defendant pays money into and the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court is made is not denied in the defence, the plaintiff shall be at liberty to accept same in full satisfaction and discharge of the cause of action in

respect of which it is paid in, and in that case the plaintiff may forthwith apply by motion for payment of the money to him; and on hearing the motion, the Court shall make such order as to stay of further proceedings in the suit, in whole or in part, and as to cost and other matters as seems just.

4. If the plaintiff does not apply he shall be considered as insisting that he has sustained damages to a greater amount or (as the case may be) that the defendant was and is indebted to him in a greater amount, than the sum paid in; and in that case the Court, in disposing of costs at the hearing, shall have regard to the fact of the payment into Court having been made and not accepted.
5. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into court has been made, is denied in the pleadings, the following rules shall of liability, apply—
  - (a) the plaintiff may accept in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in (where upon all further proceedings in respect of such claim or cause of action except as to costs shall be stayed) or the plaintiff may refuse to accept the money in satisfaction, in which case the money shall remain in court subject to the provisions hereinafter mentioned;
  - (b) if the plaintiff accepts the money so paid in, he shall be entitled with leave of the Court to have the money paid out to him;
  - (c) if the plaintiff does not accept the sum so paid in, but proceeds with the action in respect of such claim or cause of action or any part thereof, the money shall remain in Court. If the plaintiff proceeds with the action in respect of such claim or cause of action or any part thereof and succeeds, the amount paid in shall be applied as far as is necessary in satisfaction of the plaintiff claim and the balance (if any) shall under Court order be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall under Court order, be repaid to him.
6. Where any money is required to be paid into or deposited in Court, the Court may, if it shall think fit expedient, order that the money be paid into a savings account at a reputable commercial Bank. Such payment shall be done by the Registrar, and any interest payable by the bank shall accrue pro tanto to the benefit of the party who, at the end of the action, is entitled to the money originally paid into Court.
7. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

8. Money paid into court pursuant to rule 1 or 7 or under the order of the Court or a Judge shall not be paid out except in pursuance of an order of the court or the Judge.
9. Where a person entitled to a fund in Court or a share of such fund, dies intestate and the Court is satisfied that no grant of administration has been made and that the assets of his estate do not exceed two thousand Naira in value including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who being a widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.
10. Where the value of the estate of the deceased described above exceeds N2,000.00 (two thousand Naira), a letter of administration must be sought in accordance with order 49. "Fund in Court" in this rule includes money paid into a bank account under rule 6.

#### ORDER 32 - DISCOVERY AND INSPECTION OF DOCUMENTS

1. After the close of pleadings in any cause or matter any party by leave of Court or Judge in Chambers may deliver interrogatories in writing for the examination of any other party or parties, and such interrogatories when delivered shall state clearly which of such interrogatories each of such parties is required to answer.

Provided that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. A copy of the interrogatories proposed to be delivered shall be filed and served with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge in Chambers shall think fit to dispense with this requirement). In deciding upon such application, the Court or Judge in Chambers shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question, and leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the action or for saving costs.
3. Interrogatories shall be in Form 30 with such variations as circumstances may require.
4. If any party to an action is a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of an officer or other persons, any opposite party may apply for an order allowing him to

deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

5. Interrogatories shall be answered by affidavit to be filed within 10 days, or within such other time as the Court or a Judge in Chambers may allow. Two copies of the affidavit shall be supplied to the registrar.
6. An affidavit in answer to interrogatories shall be in Form 31 with such variations as circumstances may require.
7. Any objections to answering any interrogatory on the ground that it is scandalous or irrelevant, or not bona fide for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.
8. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court or a Judge in Chambers for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by viva voce examination, as the Court or Judge may direct.
9. Any party may, without filing any affidavit, apply to the Court or a Judge in Chambers, for an order directing any other party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in issue. On the hearing of such application the Court or Judge in Chambers may either refuse or adjourn the same, if satisfied that such discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit;

Provided that discovery shall not be ordered when so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

10. Where in any action arising on a marine insurance policy an application for discovery of documents is made by the insurer, the following provisions shall apply
  - (a) on the hearing of the application, the Court or Judge in Chambers may, subject as provided in the next paragraph, make an order in accordance with rule 9;
  - (b) where in any case the Court or Judge in Chambers is satisfied either on the original application or a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order for the production of a ship's papers, the Court or Judge in Chambers may make such an order in Form 68;

- (c) in making an order under this rule the Court or Judge in Chambers may impose such terms and conditions as to staying proceedings or otherwise as the Court or Judge in Chambers in its or his absolute discretion shall think just;
  - (d) rule 13 shall not apply to any application made under this rule.
11. The affidavit to be made by any person against whom an order for discovery of documents has been made under rule 9 or under paragraph (a) or paragraph (b) of rule 10 shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall, except in the case of an order made under paragraph (b) of rule 10 be in Form 32 with such variations as circumstances may require.
  12. On the hearing of any application for discovery of documents the Court or Judge in Chambers in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody, or power relating to the matters in question. Such list shall, as nearly as may be, follow the form of one affidavit in Form 32:

Provided that the ordering of such list shall not preclude the Court or Judge in Chambers from afterwards ordering the party to make and file an affidavit of documents.

13. It shall be lawful for the Court or a Judge in Chambers at any time during the pendency of an action to order the production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action as the Court or Judge in Chambers shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just.
- 14.(1) Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document to produce such document for the inspection of the party giving such notice, or of his legal practitioner, and to permit him or them to take copies thereof.
- (2) Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he shall satisfy the Court or a Judge in Chambers that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in Chambers shall deem sufficient for not complying with such notice, in which case the Court or Judge in Chambers may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge in Chambers may think fit.



15. Notice to any party to produce any documents referred to in his pleadings or affidavit shall be in Form 33 with such variations as circumstances may require.
16. The party to whom notice is given under rule 14 shall, within 2 days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 11, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same notice stating a time within 7 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his legal practitioner, or in the case of banker's books or other books of accounts, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form 34 with such variations as circumstances may require.
17. (1) If the party served with notice under rule 14 omits to notify a time for inspection, or objects to give inspection or offers inspection elsewhere than at the office of his legal practitioner, the Court or Judge in Chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Courts or Judge may think fit.

Provided that the order shall not be made when and so far as the Court or Judge in Chambers shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

- (2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.
18. (1) Where inspection of any business books is applied for, the Court or a Judge in Chambers may, if it or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the book from which the copy was made.

- (2) Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the Court or a Judge in Chambers to

inspect the document for the purpose of deciding as to the validity of the claim of privilege.

- (3) The Court or a Judge in Chambers may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any class or classes of documents, specified or indicated in the application, is or are, or has or have at any time been, in his possession, custody, or power, when he parted with the same and what has become of it. Application for such order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession, custody or power the particular document or documents, or the class or classes of documents specified or indicated in the application, and that they relate to the matters in question in the action, or to some or one of them.
19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or Judge in Chambers may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.
20. If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall be liable to committal. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge in Chambers for an order to that effect, and an order may be made accordingly.
21. Service of an order for interrogatories or discovery or inspection made against any party or his legal practitioner shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.
22. 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.
23. 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 others or the whole of such answer:

Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that those put in ought not to be used without them, he may direct them to be put in.

24. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge in Chambers may, on the application of any party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.
25. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians ad litem.
26. Any order made under the provisions of this order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before trial.

#### ORDER 33 - INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

- 1.(1) An application for the grant of an injunction may be made by any party to an action before or after the trial of the action, whether or not a claim for injunction was included in that party's action.
  - (2) Where the applicant is the plaintiff and the case is one of urgency, such application may be made ex-parte on affidavit but, except as aforesaid, such application shall be made by motion on notice or summons.
  - (3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency, and in that case the injunction is applied for may be granted on terms providing for the issue of the process and such other terms, if any, as the Court thinks fit.
2. (1) On the application of any party to an action the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of any such property in the possession of a party to the action.
  - (2) For the purpose of enabling any order under paragraph 1) to be carried out, the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the action.

- (3) Where the right of any party to a specific fund is in dispute in an action, the Court may, on the application of the party, order the fund to be paid into Court or otherwise secured.
  - (4) An order under this rule may be made on such terms, if any as the Court thinks just.
  - (5) An application for an order under this rule shall be made by summons or motion on notice.
  - (6) Unless the Court otherwise directs, an application by the defendant for such an order may not be made before he enters an appearance.
3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, the Court may, on the application of a party and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject matter of the action or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.
- (2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any person to enter any land or building in the possession of any party.
  - (3) Paragraphs (5) and (6) of rule 2 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.
4. (1) The Court may, on the application of any party make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order, of any property (other than land) which is the subject matter of the action or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other reason it is desirable to sell forthwith.
- (2) Paragraphs (5) and (6) of rule 2 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.
5. Where on the hearing of an application made before the trial of a cause or matter, for an injunction or appointment of a receiver or an order under rule 2, 3 or 4, or it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires. Where the Court makes an order for early trial, it shall by the order determine the place and mode of the trial.

6. Where the plaintiff, or the defendant by way of counter-claim claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of the Exchange Control Acts.
7. Where an application is made under any of the foregoing provisions of this Order the Court may give directions as to the further proceedings in the action.
8. where any real or personal property form the subject matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provisions ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all such parties.

#### ORDER 34 - TRANSFERS AND CONSOLIDATION TRANSFER

1. Where the Chief Judge has, in exercise of the powers conferred by section 35 of the Magistrate's Court Edict, ordered the transfer of any action from the Magistrate's Court to the Court or to another Magistrate's Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the Magistrate's Court who shall transmit to the Court or the Magistrate's Court, as the case may be, the process and proceedings in every such action, and an attested copy of all entries in the books of that Court relating thereto and henceforth all proceedings in the action shall be taken in the Court to which the transfer is made as if the action had been commenced therein.
2. (1) On receipt by the Court of the documents mentioned in the last preceding rule, the registrar shall notify the party who applied for the transferor, where the transfer was not made on application of any party, the plaintiff, to attend at the Registry of the Court and pay the fees for filing the documents, if any. Such payment shall be without prejudice to the question how the costs shall ultimately be borne.

- (2) Such notification shall be effected by serving a notice personally on the party concerned or where an address for service has been given by such party in the Magistrate's Court, service may be effected by leaving the notice with an adult person resident or employed at the address for service given in the Magistrate's Court.
- 3.(1) The registrar shall, on payment of the prescribed fees, if any, file the document received from the Magistrate's Court and make an entry of such filing in the Cause Book.
- (2) The Registrar shall then serve notice on the parties to attend in person or by the legal practitioners before the Court on the day and at the time specified in the notice. The fees for the service of this notice shall be defrayed in the first instance by the party who has paid the fees for filing as provided by rule 2 (1).
- 4. (1) If the plaintiff fails to attend in compliance with notice Party given under rule 3 (2), the Court shall record his default and the defendant may apply by summons for an order dismissing the action. The provisions of paragraph (2) of rule 2 shall apply to the service of such summons on the plaintiff.
- (2) Upon an application by a defendant to dismiss the action, the Court may either dismiss the action upon such terms as may be just or make such other order on such terms as it shall think just.
- (3) If the defendant fails, or all the defendants if more than one fail to attend in compliance with a notice given under rule 3 (2), the plaintiff, after having caused an address for service to be entered in the Cause Book may, by leave of the Court to be obtained on summons, have judgement entered for him with costs or obtain the order prayed for in the transferred proceedings. The provisions of paragraph (2) of rule 2 shall apply to the service of such summons on the defendant or the defendants.
- 5. The references in rule 4 to the plaintiff and the defendant shall, in relation to proceedings commenced otherwise than by plaint, be construed as references to the applicant and the respondent.

#### CONSOLIDATION

- 6. (1) Actions pending in the High Court may be consolidated by order of the Court or of a Judge in Chambers where it appears that the issues are the same in all the actions and can therefore be properly tried and determined at one and the same time.
- (2) An order to consolidate may be made where two or more actions are pending between the same plaintiff and the same defendant, or between the same

plaintiff and different defendants or between different plaintiffs and the defendant, or between different plaintiffs and different defendants; Provided that where actions are brought by the same plaintiff against different defendant, they shall not be consolidated without the consent of all the parties unless the issues to be tried are precisely similar.

- (3) Applications for consolidation may be made by summons or notice for directions in Chambers, or they may be made by motion in Court on notice.
- (4) 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.
- (5) In the application of these provisions to proceedings not begun by a writ of summons, references to the plaintiff and the defendant shall be construed as references to the applicant and the respondent.

#### ORDER 35 - SETTLEMENT AND TRIAL OF ISSUES SETTLEMENT OF ISSUES

1. At any time before or at the hearing, the Court may, if it thinks fit, on the application of any party or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce such questions into v. riling and settle them in the form of issues which issues when settled may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind and party of the Other.
2. The Court may, if it thinks fit, direct the parties to prepare such issues, and the same shall be settled by the Court.
3. The issues may be settled without any previous notice at any stage of the proceedings at which all the parties are actually present, or at the hearing. If otherwise, notice shall be given to the parties to attend the settlement of the issues.
4. At any time before the decision of the case, if it shall appear to the Court necessary for the purpose of determining the real question or controversy between the parties, the Court may amend the issues or frame additional issues on such, terms as it shall seem fit.

#### TRIAL OF QUESTIONS AND ISSUES

5. (1) The Court may order any question or issue arising in a cause or matter, whether of fact or of law, or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

- (2) An order under this rule may be made on application by a party or by the Court or a Judge in Chambers on its or his own motion.
- (3) Application by any party for such order shall be by motion on notice stating the question or issue sought to be tried.
6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter, or make such other order or give such judgement therein as may be just.
7. This order shall be subject to the provisions of these rules and any written law in force in the State regarding transfer of cases.

#### ORDER 36 - APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. The business which may be disposed of in Chambers by a Judge shall consist of the following matters, in addition to the matters which under any other rule or any written law may be disposed of in Chambers:—
  - (a) applications to serve a writ or other process out of the jurisdiction ;
  - (b) applications for substituted service of a writ or other process,
  - (c) applications to have cases heard during vacations;
  - (d) applications for enlargement of time;
  - (e) applications for a writ of attachment or for a garnishee order;
  - (f) applications for payment or transfer to any person of any cash or securities standing to his credit in any cause or matter where there has been a judgement or order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of any person;
  - (g) applications as to the guardianship and maintenance or advancement of infants;
  - (h) any matter relating to the adoption of children;
  - (i) applications connected with the management of property;
  - (j) such other matters of an interlocutory nature as the Judge may think fit to dispose of in Chambers.



2. The provisions of Order 8 with regard to interlocutory applications by way of motion in Court shall apply mutatis mutandis to applications to a Judge in Chambers.
3. Subject to any provision contained in the Kano State High Court Law, any order or direction made or given by a Judge in Chambers shall have the same effect as if such order or direction had been made or given in Court.

#### ORDER 37 - TRIAL PROCEEDINGS IN GENERAL

##### Attendance of parties at hearing

1. (1) In every cause or matter pending before the Court, in case it shall appear to the satisfaction of the Court that any party who may not be represented by legal practitioner is prevented by some good or sufficient cause from attending the Court in person, the Court may in its discretion permit any master, servant, clerk or member of the family of such plaintiff or defendant, or officer of the plaintiff or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.
- (2) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a Judge.
2. If, when a trial is called on the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.
3. If, when a trial is called on the defendant appears and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgement dismissing the action, but if he has a counter-claim then he may prove such counter-claim, so far as the burden of proof lies upon him:

Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may, if it thinks fit, give judgement as if the plaintiff had appeared.

4. Any judgement obtained where one party does not appear at the trial may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial or within such longer period as the Court may allow for good cause shown.
5. The Judge may, if he thinks it expedient for the interest of justice, postpone or adjourn a trial for such time, and upon such terms, if any, as he may think fit.

##### Proceedings at the Hearing

6. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief in action for with a view to mitigation of damages, as to the circumstances under, which the libel or slander was published, or as to the character of the plaintiff, without leave of the Court, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.
7. The trial Judge shall, at or after trial, direct judgement to be entered as he shall think right, and no motion for judgement shall be to be necessary in order to obtain such judgement.
8. The Registrar, or other proper officer present at any trial or hearing, shall make a note of times at which such trial or hearing shall commence and terminate respectively, and the time actually occupied thereby of each day on which the same shall take place for communication to the Taxing Officer if required.
9. Trial with assessors shall, where permitted under a written law, take place in such a manner and upon such terms as the Court shall decide.
10. The order of proceeding at the trial of a case where pleadings have been filed shall be as prescribed in the following rules.
11. The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, as the Court may determine, shall begin.
12. The party beginning shall then produce his evidence and examined his witnesses. When the party beginning has conclude his evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit or deposition, or under commission, and documentary evidence not already read or taken as read); and if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon; but if answered in the affirmative, he shall wait for his general reply.
13. When the party beginning has concluded his case, the other party shall be at liberty to state his case and to call evidence, and to, sum up and comment thereon.
14. If the party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may, by leave of the court, call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters.

15. Where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply.
16. Documentary evidence shall be put in and read, or taken as read by Consent.
17. (1) The Court Clerk 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 Court Clerk shall cause a list of all the exhibits in the action to be made.
  - (3) The list of exhibits when completed shall be attached to the pleadings and 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.
18. Where a document or 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. Where more exhibits than one are rejected in the same action, they shall be numbered serially. If the case goes on appeal, a list of such exhibits shall be transmitted to the appeal court.
19. (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 to the Federal Court of Appeal may be given has elapsed without such notice having been given, and they only if the Judge who presided over the trial (or, in his absence, another Judge) grants leave to release such exhibit on being satisfied—
  - (a) that there will be no appeal;
  - (b) that the exhibit will be kept duly marked and labeled and will be produced, if required, at the hearing of an appeal in the Court of Appeal (if any such appeal is lodged); or
  - (c) that the release of the exhibit will not in any way prejudice any other party.

- (2) After a notice of appeal to the Court of Appeal has been filed, an exhibit produced at the trial shall not be released by the High Court unless leave to release such exhibit is granted by the Court of Appeal.
20. (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 to the Court of Appeal.
- (2) Where there is an appeal to the Court of Appeal, an office copy of the list of exhibits shall be included among the documents supplied to that Court for the purpose of the appeal.
21. In cases where written pleadings have not been filed, or the parties or either of them are incapable of understanding their effect with sufficient accuracy, the proceeding at the hearing shall be varied by the Court so far as may be necessary. In particular, the statement of the defendant in defence where he does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his claim and of the grounds thereof, and before any witness is examined, unless in any case the Court shall direct otherwise.
22. The Judge may in all cases disallow any question put in cross-examination which may appear to him to be vexatious and not relevant to any matter to be inquired into in the action.

#### ORDER 38 - ORIGINATING SUMMONS PROCEEDINGS

1. Any person claiming to be interested under a deed, will, or other written instrument 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.
2. 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 determination of such question of construction, and for a declaration as to the right claimed.
3. The Court or a Judge in Chambers may direct such persons to be served with the summons as it or he may think fit.
4. The application shall be supported by such evidence as the Court or a Judge in Chambers may require.
5. The Court or a Judge in Chambers shall not be bound to determine any such question of construction if in its or his opinion it ought not to be determined on originating summons.

6. The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this rule against a defendant who does not appear at the hearing, the order may be varied or revoked by subsequent order of the Court on such terms as it thinks just.
7. Where in an action begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party was served and is in default of appearance.
8. (1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counter-claim in the action in respect of that matter instead of bringing a separate action.
- (2) A defendant who wishes to make a counter-claim under this rule shall at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct.
- (3) If it appears on the application of the plaintiff against whom a counter-claim is made under this rule that the subject matter of the; counter-claim ought for any reason to be disposed of by a separate action, the Court may order the counter-claim to be struck out or may order it to be tried separately or make such other order as may be expedient.

#### ORDER 39 - PROCEDURE RELATING TO EVIDENCE

1. Subject to the provisions of these rules and of the Evidence Witnesses to Act, and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.
2. (1) The Court or a Judge in Chambers may at or before the trial of an action, order or direct that all or any of the evidence therein shall be given by affidavit.
- (2) An order or direction under this rule may be made or given on such terms as to the filing and giving of copies of the affidavits or proposed affidavits and as to the production of the deponents for cross-examination as the Court or Judge in Chambers may think fit but, subject to any such terms and to any

subsequent order or direction of the Court or a Judge in Chambers, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

3. (1) Without prejudice to rule 2, the Court or a Judge in Chambers may, at or before the trial of an action, order or direct that evidence of any particular fact shall be given at the trial in such a manner as may be specified by the order or direction.
- (2) The power conferred by paragraph (1) of this rule extends in particular to ordering or directing that evidence of any particular fact may be given at the trial—
  - (a) by statement on oath of information or belief; or
  - (b) by the production of documents or entries in books; or
  - (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.
4. The Court or a Judge in Chambers may, at or before the trial of an action order or direct that the number of medical or expert witnesses who may be called at the trial shall be limited as specified by the order or direction.
5. Unless, at or before the trial, the Court or a Judge in Chambers for special reasons otherwise orders or directs, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof Without further proof.
6. In an action, of whatever nature, arising out of an accident on land due to a collision or apprehended collision—
  - (a) no plan of the place where the accident happened other than a sketch plan, shall be receivable in evidence unless, at or before the trial, the Court or Judge in Chambers authorises the reception thereof;
  - (b) unless, at or before the trial the Court or Judge in Chambers otherwise orders or directs, the oral expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable unless a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection.

7. Any order or direction under rules 2, 3, 4, 5 and 6 may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers, made or given at or before the trial.
8. The preceding provisions of this Order shall apply to trials of issue, references, inquiries and assessments of damages as they apply the trial of action.
9. Office copies of all writs, records, pleadings and documents filed in the Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible.
10. (1) The Court or Judge in Chambers may, in any action where it appears necessary for the purpose of justice, make an order for the examination upon oath before the Court or a Judge in Chambers or any officer of the Court, or any other person, and at any place, of any witness or person and may empower any party to any such action to give on deposition any evidence therein.
- (2) Any order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court or Judge in Chambers may think fit. The Court or a Judge in Chambers may order the party who has applied for the appointment of an examiner to pay the fees and expenses of such examiner (without prejudice to any question as to the party by whom the costs of the examination should eventually be borne):

Provided that, where the examiner is a Government servant not entitled to receive fees, such fees shall be paid into Revenue,

11. The Court may in any cause or matter where it shall appear necessary for the purposes of Justice, make any order for the examination before any officer of the Court or other person and at any place, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms if any as the Court may direct.
12. If in any case the Court shall so order, there shall be issued a letter of request to examine witnesses outside Nigeria in lieu of a commission
13. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted—
  - (1) The party obtaining such order shall file in the Registry an undertaking in Form 65 which Form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
  - (2) Such undertaking shall be accompanied by-

- (a) a request in Form 66, with such variation as may be directed in the order for the issue thereof, together with a translation of such request in the language of the country in which the same is to be executed;
  - (b) a copy of the interrogatories (if any) to accompany the request, and a translation thereof ;and
  - (c) a copy of the cross-interrogatories (if any), and translation thereof.
14. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been or shall be made, such order shall be in Form 67 which Form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
15. The Court or a Judge in Chambers may in any action at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge in Chambers may think fit to be produced:

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.

16. Any persons wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of Court, and may be dealt with accordingly.
17. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.
18. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.
19. The examination shall take place in the presence of the parties, their legal practitioners, or agents and the witnesses shall be subject to cross-examination and re-examination.

Provided that where parties, their legal practitioners or agents fail to attend, without good cause, the examination may be proceeded with in their absence.



20. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to present as nearly as may be the statement of the witness and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the legal practitioners or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.
21. If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of sworn, such refusal, signed by the examiner, shall be filed at the Registry, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge in Chambers ex-parte or on notice for an order directing the witness to attend, or to be sworn or to answer any question, as the case may be.
22. If any witness shall object to any question which may be put to him before an examiner, the question so put and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Registrar to be filed, and the validity of the objection shall be decided by the Court or a Judge in Chambers.
23. In any case under the two last preceding rules, the Court or a Judge in Chambers shall have power to order the witness to pay any refusal or costs occasioned by his refusal or objection.
24. When the examination of any witness before any examiner shall have been concluded, the original depositions authenticated by the signature of the examiner, shall be transmitted by him to the Registry, and there filed.
25. The person taking the examination of a witness under rule 24 may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge in Chambers may direct such proceedings and make such order as upon the report the Court or Judge in Chambers may think just.
26. Except where these rules otherwise provide, or the Court or a Judge in Chambers directs, no deposition shall be given in evidence at the hearing or trial of the action without the consent of the party against whom the same may be offered, unless the Court or Judge in Chambers 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 cases 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.

27. 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.
28. Any party in any action 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 or which shall be used on any proceeding in the action shall be bound on being served with such subpoena to attend before such officer or person for cross-examination.
29. 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 action at any stage.
30. 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 action after the hearing or trial, shall be subject to any special directions which may be given in any action.
31. No affidavit or deposition filed or made before issue joined in any action shall, without special leave of the Court or a Judge in Chambers, be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of intention in that behalf.
32. 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.
33. Where it is intended to sue out a subpoena, a praecipe for that purpose, in Form 86, containing the name or firm and the place of business or residence of the legal practitioner intending to sue out the same, and where the legal practitioner is agent only, then also the name or firm and place or 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

conduct money on the prescribed scale is deposited to cover the first days attendance.

34. A writ of Subpoena shall be in one of Forms 40, 41 or 42, with such variations as circumstances may require.
35. 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 a note from the Judge.
36. In the interval between the suing out and service of any subpoena, the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected praecipe of such subpoena marked with the words "altered and re-sealed", and signed with the name and address of the legal practitioner suing out the same.
37. A subpoena shall be served personally unless substituted Service of service has been ordered by the Court or a Judge in Chambers in cases where a person evades service. The provisions of Order 12 shall, so far as possible, apply to service and proof of service of a subpoena.
38. Any subpoena shall remain in force from the date of issue until the conclusion of the trial of the action or matter in which of subpoena, it is issued.
39. Any party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed, may deliver to the opposite party not less than four clear days before the return-day a notice in writing specifying the date nature and party to such deed or instrument, and requiring the opposite party to admit that the same was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents and if at or before the hearing of the suit the party notified shall neglect or refuse to give such admission, the Court may adjourn the hearing in order to enable the party tendering such deed or instrument to obtain proof of the due execution thereof and upon production of such proof the Court may order the costs of such proof to be paid by the party so neglecting or refusing, whether he be the successful party or not.
40. Where any civil or criminal matter is pending before a court or tribunal of a foreign country, and it is made to appear to the Court by commission rogatoire, or letter of request, or other sufficient evidence that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court may, on the ex-parte application any person shown to be duly authorised to make the application on behalf of such foreign court or tribunal, and on production of the commission rogatoire, or letter of request, or such other evidence as the Court may require or consider sufficient, make such order or orders as may

be necessary to give effect to the intention of the commission rogatoire, or letter of request.

41. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding. An order under this rule may be made either with or without summoning the bank or any other party; and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.
42. Where a document is produced and tendered in evidence and rejected by the Court, the document shall be marked as having been so tendered and rejected.
43. (1) It shall be lawful for the Court to issue an order to bring up any person confined as a prisoner under any sentence or order of commitment for trial, or otherwise, or under civil process, to be examined as a witness in proceedings pending, or to be inquired of in any Court.
- (2) The Order shall not be made of course, unless the Court shall have reasonable grounds for delivering that evidence of the prisoner is likely to be material.
- (3) The Officer in charge of the prison or person on whose custody such prisoner may be shall forthwith obey such order by bringing the prisoner in his custody to the Court, or by delivering to an officer of the Court as the order may direct, and if the prisoner shall under the terms of the Order be delivered to any officer of the Court, the officer in charge of the prison or other person shall not be liable for the escape of such prisoner.

#### ORDER 40 - JUDGEMENTS AND ORDERS

1. The decision or judgement in any suit shall be delivered in open Court, unless the Court otherwise directs for sufficient cause.
2. If the Court reserves judgement at the hearing, parties to the suit shall be served with notice to attend and hear judgement, unless the Court at the hearing states the day on which judgement will be delivered, in which case there shall be no further notice.
3. All parties shall be deemed to have notice of the decision or judgement if pronounced at the hearing, and all parties served with notice to attend and hear judgement shall be deemed to have notice of the judgement when pronounced.
4. A minute of every judgement, whether final or interlocutory, shall be made, and every such minute shall be a decree of the Court, and shall have the full force and effect of a formal decree. A formal decree or order may be drawn up on the application of either party.

5. If the defendant shall have been allowed to set off any demand or counter-claim against the claim of the plaintiff, the judgement shall state what amount is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The judgement of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.
6. A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately after the decree or order has been made (except as to costs the amount whereof may require to be ascertained by taxation), unless the court shall enlarge the time by any subsequent order.
7. The Court at the time of making any judgement or order, or Court may at any time afterwards, may direct the time within which the payment direct time or other act is to be made or done, reckoned from the date of the judgement or order, or from some other point of time, as the Court thinks fit, and may order interest at the rate not exceeding ten naira per centum per annum to be paid upon any judgement, commencing from the date thereof or afterwards, as the case may be.
8. When any judgement or order directs the payment of money, payment by the Court may, for any sufficient reason, order that the amount shall instalment, be paid by instalments, with or without interest. Such order may be made at the time of giving judgement, or at any time afterwards, and may be rescinded upon sufficient cause at any time.
9. Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless the Court or a Judge in Chambers shall otherwise direct, and shall take effect accordingly.
10. 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 pleadings.-
  - (c) for the filing of any document; or
  - (d) for any act to be done by an officer of the Court other than a legal practitioner. It shall not be necessary to draw up such order unless the Court or a Judge in Chambers shall otherwise direct; 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. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this section.

11. (1) Orders, other than final orders, shall not be entered after being drawn up but shall be filed, and a note of the filing shall be made in a book kept for the purpose.
- (2) Every order so filed shall be deemed to be duly entered, and the date of such filing shall be deemed the date of entry. In the case of procedure orders drawn up in Chambers, no entry thereof shall be necessary before an attachment can be issued for disobedience hereof.
12. Unless otherwise ordered by the Court interest shall be paid on outstanding judgement debts at the rate of 10% from the date of the judgement whether or not the judgement debtor is allowed time to pay by instalment.

#### ORDER 41 - HABEAS CORPUS PROCEEDINGS

1. Where a person is alleged to be wrongfully detained an application may be made for an order that he be produced in Court for the purpose of being released from detention, or upon such terms and condition as the Court may decide.
2. (1) No application under rule 1 shall be made unless leave therefor has been granted in accordance with this rule.
- (2) Application for such leave shall be made ex-parte to the Court and shall be supported by a statement setting out the names and description of the applicant, the relief sought, and the grounds on which it is sought, it shall also be supported by an affidavit verifying the facts relied upon.
- (3) The affidavit verifying the facts relied upon in making the application shall be made by the person detained, but where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit sworn to by some other person stating that the person detained is unable to make the affidavit himself.
- (4) The applicant shall file in the Court, the application for leave not later than 24 hours preceding the date of the hearing and shall at the same time lodge in the Court enough copies of the statement and affidavit for service on any party or parties as the Court may order.
- (5) The Court in granting leave may impose such terms as to giving security for costs as it deems fit.
- (6) The Court may—

- (a) make an order forth-with for the release of the person being detained notwithstanding the provision of paragraph 1 above;
  - (6) direct that an originating summons be issued in form 2 of the Fundamental Rights (Enforcement) Rules 1979, or that the application be made by motion on notice in Form 3 of the Fundamental Rights (Enforcement) Rules 1979; or
  - (c) adjourn the motion ex-parte application so that notice thereof may be given to the person against whom the order for the release of the person detained is sought.
  - (7) The summons or motion on notice shall be served on the person against whom the order for the release of the person detained is sought and on such other persons as the Court may direct, and unless the Court so directs, there shall be at least five clear days between the service of the summons or motion and the date named for the hearing or the application.
  - (8) Every party to an application under rule 1 shall supply to every affected party copies of the affidavit which he proposes to use at the hearing, of the application.
3. (1) Without prejudice to rule 2 (6) the Court hearing the application may at its own discretion order that the person detained be produced in Court.
- (2) An order under paragraph 1 above shall be sufficient warrant to any superintendent of a prison, police officer in charge of a police station, police officer or constable in charge of the person detained or any other person who is in custody of the person detained, for the production of that person.
  - (3) Where an order is made for the production of a person detained, the Court by whom the order is made shall give directions as to the Court before which and the date on which the order is returnable.
4. (1) Subject to paragraph (2) and (3) of this rule an order for Service of production of the person detained shall be served personally on the person to whom it is directed.
- (2) If it is not possible to serve such an order personally, or if it is directed to a police officer or a prison superintendent or other public official, it shall be served by leaving it with any officer in charge or working at the police station or any person working in the prison or office of the Superintendent of prison or the office of the public official to whom it is directed.
  - (3) If the order is made against more than one person, it shall be served in the manner provided by the rule on the person first named and copies shall be served on each of the other persons in the same manner.

- (4) There shall be served with the order (in form 4 in the Fundamental Rights (Enforcement) Rules 1979 for the production of the person detained a notice (in Form 5 of the Fundamental Rights (Enforcement) Rule 1979 stating the Court before which the detained person is to be brought.
5. The return to an order for the release of a person detained the order shall be endorsed on or annexed to the order and shall state all the causes or justifications of the detainer of the person detained.
- (2) The return may be amended or on other return substituted, by leave of the Court before whom the order is returnable.
6. When a return to the order has been made, the return shall first be read in open court and an oral application then be made for discharging or remanding the person detained or amending or quashing the return, and where the detained person is brought to the court his legal representative shall be heard first, then the legal representative for the State or for any other official or person detaining him. The legal representative for the person detained will then be heard in reply.
7. An order for the release of a person detained shall be made in clear and simple language having regards to all the circumstances of the case.
8. (1) An application for a writ of habeas corpus ad testificandum or of habeas corpus respondendum shall be made on affidavit.
- (2) An application for an order to bring up a prisoner,, otherwise than by writ of habeas corpus to give evidence in any cause or matter, civil or criminal before any Court, tribunal or justice shall be made on affidavit.
9. Writ of habeas corpus shall be in forms 95, 96 or 91 in the appendix to these rules, whichever is appropriate.

#### ORDER 42 - COMMITTAL FOR CONTEMPT OF COURT

1. (1) The power of the Court to punish any person or group of persons for contempt of Court may be exercise by an order of Committal.
- (2) An order for committal may be made where contempt of court—
  - (a) is committed in connection with any civil or criminal proceedings before the Court, or before any inferior court;
  - (b) is committed in the face of the Court or consists of disobedience to an order of the Court or breach of an undertaking to the Court.



2. (1) An application for an order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.
- (2) The motion on notice together with the affidavit shall be served personally on the person sought to be committed, but the Court may dispense of personal service where the justice of the case so demands.
3. Nothing in rules 1 and 2 of this order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of Court.
4. (1) Subject to paragraph (2) the Court hearing an application for an order of committal may sit in private in the following circumstances that is to say—
  - (a) where the application arises out of proceedings relating to wardship or adoption of an infant or to the guardianship, custody, maintenance or up-bringing of an infant or rights of access to an infant;
  - (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;
  - (c) where the application arises out of proceedings in which secret process, discovery or invention is in issue;
  - (d) where it appears to the Court that in the interest of justice or national security the application shall be heard in private, but in all other cases the application shall be heard in an open Court.
- (2) If the Court hearing an application in private by virtue of paragraph 1 above decides to make an order of committal against the person sought to be committed, it shall in open Court state—
  - (a) the name of that person;
  - (b) in general terms the nature of the contempt of Court in respect of which an order of committal is being made; and
  - (c) the length of the period he is being committed.
- (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out under rule 2.
- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

5. The foregoing provisions are without prejudice to the powers of the Court to Commit for contempt committed in the face of the Court.
6. (1) The Court by whom an order of committal is made may by order direct that the execution of the order shall be suspended for such period or on such terms or conditions as it may specify.
- (2) Where execution of an order of committal is suspended by an order under paragraph 1 above the applicant for the order, shall unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.
7. (1) The Court may, on the application of any person committed to prison for any contempt of the Court discharge him.
- (2) Where a person has been committed for failing to comply with a judgement or order requiring him to deliver anything to some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce the judgement, or order then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and without prejudice to the generality of paragraph (1) the Court may discharge the person committed and may give such directions for dealing with the thing or things taken by the sheriff as it thinks fit.
8. Nothing in the foregoing provisions of this order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of Court, or a person punishable in the like manner by virtue of any enactment as if he had been guilty of contempt of Court to pay a fine or give security for his good behaviour, and these provisions, so far as applicable, with necessary modifications shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.
9. Every writ of attachment issued in a case to which this order applies shall be made returnable before the Court. If a return of non est inventus is made, one or more writs may be issued on the return of the previous writ.

#### ORDER 43 - APPLICATION FOR JUDICIAL REVIEW

1. (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 mentioned in paragraph (1) (b) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that 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; and
  - (c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.
2. On an application for judicial review any relief mentioned in rule 1 (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.
3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
- (2) An application for leave shall be made ex-parte to the Court, except in vacation when it may be made to a judge in Chambers, and shall be supported—
  - (a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
  - (b) by affidavit, to be filed with the application, verifying the facts relied on.
- (3) The applicant shall file the application not later than 2 clear days than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support.
- (4) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.
- (5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (6) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgement, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing

of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

- (7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
  - (8) Where an application for leave is refused by a judge in chambers, the applicant may make a fresh application to another Judge in Court.
  - (9) An application to a judge in Court under paragraph (8) shall be made within 10 days after the judge's refusal to give leave.
  - (10) Where leave to apply for judicial review is granted, then—
    - (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders; and
    - (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.
4. (1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) below applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant—
- (a) leave for the making of the application; or
  - (b) any relief sought on the application if in the opinion of the Court the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (2) In the case of an application for an order of certiorari to remove any judgement, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceedings.
- (3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.
5. (1) Subject to paragraph (2), when leave has been granted to make an application for judicial review, the application shall be made by originating

motion, except when the Court is on vacation when it may be made by originating summons to a Judge in Chambers.

- (2) Where leave has been granted and the Judge or Court so directs, the application may be made by motion to a Judge sitting in open Court or, by originating summons to a Judge in Chambers.
  - (3) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the Court 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 or summons shall also be served on the clerk or registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge.
  - (4) Unless the Court granting leave has otherwise directed there shall be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.
  - (5) A motion shall be entered for hearing within 14 days after the grant of leave.
  - (6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it, and the affidavit shall be before the Court on the hearing of the motion or summons.
  - (7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.
6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
- (2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit or any other party to the application.
  - (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

- (4) Each party to the application shall supply to every other party on demand and on payment of the proper Court charges copies of every affidavit which he proposes to use at the hearing including in the case of the applicant, the affidavit in support of the application for leave under rule 3.
7. On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—
- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
  - (b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
8. Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge notwithstanding that the application for judicial review has been made by motion and is to be heard by the Court.
9. (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.
- (2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.
- (3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), below direct that the proceedings shall be quashed forthwith on their removal into the Court.
- (4) Where the relief sought is an order of certiorari and the Court is satisfied, that there are grounds for quashing the decision to which the application relates, the Court 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 Court.
- (5) Where the relief sought is a declaration, an injunction or damages; and the Court 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 his application, the Court may,

instead of refusing the application, order the proceedings to continue if as they had been begun by writ.

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.
11. Where there is more than one application pending against several persons in respect of the same matter, and on the same grounds, the Court may order the applications to be consolidated.

#### ORDER 44 - APPEALS FROM MAGISTRATE'S COURT, ETC.

1. Every appeal shall be brought by notice of appeal which shall be of be lodged in the lower Court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.
2. (1) 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 such decision and the grounds for appeal in
- (2) 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.
- (3) The notice of appeal shall give an address within the Judicial, Division in which is situated the lower court appealed from, to which notices may be sent for the appellant, and such notices may be sent to him by registered post.
- (4) The notice of appeal shall be in Form107 in the appendix and may be varied to suit the circumstances of the case so that no variation of substance shall be made.
3. The Registrar of the Lower Court shall, within three months of the decision appealed from, prepare as many certified copies of the proceedings required for the consideration^ the appeal as there are parties on record. Save where the fees for preparing such copies are remitted, a deposit decided upon by the Registrar as likely to cover such fees, shall be made by the appellant before the preparation of such copies.
4. The Registrar of the Lower Court shall within 7 days of preparing the copies aforesaid send the same to the Registrar of the Court in the Judicial Division in which the lower court is situated, and the appeal shall be decided by the Judge of that Division.
5. When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy of the proceedings.

6. The times prescribed in rules 1 to 4 may be enlarged at any time by the Court on such terms (if any) as may seem fit, after notice given to the respondent by the appellant of his application for enlargement of time.
7. 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 put,, or enlarge time for sufficient reason shown.
8. All civil appeals from lower Courts shall be heard by two Judges of the Court.
9. The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.
10. (1) If, on the day of hearing or at any adjournment 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) If in any such case the respondent appears, the judgement shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not, appear, the costs of the appeal shall be in the discretion of the Court
11. (1) If, on the day of hearing and at any adjournment 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 judgement according to the merits of the case without regard, to any imperfection or defect of form:  
(2) 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 hereinbefore contained the court shall dismiss the appeal and affirm the decision, with or without costs of appeal against the appellant.
12. On the hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set forth in his notice of grounds for appeal, and where, in the opinion of the Court, other grounds for appeal than those set forth in the memorandum grounds for appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds for appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.
13. (1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgement of the Lower Court on grounds other than those stated by the Court.



- (2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to confirm the judgement of the Lower Court.
  - (3) Such notice and grounds shall be filed in Court within 14 days of service on the respondent of the notice and grounds for appeal, and shall be served on the appellant or his legal practitioner.
14. (1) The respondent may file grounds for appeal against any Counterpart of the judgement of the lower court.
- (2) Such grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds for appeal, and shall be served on the appellant or his legal practitioner before the hearing.
15. (1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed, unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to enquire into the subject matter thereof or to prepare for the hearing.
- (2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for appeal forthwith to be amended upon such terms and conditions, if any, as the Court may think just.
16. (1) On any appeal, from a decision of a lower Court, no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of such Court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in such Court.
- (2) If any error, defect, or variance mentioned in this rule appears to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.
17. No objection shall be taken or allowed, on any appeal, to any notice of appeal which is in writing or to any recognizance entered into under this order for the due prosecution of such appeal for any alleged error or defect therein; but if any such error or defect appears to the Court to be such that the respondent on such appeal has been deceived or misled, it shall be lawful for the Court to amend the same and, if it is expedient to do so, also to adjourn further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may deem just.

18. The Court may, in any case where it may considers necessary that 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 such evidence, and may in such case either direct the lower court to adjudicate a fresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct, after taking such evidence 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.
19. (1) When additional evidence is to be taken by the lower Court and specific findings of fact reported, it shall certify such evidence to the Court which shall thereupon proceed to dispose of the appeal.
  - (2) The appellant or his legal practitioner shall be present the additional evidence is taken.
  - (3) Evidence taken in pursuance of rule 18 shall be regarded 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 to 18, (above) 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.
20. The fees in the First Schedule shall be chargeable in civil Appeals where the same 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 same on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.
21. Allowance may be made to witness in accordance with the provision of the Third Schedule.
22. (1) On application being made for stay of execution under any enactment establishing the lower Court, the lower Court or the Court may impose one or more of the following conditions: -
  - (a) that the appellant shall deposit a sum fixed by the Court nor exceeding the amount of the money or the value of the property affected by the decision or judgement 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 judgement appealed from relates to possession of lands or house, 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 appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the security for the 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) Any order made on any such application shall limit the time (not being more than 30 days) for the performance of the conditions imposed, and direct that in default of such performance within the time so limited execution may issue or proceed.
  - (3) An application for stay of execution under the enactment establishing the lower court may be made at any time after lodgement of the notice of appeal and shall in the first instance be made to the lower Court.
  - (4) Where execution has been ordered by the Court the application shall not be made to the lower court but to the Court.
  - (5) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal. Where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.
  - (6) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).
  - (7) Any party dissatisfied with an order made by the lower court may apply to the Court by motion (original or interlocutory as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.
  - (8) An appeal shall not operate as a stay of execution under the decision or judgement appealed from except so far 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.

23. The Court may make such order as to the payment of costs by or to the appellant as it may deem to be just and such order may be made also in any case where an appeal has not been entered into or prosecuted.
24. (1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal including the costs incidental to the application.
  - (2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given 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 so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs as may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex-parte or on notice, as the Court may deem fit.
  - (4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (but not otherwise).
  - (5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under paragraph (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgement or decision appealed from.
25. (1) When a case is decided on appeal the Court shall certify its judgement or order to the lower Court in which the decision appealed against was pronounced.
  - (2) The lower court to which the Court certifies its judgement or order shall thereupon make such orders as are conformable to the judgement or order of the Court, and, if necessary, the records shall be amended in accordance therewith.
26. After the pronouncement of the judgement 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 judgement which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgement had been pronounced by it.

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.
28. The Court may, if it deems fit, enlarge any period of time prescribed by this order.
29. In this order—

"the lower court" means the Court whose judgement is appealed against, and includes a Magistrate's Court but does not include an arbitrator, a referee or an auditor ;

"judgement" includes an order or a ruling.

#### ORDER 45 - APPEALS TO THE HIGH COURT EPOM DECISION OF AUDITORS

1. This Order shall apply to any appeal to the Court from a decision of an auditor made under the provision of any written law which confers the right to appeal to the High Court against any such decision.
2. An appeal to the Court from a decision of an auditor shall be by notice of motion.
3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given.
4. The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it relates, upon the auditor in charge of the audits in respect of which the decision has been made and also upon local government or other body in relation to whose accounts of whose accounts or to the accounts of whose officers the decision was given, if that local government or the other body is not the appellant.
5. The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the hearing of the appeal shall be not less than twenty-eight days after service of the notice.
6. (1) The appellant shall within seven days after service on the auditor of the notice of motion, file with the Registrar a copy of such notice and an affidavit setting out the reason stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.
- (2) If the notice of motion is not set down in accordance with this provision, either the Local government or other body or the auditor may apply to the court, upon notice to the appellant, for an order discharging the notice of motion and for the cost of application.

7. The appellants shall deliver forthwith to the local government or other body and to the auditor a copy of any affidavit filed under rule 6 in support of the motion and any person intending to oppose the motion shall, four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be filed by him in opposition to the motion.
8. Where under rule 4 notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may appear in thereto in all respect as if he were the auditor by whom the decision was given, and these provisions shall apply accordingly.

#### ORDER 46 - STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Where any application is made to the Court for a stay of execution or of proceedings under any judgement or decision appeal from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.
2. (1) The Court may make or refuse an order for a stay of execution or of 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 judgement appealed from.
3. Where any application is made to the Court under this order, a formal order shall be drawn up embodying the terms of the decision of the Court and bearing the date upon which the order is made.

#### ORDER 47 - MISCELLANEOUS PROVISIONS

1. Subject to particular rules the Court may in all causes and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.
2. All fines forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.
3. In all cases in which publication of any notice is required the same may be made by advertisement in the State Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.
4. A document shall not be filed unless it has endorsed on it the name and number of causes, the date of filing, and whether filed by defendant or plaintiff; and on being filed such endorsement shall be initialled by the Registrar.

5. The Forms prescribed by the various orders and rules shall be used wherever applicable with such variations as circumstances may require.
6. No Form shall be varied in such a way as to impose on any party, officer of the Court or other person an obligation to which he is not subject by virtue of the High Court Law or these rules or otherwise by law.
7. In proceedings for which forms are not provided or pre-scribed by any subsequent rules or orders of Court the Chief Registrar may subject to the approval of the Court from time to time frame the forms required.
8. All warrants and writs of whatever description shall be sufficiently addressed for execution by being directed to the Sheriff; but this provision shall not prevent any writ or warrant from being addressed to a person by name or to a person named, and to officers of Court generally to an Area Court.
9. The sealing of any writ or process shall not be necessary in addition to signature of the judge or other officer by whom the same shall be signed, except in cases where sealing may be expressly directed by any written law or by any prescribed form.
10. The fees set out in the fourth Schedule may be charged in respect of the duties of a notary public or of a notarial act.

#### ORDER 48 - SITTINGS OF THE COURT AND VOCATION

1. Subject to the provision of the High Court Law the Court may at its discretion appoint any day or days for the hearing or places from time to time for the hearing of actions as the circumstances may require.
2. (1) The sittings of the Court for hearing and determination of the rights and obligations shall be in public.
- (2) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may for special reasons, hear any particular action in the presence only of the parties with their legal practitioners (if any) and the officers of the Court.
3. The offices of the Court shall be opened at such times and place as the Chief Judge shall direct.
4. (1) Subject to the directions of the Chief Judge, sittings of the Court for dispatch of civil matters shall be held on every week-day except on public holidays.
- (2) There shall be an annual vocation of the Court to commence on such date in August and of such duration, not exceeding six weeks, as the Chief Judge may by notification in the Gazette appoint.

5. (1) Notwithstanding the provisions of rule 4 above any action may be heard by a Judge in Court during any week-day except on a Sunday or public holiday where such action is urgent or a Judge in the interest of all parties concerned agrees to hear the action.
- (2) An application for urgent hearing shall be made by summons in chambers, and the decision of the Judge on such application shall be final.
6. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Court or a Judge in Chambers.

#### ORDER 49 - PROBATE AND ADMINISTRATION

##### Grant of Probate or Administration in general.

1. (1) Subject to the provisions of rules 39 and 40, 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 at Kano.
- (2) In regard to any such application, the Chief Judge shall have power to request the Court 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 Court under this Order, and every Court 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 seven days of the death of the deceased; and no grant of administration (not with the will annexed) shall issue within fourteen days of such death.
- (4) Every applicant for a grant of Probate or administration shall file with his application a true declaration of all personal properties of the deceased and the value thereof as in form 164 and the Court shall ascertain the value of the property of the deceased 'as correctly as circumstances allow.
- (5) In determining the value of the property of the deceased allowance shall be made for reasonable funeral expenses and for debts and incumbrances; and—
  - (a) any gratuity payable by the government of the federation of Nigeria or by the government of any State or by any statutory corporation, to the estate of any person formerly employed by any such government or statutory corporation;



- (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written Law.
12. In no case shall the Court issue letters of administration until all inquiries which the Court sees fit to institute have been answered to its satisfaction. The Court shall, however, 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.
  13. A notice to prohibit a grant of administration may be file in the Court.
  14. (1) The notice shall remain in force three months on from the day of filing, but it may be renewed from time to time. The notice shall not affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.  
  
(2) Notices in the nature of citations shall be given in such manner as the Court directs.
  15. Suits respecting 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. Custody of Wills.
  16. Any person may, in his lifetime, deposit for safe custody in the Court at Kano his own will, sealed up under his own seal and the seal of the Court.
  17. 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 the due preservation and convenient inspection of the same. A copy of every such will and of the probate or administration shall be preserved in a book kept for the purpose in the Registry.
  18. No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is filed. A certified transcript, under the seal of the Court of the probate or administration with the will annexed may be obtained from the Court.

Probate or Administration with will annexed.

19. (1) On receiving an application for administration with will annexed, the Court 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 to be subscribed by two witnesses according to the enactments relative thereto, 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 Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the will to have been, in fact, executed in accordance with those enactments.
20. If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.
21. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.
22. If both the 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 (if any) present at the execution of the will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the hand-writing 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.
23. Where the testator was blind or illiterate, the Court shall not grant administration with the will annexed, unless the Court 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.
24. (1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it and requiring to be accounted for.
- (2) Interlineations, alterations, erasures, are invalid unless they existed in the will at the time of its execution 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) If 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.
- (5) Where any words have been erased which might have been of importance an affidavit shall be required.
25. (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 Court 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 proved. 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 some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if is not produced, a satisfactory account of its non-production shall be proved.
26. 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 does not appear, his right in respect of the executorship wholly ceases; and, without 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.
27. (1) Every will or copy of a will to which an administrator with the will annexed is sworn shall be marked by the administrator and by the person before whom he is sworn.
- (2) The provisions respecting wills apply equally to codicils.
28. In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

#### Administration (not with Will).

29. (1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate
- (2) The Court shall ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration.
30. (1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the probate Registrar of the Court, conditioned

- for duly collecting, getting in, and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.
- (2) The Court may, if it thinks fit, take one surety only.
  - (3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court in any case thinks it expedient to reduce the amount.
  - (4) The Court 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 thinks reasonable.
31. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same 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 instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

#### Administration of Property.

32. 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 before the Court and show cause why an order for the administration of the property of the deceased should not be made.
33. (1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may, if it thinks fit, make an order for the administration of the property of the deceased.
- (2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of 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 Court thinks fit.
  - (3) If the Court thinks fit the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit
34. On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safekeeping and disposal of the property or any part thereof.
35. In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of

any person having interest in the estate of the deceased, or of its 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.

36. (1) The officer or person so appointed shall act under the direction of the Court, and shall be indemnified thereby.
- (2) The Court shall require and compel him to file in the Court his accounts of his administration at intervals not exceeding three months.
37. 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 Court to be necessary or convenient in any such case to appoint some person to be the administrator of the personal estate of the deceased, or of any part thereof the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administration may be limited as the Court shall think fit.
38. The Court 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 the Court shall think fit, not exceeding a fee of ten naira and in addition thereto a sum not exceeding five 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 him.

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the property has required an extra-ordinary amount of labour to be bestowed on it, the Court may allow in respect of such property a higher rate of remuneration.

#### Administration of Estate of Foreign Citizens.

39. (1) Where any citizen of any country other than Nigeria dies within the jurisdiction without leaving within the jurisdiction a widow or next of kin, then, if any such person dies within a Government station, or had his usual place of residence therein the Magistrate having jurisdiction within such station, or if he does not die within a Government station, or had not his usual place of residence therein, then the Local Government Secretary in charge of the station in which he died, shall collect and secure all moneys and other property belonging to the deceased, and shall then request the Secretary to the Government to inform the nearest consular officer of such country of the death of the deceased, and transmit to him a list of the money and property of the deceased.

- (2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money and other property of the deceased, such Local Government Secretary may appoint any Administrative Officer attached to his Local Government or, with his consent, any Magistrate or any Administrative Officer attached to any other Local Government to act in his place.
40. Application may be made to the Court by any such consular officer, or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, vary such order when and so often as is expedient.

Administration generally.

41. (1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Court so to do, file in Court the accounts of his administration, and shall thereafter file such further periodic accounts as the Court may direct until the completion of the administration.
- (2) Any such executor or administrator who fails within any such period to file his accounts as aforesaid shall be liable to such penalty not exceeding one hundred naira as the Court may think fit to impose. Every such fine shall on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.
- (3) When an account is filed in Court under this rule, the Court shall scrutinize such account and if it appears to the Court that by reason of improper unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Court may give written notice to the person filing the account to remedy such defects as there may be within such time as to the Court may seem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account within the meaning of this rule and proceedings may be taken against such person accordingly.
- (4) The Court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.
- (5) The Court may for good cause shown extend the time for such filing of accounts.
- (6) 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.

- (7) It will be the duty of the Probate Registrar to bring to the notice of the Court the fact that any executor or administrator has failed to file his accounts as required by this rule.
- (8) Such accounts shall be opened free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.
- (9) In this rule the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.
- 42. The Duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40, and 41 (1), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order.

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to review any exercise by the Probate Registrar of the powers delegated to him. On such review the Court shall have power to cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise and make such order in the premises as may to the Court seem just.

- 43. The Court may refuse to entertain any application under the last preceding rule if it considers that there has been unreasonable delay by the applicant in making his application.
- 44. The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

#### ORDER 50 - PROBATE (NON-CONTENTIOUS) PROCEDURE

- 1. 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 for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding one hundred naira as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.
- 2. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under the control of any person, the Court may in a summary way, whether a suit or proceeding respecting

probate or administration is pending or not, order him to produce the paper and bring it into Court.

3. Where it appears that there are reasonable grounds for believing that any person has 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), the Court may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be examined respecting the same in Court, or on interrogatories and that he attends for that purpose, and after examination that he produces the paper and bring it into Court.
4. The Court may of its own motion, or on the application of any person claiming an interest under a will, give notice to the executors (if any) therein named, to come in and prove the will, or to renounce probate, and they, or some or one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.
5. If any person 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 one month after the death, or after the termination of any suit or dispute, respecting probate or administration, he may independently of any other liability be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding one hundred naira, as the Court thinks fit to impose.
6. (1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his will and all applications on other matters connected with it shall be made to the Probate Registrar of the Court at Kano Judicial Division.
- (2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such order 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 Court under this order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge.
7. (1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.
- (2) Every legal practitioner through whom an application for a grant is made shall give the address of his place of business within jurisdiction.
8. (1) A personal applicant may apply for a grant otherwise than by post at the Probate Registry.



- (2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended 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 on 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 Registrar 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 Registrar 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 Registrar may approved.
- (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 Registrar 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.
9. (1) The Registrar shall not allow any grant to issue until all inquiries which he may seem fit to make have been answered to his satisfaction.
- (2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.
- (3) No grant of probate or of administration with the will annexed shall issue within seven days of the death of the deceased.
10. (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 papers as the Registrar may require.
- (2) Unless otherwise directed by the Registrar, the oath shall state where the deceased died domiciled.
11. 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.

12. 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 Registrar is satisfied that compliance with this rule might result in the loss of the will, he may allow a photostat copy thereof to be marked or exhibited in lieu of the original document.

13. (1) Where the Registrar considers that in any particular case a photostat copy of the original will would not be satisfactory for purposes of record he may require an engrossment suitable for Photostat reproduction to 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 paragraph (2) of this rule applies, it shall be made bookwise 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 appears in pencil in the original.
14. (1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the will, he shall before admitting it to 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 the last foregoing paragraph, the Registrar may, if he thinks fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is the hand writing of the deceased, or of any other matter which may arise a presumption in favour of the due execution of the will.
  - (3) If the Registrar, after considering the evidence—

- (a) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;
  - (b) is doubtful whether the will was duly executed, he may refer the matter to the Court on motion.
- 15. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.
- 16. (1) Where there appears in a will 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 Registrar 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 paragraph shall not apply to any alteration which appears to the Registrar to be of no practical importance.

- (2) If from any mark on the will it appears to the Registrar 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 Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.
  - (3) Where there is doubt as to the date on which a will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.
- 17. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstances leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.
- 18. The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 15, 16, and 17, and 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.
- 19. If it appears to the Registrar that there is prima facie evidence that a will is one to which section 9 of the wills Act 1837, or any provision of the equivalent enactment in force in the State, applies, the will may be admitted to proof if the Registrar is satisfied that it was made by the testator in

accordance with the provisions of that section or enactment, as the case may be.

20. Where evidence as to the law of any country or territory outside the State is required on any application for a grant, the Registrar 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.
21. 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—
  - (1) the executor;
  - (2) any residuary legatee or devisee holding in trust for any other persons;
  - (3) any residuary legatee or devisee for life;
  - (4) 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—

- (a) unless the Registrar otherwise directs, a residuary legatee or devisee whose legally is vested in interest shall be preferred to one entitled on the happening of a contingency; and
  - (b) where the residue is not in terms wholly disposed of, the Registrar 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 however to rule 53) 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:
- (5) Any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 44, 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 thereto.
  - (6) Any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

22. 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.
23. Every applicant for a grant of probate or letters of administration with the will attached shall file in the Court a true declaration of all personal property of the deceased and the value thereof;

Provided that for the purpose of the fees payable on probate and such 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 the Government of a State, to the estate of any person formerly employed by either of such Governments or by Statutory Corporation;
  - (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.
24. In no case shall the Court issue probate or letter of administration with the will attached until all inquiries which the Court sees fit to institute have been answered to its satisfaction. The Court shall, however, afford as great a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.
  25. A notice to prohibit a grant of probate or administration with the will attached may be filed in the Court.
  26. (1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time. The notice shall not effect a grant made on the day on which the notice is filed. The person filing the notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.
  - (2) Notices in the nature of citations shall be given in such manner as the Court directs.
  27. Suits respecting probate or 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.

#### Custody of wills

28. Any person may, in his lifetime, deposit for safe custody in the Court at Kano his own will, sealed up under his own seal and the seal of the Court.

29. 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 the due preservation and convenient inspection of the same. A copy of every such will, and of the probate or administration, shall be preserved in a book kept for the purpose in the Registry.
30. No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is filed. A certified transcript, under the seal of the Court of the Probate or administration with the will annexed may be obtained from the Court.

Probate or administration with will annexed.

31. (1) On receiving an application for Probate or for administration with will annexed, the Court 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 to be subscribed by two witnesses according to the enactments relative thereto, 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 Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the will to have been, in fact, executed in accordance with those enactments.
32. If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.
33. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.
34. If both the subscribing witnesses are dead, or if from other circumstances such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had to other persons, (if any) present at the execution of the will; but if no such 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.
35. Where the testator was blind or illiterate, the Court shall not grant probate of the will, or administration with the will annexed, unless the Court 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 all that time knowledge of its contents.

36. (1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or 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 obliteration 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) If 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.
  - (5) Where any words have been erased which might have been of importance, an affidavit shall be required.
37. (1) Where a will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the Court 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 proved. 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 some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if not produced, a satisfactory account of its non-production shall be proved.
38. 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 does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to testator and the administration of his property may go and be committed as if that person had not been appointed executor.

39. (1) Every will or copy of a will to which an executor or an administrator with the will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn.
- (2) The provisions respecting wills apply equally to codicils.
40. In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.
41. (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 the 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 (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.
42. In the absence of a proving executor—
- (1) An application to join with a person entitled to a grant of administration with the will attached a person in a lower degree shall in default of renunciation by all persons entitled in priority to such, last mentioned person, be made to the Registrar 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 Registrar may require.
- (2) An application to join with a person entitled to a grant of administration with the will attached a person having no right thereto shall be made to the Registrar 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 Registrar may require.

Provided that there may without any such application be joined with a person entitled to administration with the will attached—

- (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 Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;



(c) a trust corporation.

43. (1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application the Registrar 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 other order as the circumstances of the case may require.

44. (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 Registrar.

(3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Registrar otherwise directs, probate or administration with the will attached 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.

45. (1) Nothing in rules 21, 42 or 44 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 to rule 47 applies.

46. 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 (not exceeding four) of such persons :

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

47. Where the deceased died domiciled outside the State, the Registrar may order that a grant do issue—

- (1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled.
- (2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled.
- (3) if there is no such person as is mentioned in paragraph (1) or (2) of this rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct.
- (4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (1) or (2) 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) if the will is in English or in the local vernacular, to the executor named therein;
  - (ii) if the will describes 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 which would have been applicable if the deceased had died domiciled in the State.

48.(1) Where a person entitled to a grant resides outside the State a grant may be made to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar 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 Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

49. (1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the of age of eighteen years shall, subject to paragraphs (3) and (5) of this rule, be granted.

- (a) to both parents of the infants jointly, or to any guardian appointed by a court of competent jurisdiction; or
    - (b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or, where the infant is a married woman, to any such next of kin or to her husband if nominated by her.
  - (2) Any person nominated under sub-paragraph (b) of the last foregoing paragraph may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.
  - (3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen 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 paragraph (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 Registrar 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 an infant 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 infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.
  - (6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this rule authorised to renounce by the Registrar.
50. (1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule 49 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefore.
- (2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be made—
- (a) in the case of mental incapacity, to the person authorised by the court to apply for the grant; or
  - (b) where there is no person so authorised, 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) if 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 Registrar may by order direct.
- (2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been cleared off.
- (3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

#### ORDER 51 - PROCEEDINGS UNDER THE LEGITIMACY LAW

1. In this Order "petitioner" means a person applying for a legitimacy declaration, and "petition" has a corresponding meaning.
2. The practice and rules of the Court shall so far as practicable govern all proceedings under the Legitimacy Law, subject nevertheless to the particular provisions of this Order.
3. (1) A petition shall be headed "In the matter for the Legitimacy Law", and "In the matter of—(the person to be declared legitimated)" and shall be according to the prescribed form, with such variations and additions as the circumstances may require, and shall state among other matters—
  - (a) the place and date of the marriage concerned;
  - (b) the status and residence of each of the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare—

- (i) at the date of his birth; and
    - (ii) at the date of the marriage;
  - (c) whether there are living other issue of the parents of such person as aforesaid and the respective names and dates of the birth of all such issue;
  - (d) the person (if any) affected by the legitimization of such person as aforesaid and the value so far as is known of the property (if any) hereby involved;
  - (e) whether any and if so what previous proceedings under the Legitimacy Law, or otherwise with reference to the paternity of such person as aforesaid, or the validity of the marriage leading to his legitimization have been taken in any Court;
  - (f) that there is no collusion.
- (2) A petition shall also include an undertaking by the petitioner (if not an infant or person of unsound mind) to pay the costs of the respondents if the Court shall so direct.
- (3) If the petitioner is an infant or person of unsound mind, he shall petition by a next friend and the full names, occupation or description, and residence or place of business, of the next friend shall be stated in the petition and there shall be lodged by him with the petition and undertaking to be responsible for costs.
4. If the petitioner does not reside in the State, the petition shall state an address within the State at which the petitioner may be served with any summons, notice, order of Court or other process.
5. Where it appears on the presentation of a petition that the petitioner does not reside in the State, the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar.

Provided that where the petition is filed through a legal practitioner, an undertaking by him, in form to be approved by the Registrar, to be responsible for the costs shall be sufficient.

6. The respondents to a petition shall be the Attorney-General of the State and all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made respondents to be made respondents and to be served with the petition and

- affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as may be just.
7. The petition shall be accompanied by an affidavit made by the petitioner, or by an affidavit made or by his next friend (if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.
  8. (1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be served and also two copies for the use of the Court.  
(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the hearing.
  9. (1) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to the Attorney General at least two months before the petition is presented or file.  
(2) Any document or notice addressed to the Attorney-General shall be addressed to him at Attorney- General's Chambers, Ministry of Justice, Kano.
  10. (1) A sealed copy of the petition and affidavit shall, unless the Court otherwise directs, be served by a bailiff or by a police constable fifty-six days at least before the hearing on every respondent (other than the Attorney-General) personally and the petition and every copy to be served on a respondent (other than the Attorney-General) shall be endorsed with a notice in the prescribed form.  
(2) At least fifty-six days' notice of the day whereon the petition will first be heard shall be given by the Registrar to the Attorney-General.
  11. (1) A respondent may within twenty-eight days after service of the petition upon him file an answer to the petition.  
(2) Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.  
(3) There shall be filed with the answer as many copies of the answer and the affidavit (if any) as there are other parties to be served and also two copies for the use of the Court.  
(4) The Registrar shall within forty-eight hours of receiving them send by post one sealed copy of the answer and the affidavit (if any) to the petitioner, the Attorney-General, and any other respondent.

12. Evidence on the hearing of the petition shall be given orally:  
Provided that the Court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.
13. The Court may make such orders as to costs as it shall think just.
14. A copy of the order made on the hearing of a petition sealed with the seal of the Court shall be supplied by the Registrar to any party to the proceedings on payment of the prescribed fee.

#### ORDER 52 - PROCEEDINGS IN FORMA PAUPERIS

1. The provisions of this Order shall remain in force until statutory provisions are made for legal aid in connection with civil proceedings before the Court and thereupon shall cease to have effect.
2. The Court or a Judge in Chambers may admit a person to sue or depend in forma pauperis, except in bankruptcy proceedings, if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable ground for suing or depending as the case may be.
3. (1) The application shall, if the Court or a Judge in Chambers so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the applicant satisfied the requirements of rule 2 as to his means, and setting forth all the material facts on which he relies in his desire to sue or depend, distinguishing between those which are within his personal knowledge and those which he bases on information and belief, and in the latter case, setting forth the sources of his information and belief.
- (2) If the application is, in the opinion of the Court or a Judge in Chambers, worthy of consideration, it shall be referred to a legal practitioner willing to act, and unless such legal practitioner shall certify that in his opinion the applicant has a good cause of action or good ground of defence, as the case may be, the application shall be refused.
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 to the Court or a Judge in Chambers may seem right; and a person so admitted to sue or defend shall not, unless the Court otherwise orders be liable to pay or be entitled to receive any costs.
5. On granting the application the Court or a Judge in Chambers may assign to the applicant any legal practitioner willing to be so practitioner assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with leave of the Court or of a Judge in Chambers.

6. (1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant nor any other person shall, except by leave of the Court, or of a Judge in Chambers, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended thereunder.
- (2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action taken or defended thereunder, his application shall be refused or, if already granted, the order granting it shall be rescinded.
- (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 Registrar.
7. (1) The Court or a Judge in Chambers may at any time revoke the order granting the application, and thereupon the applicant shall not be entitled to the benefit of this provision 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 the Court or a Judge in Chambers.
8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant, or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all the circumstances may seem fit.

#### NOTE

It will not be necessary for you to enter an appearance in the High Court Registry but if you do not attend either in person or by your legal practitioner, at the time and place above mentioned (or at the time mentioned in the endorsement hereon), such order will be made and proceedings taken as the Judge may think just and expedient.

9. Every writ, 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.
10. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate court, and then only on grounds of law; but if so permitted the provisions of this Order shall apply mutatis mutandis to all proceedings on the appeal.

#### ORDER 53 - COSTS



### Security for costs

1. (1) Where, on the application of the defendant to an action or other proceeding in the Court it appears to the Court—
  - (a) that the plaintiff is ordinarily resident out of jurisdiction; or
  - (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or
  - (c) that subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or
  - (d) that the plaintiff has changed his address during the course or the proceedings with a view to evading the consequences of the litigation, then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.
- (2) The Court shall not require a plaintiff to give security by reason only of paragraph (1) (c) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without intention to deceive.
- (3) The references in the foregoing rule to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.
2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time and on such terms (if any), as the Court may direct.

### Costs Between Party and Party.

3. In every suit the costs of the whole suit, and of each particular proceeding therein, and the costs of every proceeding in the Court, shall be in the discretion of the Court as regards the person by whom they are to be paid.
4. The Court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit, although the Court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

5. The Court may order any Costs to be paid out of any fund or property to which a suit or proceedings relates.
6. When the Court adjudges or orders any costs to be paid, the amount of such costs shall be, if practicable, summarily determined by the Court at the time of making the judgment or order, and named therein.
7. 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 establishing his fixing costs, claim, defence or counter-claim, but the Court may take into account all the circumstances of the case.
8. Where the Court orders costs to be paid, or security to be given for costs by any party, the Court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceedings, or connected therewith, 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.
9. When the Court deems it to be impracticable to determine Taxation of summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.
10. Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of Court, to the skill, labour and responsibility involved.
11. In taxation of costs between party and party, nothing shall Taxation, be allowed in respect of fees paid to the Court beyond what was necessary having regard to the amount recovered on judgement.
12. If upon the taxation of any bill of costs more than one-sixth of is deduced from the amount claimed, the Court may either make no of bill of costs order as to the costs of the taxation or may order the party who filed the bill of costs to pay to the other party or parties the costs of taxation.
13. Where a plaintiff is successful in any action which might have been brought by him in an inferior tribunal, the Court may take into account the smaller costs which would have been involved to the parties to the action if it had been taken in such inferior tribunal and may, in its discretion, grant to the successful plaintiff modified costs or no costs and may grant to any other party such extra costs as the Court is satisfied such other party has incurred by reason of the action being taken in the Court instead of in the inferior tribunal, unless the Court is of opinion that the action was one which for some special reason it was proper to bring in the Court.

1. Subject to the provisions of any written law and of the foregoing Orders—
  - (1) The fees set out in the First, Second, Third, Fourth and Fifth Schedules hereunder shall be payable by any person commencing the respective services for which they are specified in those Schedules. ...
  - (2) The allowances set out in Part II of the Fifth Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.
  - (3) A witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.
2. The regulations set out in the Sixth Schedule shall be observed by all officers of Court concerned with the rendering of services, and of collection of fees payable, under the provisions of the foregoing Orders.

## APPENDIX—FORMS

### Form No. Title

1. General form of Writ of Summons
2. Specially endorsed Writ
3. Writ for service out of the jurisdiction, or where Notice of writ is to be served out of the jurisdiction
4. Specially endorsed writ for service out of the jurisdiction
5. Notice of writ to be served out of the jurisdiction
6. Form of memorandum for renewal Writ
7. Request to Minister of External Affairs to transmit Notice of Writ to Foreign Government
8. Request for service abroad
9. Letter forwarding Request for Substituted Service
10. Request to Minister of External Affairs to transmit Notice of Writ to Foreign Government
11. Forms of entry of Appearance. Memorandum of Appearance

12. Notice of entry of Appearance, after leave obtained
13. Entry of Appearance limiting Defence
14. Affidavit for entry of Appearance as Guardian
15. Notice of Entry of Appearance to Defendant or his Solicitor
16. Personal service of Writ of Summons (within or without the jurisdiction)
17. Affidavits of service: service on a partner in a firm
18. Service on officer of a corporation
19. Personal service of Originating Summons requiring Appearance
20. Substituted service by post to one address
21. Service of Notice of Writ by advertisement and form of advertisement
22. Service of Notice to Produce or Admit
23. Third Party Notice claiming indemnity or contribution or other Relief or Remedy
24. Third Party Notice when questions or issue to be determined
25. Notice of counter-claim
26. Notice of payment into Court
27. Acceptance of sum paid into Court by one of several defendants
28. Acceptance of sum paid into court by one of several Defendants
29. Confession of Defence
30. Interrogatories
31. Answer to Interrogatories
32. Affidavits as to documents
33. Notice to produce documents
34. Notice to inspect documents
35. Notice to admit documents
36. Notice to admit facts
37. Admission of facts, Pursuant to Notice

38. Notice o produce (General Form)
39. Issues joined
40. Subpeona ad testificandum
41. Habeas corpus ad testificandum
42. Subpoena ducestecum
43. Commission to examine witness
44. Certificate of the Chief Registrar (Title)
45. Receiver's account (Title)
46. Form of guarantee for the acts and defaults of a Receiver
47. Receiver's Security by undertaking 48 Affidavit verifying Receiver's account
49. Form of order, accounts and inquiries
50. Order for payment of principal money or interest secured by mortgage or charge
51. Order for possession of property forming a security for payment to the Plaintiff of any principal money of Interest
52. Order for payment of principal money or interest secured by mortgage or charge and for possession of property comprised therein
- 53 Summons (General Form)
54. General Form of originating summons
55. Originating summons not inter partes
56. Notice of appointment to hear originating summons
57. Originating summons
58. Form of ex-parte originating Summons
59. Order (General Form)
60. Notice in money lenders Action
61. Summons for Directions
62. Short Order for issue of commission to examine witnesses

63. Order for issue of Letter of Request to take evidence abroad
64. Letter of-Request to take evidence abroad (Where no convention)
65. Solicitor's Undertakings as to Expenses
66. Letter of Request to take evidence abroad (Convention Country)
67. Order of appointment of the Nigerian Diplomatic Agent as special examiner (in Convention Country)
68. Order for production of ship's papers
69. Default of appearance and defence in case of liquidated demand
70. Interlocutory judgement in default where demand unliquidated
71. Interlocutory and final judgement in default where demand unliquidated
72. Default judgement in detinue
73. Judgement in default of appearance in action for recovery of land, damages and costs
74. Judgement for recovery of land only
75. Final judgement after assessment of damages
76. Judgement after Appearance and Order
77. Judgement for Unliquidated demand
78. Judgement after trial before Chief Registrar or Referee
79. Judgement after trial of questions of Account by Referee
80. Judgement upon motion for judgement
81. Judgement of Dismissal
82. Judgement for Defendant's costs on discontinuance
83. Judgement for Plaintiff's costs after confession of defence
84. Judgement for Costs after Acceptance of money paid into Court
85. Judgement on motion after trial of issue
86. Forms of praecipe

87. Legitimation petition
88. Legitimacy Law affidavit
89. Legitimacy Law undertaking by next friend
90. Legitimacy Law undertaking for costs
91. Legitimacy Law Notice to Attorney-General of the State
92. Legitimacy Law Answer to petition
93. Legitimacy Law decree
95. Writ of Habeas Corpus
96. Notice to be served with writ of habeas corpus ad subjiciendum
97. Writ or Habeas corpus ad testificandum
107. Notice of appeal (civil)
108. Registrar's return or fees payable to bailiffs
109. Receipt to be given by bailiff
110. Return of Process in possession of bailiff
111. Return of cash received by bailiff
112. Sheriff's receipt for writ
113. Sheriff's Register of Process
114. Summons for neglect to levy execution
115. General Form of commencement of Process in transferred Proceedings
116. Order suspending or staying judgement of process or for discharge of debtor
117. Registrar's Process Book.
118. Writ of attachment and sale against immovable property
119. Notice of Registrar of Foreign Court of payment under warrant or Order of commitment sent to him
120. Public Notice of attachment of land
121. Notice of attachment

122. Notice of claim to attached property
123. Notice to claimant to attached property to make deposit or give security
124. Notice of application for private sale
125. Notice to person in possession of sale of attached property
126. Certificate of purchaser of land
127. Writ of interim attachment in judgement debtor proceedings
128. Notice of consequences of disobedience to order of Court
129. Notice to show cause why order of Attachment should not be made
130. Certificate that labour has been Ordered for debtor prisoner
131. Warrant of committal or of judgement debtor in default of security
132. Warrant of committal remand of judgement for misconduct
133. Warrant of Committal under section ..... of Sheriff and Civil Process Law
134. Warrant of Arrest and Detention of Judgement Debtor
135. Production Warrant
136. Praecipe for issue of order or warrant of Committal
137. Notice of payment of subsistence money
138. Endorsement on an order of Committal sent to a foreign court
139. Certificate by officer in charge of prison as payment of judgement debt
140. Notice of part-payment
141. Endorsement of refusal of Discharge Order
142. Endorsement of recommittal
143. Warrant for arrest of ship
144. Writ of interim attachment
145. Warrant to arrest absconding defendant (High Court)
146. Warrant to arrest absconding defendant (Magistrate's Court)
147. Writ of delivery



- 148. Writ of delivery with execution against immovable property
- 149. Writ of Sequestration
- 150. Nigerian Register of Judgements
- 151. Notice of registration of Certificate of Judgement
- 152. Notice of issue of process
- 153. Notice of payment into court
- 154. Notice of Payment into court
- 155. Surety's Guarantee
- 156. Surety's Guarantee on application for Resealing
- 157. Caveat
- 158. Warning to caveator
- 159. Appearance to warning or citation
- 160; Notice of Election to Redeem Life interest
- 161. Oath for executor
- 162. Oath for Administrator (will annexed)
- 163. Declaration of Personal Property

## FORMS

### CIVIL PROCEDURE FORMS OF WRITS OF SUMMONS, ETC

#### FORM 1

General Form of writ of summons

....., 19.....

(here put the letter and number (see note (a) following this form)

In the High Court of Kano State

In  
the.....Judicial  
Division

Between A.B .....  
Plaintiff

and

C.D.....  
Defendant

To, C.D., of .....in  
the.....of.....

You are hereby commanded that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A.B.;

and take notice that in default of your so doing the plaintiff may proceed therein, and judgement may be given in your absence.

DATED THIS.....day of,.....19.....

By order of the Court

.....

Registrar

Memorandum to be subscribed on the writ

N.B.—This writ is to be served within twelve calendar months from the date thereof or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed, at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registrar by registered post

Endorsement to be made on the writ before issue thereof.

The plaintiff's claim is for, etc. (b) .....

This writ was issued by G.H., of.....whose address for service (c) is  
..... agent for.....of.....legal  
practitioner for the said plaintiff who resides at (d) ..... (mention  
the city, town or district and also the name of the street number of the house of the  
plaintiff's residence, if any)

Endorsement to be made on copy of writ forthwith after service.

This writ was served by me at ..... on the  
defendant (here insert

mode of service) on the..... day  
of..... 19.....

Endorsed the..... day of  
.....19.....

(Signed) .....

(Address).....

#### Notes

(a) Heading and Title.—If the action is for administration the writ must be headed  
"In the matter of the estate of ....."

"deceased." If it is a debenture holders' action the writ must be headed In the  
matter of the A.B. Company", and in a Probate action,

"In the Estate of A.B., deceased." A writ of summons claiming administration of a  
trust or settlement may be entitled "In the matter of the (trust or settlement)."

(b) Endorsement of Claim—If the plaintiff sues or the defendant is sued, in a  
representative capacity, the endorsement must state in what capacity the plaintiff  
sues or the defendant is sued. If the claim is for a debt or liquidated demand only,  
the endorsement even though not special, must strictly comply with the provision  
of the Law, including a claim for four days costs. For special requirements in

money lender actions, see section 159.

(c) Address for Service—The address must be within the jurisdiction.

(d) Address of Plaintiff—In the case of a company in liquidation the plaintiff's  
address should run "..... plaintiffs who are a company in  
liquidation.

The liquidator is (name of liquidator or (address of Liquidator)).

In the case of a foreign corporation within the meaning of part 10 of the Companies  
Act, 1968, the plaintiff's address should run thus "..... plaintiffs, who are a  
foreign corporation within the meaning of the Companies Act, 1968". The registered  
name and address of the person to be served are (here add registered name and  
address).

(e) Endorsement on service—

(f) Probate Actions.—In these actions the endorsement of claim must show the nature of the plaintiff's interest under which he claims ( ); and the alleged interest of the defendant.

Before the writ is issued the following certificate must be endorsed on it:

The Registry, High Court of Kano State

In the.....Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing thereof has been produced to me this day of ..... 19

.....

(Signature of Registrar)

## FORM 2

Specially Endorsed Writ

(Heading as in No. 1)

To C.D. of..... in the ..... of .....

You are hereby commended that, ..... etc. (as in Form 1 supra).

Dated .....,etc, (as in Form 1, supra).

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed within six calendar months from the date of the last renewal including the day of such dated, and not afterwards. The defendant may enter appearance personally or by legal practitioner by handling in the appropriate forms, duly completed, at the Registry of the Judicial Division in which the action is brought, or by sending them to the Registry by registered post.

If the defendant enters an appearance he must also deliver a defence to the legal practitioner to the plaintiff within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise judgement may be entered against him without notice, unless he has in the meantime been served with a summons for judgement.

## Statement of Claims

The plaintiff's claim

is.....

Particulars.....

(Signed)

And the sum of N.....(a) for such sum as may be allowed on taxation for costs, and also, in case the plaintiff obtains an order for substituted service, the further sum of N.....

(or such sum as may be allowed on taxation). If the amount claimed be paid to the plaintiff or his legal practitioner or agent within four days from the service hereof, further proceedings will be stayed.

Provided that if it appears from the endorsement of the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into court within the said time and notice of such payment is given to the plaintiff, his legal practitioner or agent.

This writ was issued, etc. (as in Form 1 supra).

This writ was served by me at ..... on the defendant (here insert mode of service)

on.....the.....day of.....

(Signed) .....

(address).....

#### NOTES

See also notes to Form 1, supra).

(a) Endorsement for Costs—The endorsement for cost applies only where the claim on the writ is for a liquidated demand alone, and not where recovery of land or property is claimed.

19.....

Notes

#### FORM 3

Writ for Service out of the Jurisdiction, or where notice of Writ is to be served out of the Jurisdiction.

(Headings as in 1)

To C.D. of.....

You are hereby commanded that within (here insert the number of days directed by the Court or Judge ordering the service or notice) days after service of this writ (or

notice of this writ, as the case may be) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the.....Judicial Division of the High Court of Kano State in an action at the suit of A.B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgement may be given in your absence.

Dated this ..... day of ..... 19 .....

By order of the Court.

.....

Registrar

Memorandum to be subscribed on the writ.

N.B.— This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendants (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by legal practitioner at the Registry of the Judicial Division in which the writ is issued.

This writ (or notice of this writ) was served, etc, (as in Form 1). Endorsement to be made on the writ before the issue thereof;

N.B.— This writ is to be used where the defendant or all the defendants or one or more defendant or defendant is or are out of the jurisdiction.

When the defendant to be served is not a citizen of Nigeria, and is not in the Commonwealth, notice of this writ, and not the writ itself, is to be served upon him.

Note— The above endorsement "N.B." must be on every writ or concurrent writ for service out of the jurisdiction, or of which notice is to be served out of the jurisdiction. The endorsement "N.B." need not be made on a writ against defendants domiciled abroad, but whom it is intended to serve within the jurisdiction.

Endorsement.—If the claim is for a debt or liquidated only, the endorsement even though not special, must strictly comply with the provisions of the law, including a claim for costs.

See also notes to Form 1, Supra.

FORM 4

Specially Endorsed Writ for service out of the Jurisdiction.

(Heading as in Form 1)

To C.D. of

.....

You are hereby commanded that within (here insert the number of days limited for appearance) days after service of this writ (or notice of this writ, as the case may be) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the ..... Judicial Division of the High Court of Kano State in an action at the suit of A.B.: and take notice, that in default of your so doing the plaintiff may proceed therein, and judgement may be given in your absence.

DATED this.....day of .....19,  
.....

By order of the Court

.....

Registrar

N.B. — This writ is to be served, etc (as in Form 3)

The defendant may appear, etc, (as in Form 3, supra) If the defendant enters, etc (as in Form 2 supra)

Statement of Claim

The plaintiff's claim  
is.....

Particulars: .....

(Signed).....

And the sum of N.....(or such sum as may be allowed on taxation) or costs.

If the amount claimed is paid to the plaintiff or his legal practitioner or agent within (here insert number of days limited for appearance) days from service of the writ or notice hereof (as the case may be) further proceeding will be stayed.

Provided that if it appears from the endorsement of the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the plaintiff, his legal practitioner or agent.

This Writ was issued, etc (as in Form 1, supra)

This Writ (or Notice of this Writ) was served, etc (as in Form 1, supra)

N.B. — This writ is to be used, (as in Form 3, supra).

Note.— A Writ issued, against a foreign company having no office in Nigeria must be in Form 3 or 4 See also Notes to Form 2 supra.

## FORM 5

Notice of Writ to be served out of the Jurisdiction

(Heading as in Form 1)

To C.D. of

.....

TAKE NOTICE, that A.B.

of.....

has commenced an action against you, C.D, in

.....

Memorandum to be subscribed on the writ

N.B.— This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed, at the Registry of the High Court of the Judicial Division in which the action is brought or by sending them to the Registrar By Registered post.

Endorsement to be made on the writ before issue thereof

The plaintiff's claim is for, etc. (b).....

This writ was issued by G.H., of.....whose address for service (c) is ..... agent for..... of ..... legal practitioner for the said plaintiff who resides at (d) .....

(mention the city, town or district and also the name of the street number of the house of the plaintiff's residence, if any). Endorsement to be made on copy of writ forthwith after service.

This writ was served by me at .....on the defendant (here insert mode of service) on the ..... day of ..... 19.....

Endorsed the.....day of.....i.....19.....



(Signed) .....

(Address).....

## NOTES

Heading and Title. — If the action is for administration the writ must be headed

"In the matter of the estate of....." "deceased" If it is debenture holders action the writ must be headed "In the matter of the A.B. Company, "and in a Probate action, "In the Estate of A.B., deceased". A writ of summons claiming administration of a trust or settlement may be entitled "In the matter of the (trust or settlement).

(b) Endorsement of Claim. — If the plaintiff sues or the defendant is sued, in a representative capacity, the endorsement must state in what capacity the plaintiff sues or the defendant is sued. If the claim is for a debt or liquidated demand only, the endorsement even though not special, must strictly comply with the provision of the Law, including a claim for four days costs. For special requirements in moneylender actions, see section 159.

(c) Address for Service — The address must be within the Jurisdiction.

Judicial Division, High Court of Kano State by Writ of that Court, dated the ..... day ..... 19 ..... which writ is endorsed as follows:

(copy in full of the endorsements) and you are required within.....day after the receipt of this Notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and in default of your so doing, the said A.B., may proceed therein; and Judgement may be given in your absence.

You may appear to the said Writ by entering an appearance personally or by your legal practitioner at the ..... Judicial Division of the High Court of Kano State.

(If Writ specially endorsed and "If you enter an appearance you must also deliver a defence within fourteen days of the time limited for appearance, etc." as in Form 2, supra).

(Signed) A.B. of.....etc.

or X.Y. of.....etc;

.....

Legal Practitioner for A.B.

This Notice was served by me ..... of .....

at.....on the defendant .....  
the..... day

of ....., 19.....

Endorsed the.....day of.....,19.....

Signature and address of server.....

N.B.— This Notice is to be used where the person to be served is resident in Nigeria but outside the Jurisdiction of the High Court of Kano State

## FORM 6

Form of Memorandum for Renewed Writ

(Heading as in Form 1)

Seal renewed writ of summons in this action endorsed as follows:

(Copy original writ and the endorsements)

## FORM 7

Request to Minister of External Affairs to transmit Notice of Writ to Foreign Government

(Heading as in Form 1)

This Chief Judge of Kano State presents his compliments to the Minister of External Affairs and encloses herewith a notice of writ of summons in an action of ..... versus ..... pursuant to order, out of the..... Judicial Division of the High Court of Kano State for transmission to the Ministry of Foreign Affairs in.....(name of country) with the request.

That the same may be served personally upon.....name of defendant to be served) against whom proceedings have been taken in the.....Judicial Division of the High Court of Kano State and with the further request that such evidence of the service of the same upon the said defendant may be officially certified to the High Court of Kano State, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts of the (name of country) in proving service of legal process.

The Chief Judge further requests that in the event of efforts to effect personal service of the said notice of writ proving ineffectual, the Government or Court of the said Country be requested to certify the same to the high court of Kano State.

## FORM 8

### Request for Service Abroad

(Heading as in Form 1)

I (or we) hereby request that a notice of summons in this action be transmitted through the proper channels to (name of country) for service (or substituted service) on the defendant (naming him) at (address of defendant) or elsewhere in (name of country) And I (or we) hereby personally undertake to be responsible for all expenses incurred by the Ministry of External Affairs in request of the service hereby requested and on receiving due notification of the amount of such expenses I (or we) undertake to pay the same into the High Court Registry for transmission to the Permanent Secretary of the Ministry of External Affairs.

Dated this.....day of.....19.....

.....

Signature of Legal Practitioner

## FORM 9

### Letter forwarding Request for Substituted Service

(Heading as in 1)

The Chief Judge of Kano State present his compliments to the Minister of External Affairs and encloses herewith a notice of writ of summons in the case of ..... versus .....in which the plaintiff has obtained an order of the ..... Judicial Division of the High Court of Kano State (which is also enclosed) giving leave to bespeak a request that the said notice .....of writ may be served by substituted service on the defendant ..... at ..... in the.....(name of country).

The Chief Judge requests that the said notice of writ and order may be forwarded to the proper authority in..... (name of country) with the request that the same may be transmitted by post addressed to the defendant at..... the last known place of abode or the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage

or practice of the Court of ..... (name of country) for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the ..... Judicial Division of the High Court of Kano State, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the Courts ..... (name of country) in proving service of legal process.

#### FORM 10

Request to Minister of External Affairs to transmit Notice of Writ to a foreign Government.

Civil Aviation Act No. 30 of 1964

(Heading as in 1)

The Chief Judge of Kano State presents his compliments to the Minister of External Affairs and enclosed herewith a notice of a writ of summons issued in an action ..... of versus ..... (insert name of the defendant High Contracting Party) pursuant to order, out of the ..... Judicial Division of the High Court of Kano State, for delivery to the Government of.....(insert name of the country of the High Contracting Party) and to request that an official certificate may in due course be despatched to the ..... Judicial Division of the High Court of Kano State stating that the notice of writ of summons has been so delivered, and on what date.

#### FORM 11

Memorandum of Appearance

In the High Court of Kano State

In the..... Judicial Division Suit No..... of .....

.....19.....Between

A.B..... (Plaintiff (a)

and

C.D. ....Defendant (a)

Please enter an appearance for ..... (Give full name of Defendant wishing to appear). A female defendant must add her description, such as spinster, married woman, widow or divorced).

(Sued as)

.....(give name by which defendant is describe in writ if this differs from

defendant's full name, otherwise delete words in square brackets)

In this Action

DATED the.....day of.....19.....

Signed (by defendant or legal practitioner entering the appearance)

Whose address for service is:..... (a defendant appearing in person must give his residence or some other place within the Judicial Division of Kano State to which communication for him should be sent. Where he appears by a legal practitioner, the legal practitioner's place of business).

#### Notes

1. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of ....."
2. Where the defendant is an individual trading in a name other than his own the appearance must be entered by him in his own name with the addition of the description "Trading as....."
3. Where the defendant is a limited liability company, the appearance must be entered by a legal practitioner.
4. Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this Form.
5. If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgement and may increase the costs payable by the defendant.

#### FORM 12

##### Notice of Entry of Appearance after leave obtained

(Heading as in Form 1)

TAKE NOTICE THAT..... has obtained leave to appear to the Writ of Summons in this action and that I have this day entered an appearance for him at the High Court

Registry,..... Judicial Division  
.....State.

Dated the.....day of ..:.....19.....

Signed.....,

of.....

### FORM 13

#### Entry of Appearance Limiting Defence

(Heading as in Form 1)

Enter an appearance for the defendant.....in this action. The said defendant limits his defence to part only on the property mentioned in the Writ of Summons, namely to the area depicted (A or B) on the plan attached.

The address of ..... is .....

Dated the..... day of ..... 19.....

Signed.....

of.....

#### Note

Any person appearing to defend as landlord must so state in his appearance; and if he is not named as a defendant, the date of the order giving him leave must be added.

### FORM 14

#### Affidavit for Entry of Appearance as Guardian

In the High Court of ..... State

In the..... Judicial Division Suit No .....

Between:

A.B., ..... Plaintiff

and

C.D. ....Defendant

I, ..... of .....the legal practitioner of the above named defendant C.D. an infant, make oath and say as follows:—

A.B., of.....is a fit and proper person to act as guardian ad litem of the above named defendant, and has no interest in the matters in question in this action (matter) adverse to that of the said infant, and the consent of the said A.B. to act as such guardian is hereto annexed.

Sworn, etc.

(Jurat)

(To this affidavit shall be annexed the document signed by such guardian in testimony of his consent to act).

#### Alternative Form of Affidavit

(To meet cases where a positive oath as to fitness cannot reasonably be insisted upon the following form is accepted.)

I,....., of.....the legal practitioner for the above named defendant CD. an infant, make oath and say as follows:

1. I am informed and verily believe A.B, or..... is a fit and proper person to act as guardian ad litem of the above named infant defendant, and the consent of the said A.B. to act as such guardian is hereto annexed.

2. The said A.B. has no interest in the matter in question in this action (matter) adverse to that of the said infant.

Sworn, etc

(Jurat)

#### Usual Form of Consent

I, A.B. of (address and occupation) consent to act as guardian ad litem of C.D., an infant defendant in this action, and I authorise Mr..... of ..... to defend this action.

.....

(Signature of guardian)

(Heading as in 1)

To.....defendant

of.....

Notice of Entry of Appearance

TAKE NOTICE that at the instance of the defendant.....

....., I have this day entered an appearance for him in this  
suit

DATED THE.....day of....., 19.....

Signed.....

.....

Registrar

Or his legal practitioner, where he appears by a legal practitioner.

FORM 16

Personal Service of Writ of Summons

(Whether within or without the jurisdiction)

In the High Court of Kano State

In the..... Judicial Division

Suit No.....19.....

Between:

A.B.....Plaintiff

and

C.D. ....Defendant

I..... (name, address, and description of  
deponent) make oath as follows:

1. I did on the.....day of.....,19..... (state  
where) personally serve C.D. the above-named defendant (or one of the above



named defendants) with a true copy of the Writ of Summons in this action which appeared to me to have been regularly issued out of the High

Court Registry of the ..... Judicial Division, Kano State against the above named defendant (or defendants) at the suit of the above-named plaintiff (or plaintiffs) which was dated the ..... day of .....,19.....

2. At the time of the said service the said Writ and the copy thereof were subscribed (and endorsed) in the manner and form prescribed by the Rules of the High Court.

3. I did on the.....day of....., 19.....endorse on the said Writ the day of the month and the week of the said service on the defendant.

.....

(Jurat)

This affidavit is filed on behalf of the plaintiff.

.....

Signature of Deponent

## FORM 17

Service on a Partner in a Firm

(Title and commencement as in Form 1)

I did on the.....day of.....19..... at ..... (state where) personally serve CD. a partner in the above-named defendant firm of CD. & Co. with a true copy of (proceed as in Form 1 to end of paragraph 2).

2. I did on the.....day of. .... endorse on the said writ the day of the month and the week of the said service.

.....

Deponent

## FORM 18

Service on Officer of a Corporation

(Title and commencement as in Form 1)

1. I did on the..... day of ..... 19..... at ..... personally save A.B. (Chairman, or Director, or Treasurer or Secretary) being the head officer of the above-named defendant corporation, with a true copy of the Writ of Summons in this action which appeared to me to have been regularly issued out of the High Court Registry of the.....Judicial Division, .....State, against the above defendants at the suit of the above-named plaintiff, and which was dated the.....day of 19..... by (leaving the same at add place of service) or sending the same by post on the ..... day of ..... 19..... in a prepaid letter or envelope addressed to that Company at (add address).

2. At the time of the said service the said Writ and the copy thereof were subscribed and endorsed in the manner and form prescribed by the law.

3. I did on the.....-....day of.....19.....

endorse on the said Writ the day of the month and the week of the said service on the said defendant.

.....

Deponent

Note

The date to be inserted in the first line of this form should be the date for posting. Where the Writ is served by post the time of service commences to run from the time when the letter would have been received in the ordinary course of post. Where the writ is served by leaving a copy at the registered office, it is not necessary in proving service to state with whom it was left.

FORM 19

Personal Service of Originating Summons Requiring Appearance

(Title and commencement as in Form 1)

I did on the.....day of,.....19.....at (place of service) personally serve C.D. the Defendant (or respondent) herein (each-if more than one) with a true copy of the originating summons in this action (or matter) which appeared to me to have been regularly issued out of the High Court Registry of the.....Judicial Division, Kano State, against the defendants (or respondents) (if the names do not appear in the title they should be stated here) on the application of the plaintiffs (or applicants, naming them if not

stated in title) and which was dated the ..... day of .....  
19.....

.....

Deponent

## FORM 20

### Substituted Service by Post to one Address

(Title and commencement as in Form 1)

That I did serve the above named defendant C.D. with a true copy of the writ of summons in the action

and a true copy of the order of Hon. Justice.....dated the .....  
day of ..... 19.....for substituted service herein by  
posting the same at the Post Office at ..... on the day of  
..... 19.... . ..... in a prepaid ordinary letter or envelop  
addressed to the said defendant at..... .pursuant to the said order.

2. That the said Writ of Summons appeared to me to have been regularly issued  
out of the High Court Registry of the ..... Judicial Division, Kano  
State against the above named defendant at the suit of the above-named plaintiff  
and was dated the ..... day of .....19.....

3. I did on the.....day of.....19.....endorse on  
the said Writ the day of the month and the week of the said service on the  
defendant.

.....

Deponent

## FORM 21

### Service of Notice of Writ by Advertisement and Form of Advertisement

(Title and commencement as in Form 1)

1. That I did the ..... day of .....19..... serve  
the above-named defendant C.D, with Notice of the Writ of Summons in this action  
and of the order for service by advertisement dated the.....day of  
.....19.....by causing to be inserted once irt (name of papers as ordered)  
an advertisement in the words following:

(Title, Reference number, etc)

The above named defendant C.D,.....of (or late of)

TAKE NOTICE that an action has been commenced against you in the  
.....

Judicial Division of the High Court of Kano State. Suit  
No.....

.....of 19.....by A.B.

of.....in which the plaintiff's claim is for (State very  
shortly the nature of claim and the amount (if any) claimed in the endorsement on  
the Writ.) And that it has been ordered that service of the Writ in the said action on  
you due effected by this advertisement. If you desire to defend the said action you  
must within .....days from the publication of this advertisement,  
inclusive of the day of such publication, enter an appearance at the High Court  
Registry of the ..... Judicial Division,  
..... State.

In default of such appearance judgement may be entered against you.

(Signed).....

Of.....

DATE.....day of.....,19.

.....

Plaintiff's Legal Practitioner

2. The advertisement aforesaid appeared in the (name of paper) on  
the.....day

of....., 19.....and in the (name of paper) on  
the.....day

of.....19..... (as the case may be).

.....

Deponent

FORM 22

Service of Notice to Produce or Admit

(Title and commencement as in Form 1)

I did on the.....day of.....,19....., serve the above-named.....with a Notice.....to (produce or admit) in this action a true copy whereof is hereto annexed and marked A.B, delivering the same to and leaving it with.....at.....his office or place of business situate at ..... in .....

FORM 23

Third Party Notice Claiming Indemnity or contribution or other Relief or Remedy

In the High Court of Kano State.

In the.....Judicial Division Suit No,.....  
of.....

Between A.B.....Plaintiff

and

C.D. ....Defendant

and

E.F.....Third Party

Issued pursuant to the order of the Hon. Justice.....  
dated the .....day of.....19.....

T. E.F. of ..... in the ..... of  
.....

Take notice that this action has been brought by the plaintiff against the defendant

In it the plaintiff claims against the defendant (here state concisely the nature of the plaintiff's claim) as appears by the endorsement on the writ of summons (or statement of claim) a copy whereof is delivered herewith. The defendant claims against you (here state concisely the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of (one half) of the plaintiff's claim) or the following relief or remedy namely ..... on the grounds namely that (state concisely the grounds of the claim against the third party).

And take Notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must cause an appearance to be entered for you within eight days after the service of this notice upon you.

In default of your entering such appearance, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and

your liability to indemnify the defendant 01 to contribute to the extent claimed or to.....(stating the relief of remedy sought) and the validity of any judgement that may be given in the action and you will be bound by such judgement and such judgement may be enforced against you pursuant to provisions of the law.

Dated the..... day of....., 19.....

(Signed) .....

Legal Practitioner for Defendant

The third party may appear hereto by entering appearance, personally or by legal practitioner by handing in the appropriate forms, duly completed at the Registry of the ..... Judicial Division of the High Court of Kano State.

The appropriate forms may be obtained from the Registrar.

FORM 24

Third Party Notice when questions or Issue to be Determined

in the High Court of Kano State.

In the..... Judicial Division.

Between A.D ..... Plaintiff

and

C.D.....Defendant

and

E.F.....Third Party

Issued pursuant to the order of the Hon. Justice.....

DATED the.....day  
of.....19.....of.....

To E.F. of.....in the.....of.....

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claim against the defendant (here state concisely the nature of the plaintiff's claim) as appears by the endorsement on the writ of summons (or statement of claim) a copy whereof is delivered herewith.

The defendant claims that the following question or issue, viz, (here state concisely the question or issue to be determined) should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself

And take notice that if you wish to be heard on the said issue or question or to dispute the defendant's liability to the plaintiff or your liability to the defendant you must cause an appearance to be entered for you within eight day after service of this notice.

In default of your so doing you will be deemed to admit the validity or and will be bound by any decision or judgement arrived at or given in this action on the said question or issue and admit any consequent liability of yourself and judgement may be given against you and enforced pursuant to the provisions of the Law.

Dated the.....day of..... 19.....

.....

(Signed)

Legal Practitioner for the Defendant

The third party may appear hereto by entering appearance, personally or by legal practitioner by handing in the appropriate forms duly completed, at the Registry, ..... Judicial Division of the High Court of Kano State. The appropriate forms may be obtained from the Registrar.

FORM 25

Notice of Counter-claim

In the High Court of Kano State,

In the,..... Judicial Division

.....

Between

A.B.....Plaintiff

and

C.D., E.F. and G.H ..... Defendants.

To the within named X.Y.

Take notice that if you do not appear to the within counter-claim of the within named C.D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgement given against you in your absence.

Appearance to be entered at the.....Judicial Division,. High Court

Registry,.....State

FORM 26

Notice of Payment into Court

In the High Court of Kano State

In the..... Judicial Division

Between:—

A.B.....Plaintiff

and

G.D., E.F., and

G.H.....Defendants.

Take notice that the defendant ..... has paid into Court N..... and says that (.....part of) that sum is enough to satisfy the plaintiff's claim (or and H..... the other part of that sum is enough to satisfy the plaintiff's claim for .....)

DATED the..... day  
of.....19.....

.....

P.O. Legal Practitioner for the Defendant

To X.Y., the plaintiff's legal practitioner, and to Mr. R.S., legal practitioner for the defendant E.F.).

(To be filled in by the Cashier, High Court)

Received the above sum of N ..... kobo into court in this action.

DATED the.....day of.....19.....



FORM 27

Acceptance of sum paid into Court

In the High Court of Kano State.

In the.....Judicial  
Division

Suit No.....19.....

Between A.B.....Plaintiff

and

C.D., E.F. and G.H  
.....Defendants.

Take notice that the plaintiff accepts the sum of N.....paid by the  
defendant (C.D.) into Court in satisfaction of the claim in respect of which it was  
paid in (and abandons his other claims in this action).

DATED the.....day of.....,19.....

.....

X. Y. Plaintiff's legal practitioner

(To Mr. P.O. legal practitioner for the defendant C.D., and Mr. R.S., legal  
practitioner for the defendant E.F.)

FORM 28

Acceptance of sum paid into Court by one of Several Defendants

In the High Court of Kano State.

In the.....Judicial  
Division.

Suit No.....19.....

Between

A.B.....Plaintiff

and

CD., E.F., and  
G.H.....Defendants.

Take notice that the plaintiff accepts the sum of N.....paid by the  
defendant CD. into court in satisfaction of his claim against that defendant.

DATED the.....day of.....,19.....

.....

X.Y. Plaintiff's Legal Practitioner

(To Mr. P.O., Legal Practitioner for the defendant CD., and Mr. R.S., Legal  
Practitioner for the defendant E.F.)

## FORM 29

### Confession of Defence

In the High Court of Kano State

In the.....Judicial  
Division

Suit No.....19.....

Between

A.B.....Plaintiff

and

CD., E.F., and  
G.H.....Defendants.

The plaintiff confesses the defence stated in the.....paragraph of the  
defendant's defence (or, of the defendant's further defence).

## FORM 30

### Interrogatories

In the High Court of Kano State.

In the.....Judicial Division Suit  
No.....of.....

Between  
A.B.....Plaintiff

and

C.,D. E.F., and  
G.H.....Defendants.

Interrogatories on behalf of the above-named (plaintiff or defendant CD.,) for the examination of the above-named (defendants E.F., and G.H. or plaintiff).

1. Did not, etc.,

2. Has not, etc.

The defendant E.F. is required to answer the interrogatories numbered).....

DATED the..... day of.....19.....

FORM 31

Answer to Interrogatories

In the High Court of Kano State.

In the.....Judicial Division Suit

No.....,....of.....

Between  
A.B.....Plaintiff

and

CD., E:P. and  
G.H.....Defendants.

The answer of the above-named defendant E.F., to the interrogatories for his examination by the above named plaintiff.

In answer to the said interrogatories, I, the above-named E.F., make oath and say as follows .....

.....

I, the above-named defendant E.F., do hereby solemnly swear by Almighty God that this is my name and handwriting and that the facts deposed by me in this affidavit are the truth, the whole truth and nothing but the truth.

FORM 32

Affidavit as to Documents

In the High Court of Kano State.

In.....Judicial Division Suit

No.....,of.....

Between

A.B.....Plaintiff

and

CD., E.F., and

G.H.....Defendants.

I, the above-named defendant CD., make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second pans of the First Schedule hereto.
2. I object to produce the said documents set forth in the second part of the said First Schedule hereto (state grounds of objection).
3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.
4. The last-mentioned documents were last in my possession or power on (state when, and what has become of them and in whose possession they now tire).
5. According to the best of my knowledge, information and belief I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my legal practitioners or agents or in the possession, custody or power or any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the sail First and Second Schedules hereto.

DATED AT.....this.....day of.....19.....

sworn to

(jurat)

FORM 33

Notice to Produce Documents

In the High Court of Kano State.

In the.....Judicial Division Suit  
No.....of.....

Between A.B.....Plaintiff

and

CD., and  
G.H.....Defendants

Take notice that the (plaintiff or defendant) requires you to produce for his inspection, the following documents referred to in your (statement of claim, or defence or affidavit) dated the .....day of.....,19.....

(Describe documents required)

DATED the.....day of.....19.....

To Z, Legal Practitioner  
for.....

.....

X. F., Legal Practitioner to the  
Plaintiff/Dependant

FORM 34

Notice to Inspect Documents

In the High Court of Kano State.

In the ..... Judicial Division

Suit No..... of  
.....

Between A.B ..... Plaintiff

and

CD., E.F. and G.H ..... Defendants

Take notice that you can inspect the documents mentioned in your notice of the.....day of.....19..... (except the deed

numbered.....in the notice) at my office on the ..... day of.....19.....,between the hour of ..... and .....

Dated this.....day  
of.....,19.....

.....

(Signed Legal Practitioner)

FORM 35

Notice to Admit Documents

In the High Court of Kano State

Suit No.....of.....

In the.....Judicial  
Division

Between

A.B.....Plaintiff

and

CD., E.F. and

G.H.....Defendants

Take notice that the plaintiff (or defendant) in this case proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff), his legal practitioner or agent at.....on.....between the hours of .....; and the defendant (or plaintiff) is hereby required within six days of the service hereof, to admit that such of the said documents as are specified to be originals, were respectively written, signed or executed as they purport respectively to have been, that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

And further take notice that if you do not within the aforementioned six days give notice that you do not admit the said documents (or any of them) and that you require the same to be proved at the trial you shall be deemed to have admitted the said documents (or document) unless the Court or a Judge shall otherwise order.

Dated this.....day of.....,19.....

.....

(Signed)

G.H., Legal Practitioner (or agent) for plaintiff (or defendant) To E.F., Legal Practitioner (or agent) for defendant (or plaintiff). (Here describe the documents, the manner of doing which may be as follows:)

#### ORIGINALS

##### Description of Documents

##### Dates

Deed of covenant between A.B. and CD. First part .....19.....  
and E.F. second part .....19.....

Indenture of lease from A.B. to CD .....19.....

Indenture or release between A.B. and .....19.....

C.D. first part and E.F. second part .....19.....

Letter—defendant to plaintiff.....19.....

Policy of insurance on goods by ship "....." on voyage from ..... to  
..... 19.....

##### Memorandum of agreement between

CD. captain of said ship, and E.F.....19.....

Bill of Exchange for N.....at..... three months drawn by  
A.B. on and accepted by

CD. endorsed by E.F. and G.H.....19.....

##### Copies

##### Description of Documents

##### Dates

Original or duplicate

Register of baptism of A.B. at....., 19..... served, sent, or delivered, when, how and by whom.

Letter - Plaintiff to defendant ....., 19..... Sent by General post,

Notice to produce papers....., 19..... 19.....  
defendant's attorney by E.F. of.....

Record of judgment of the High Court of..... in an action, F.S.  
V.F.N, Suit  
No.....of:.....19.....

Letters patent in the Record Office.....  
19.....

FORM 36

Notice to Admit Facts

In the High Court of Kano State.

In the.....Judicial Division Suit No.....

.....

Between

A.B.....Plaintiff

and

CD., E.F. and

G.H.....Defendants

Take notice that the plaintiff (or defendant) in this cause requires the defendant (or plaintiff) to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant (or plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated this..... day of ..... 19.....

.....

G.D. Legal Practitioner



(or agent) of the plaintiff

(or defendant).

To E.F. Legal Practitioner (or agent) for the defendant (or plaintiff).

To facts, the admission of which is required, are:

1. That..... died on .....
2. That he died intestate.
3. that.....as his only lawful son.
4. That..... died on.....
5. That..... was never married.

FORM 37

Admission of Facts, Pursuant to Notice

In the High Court of Kano State.

In the.....Judicial Division Suit No.....of 19.....

Between

A.B.....Plaintiff

and

CD. E.F., and

G.JH.....Defendants.

The defendant (or plaintiff ) in this cause, for the purposes of this cause only, hereby admits the several facts respectively, hereunder specified, subject to the qualifications or limitations, if any hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion, or by anyone other than the plaintiff (or defendant, or party requiring the admission).

.....

E.F. Legal Practitioner (or agent) for the defendant (or plaintiff)

Delivered, etc.,

To G.H. Legal Practitioner (or agent) for the plaintiff (or defendant).

Facts admitted Qualification of limitation, if any Subject to which they are admitted.

1. That.....died on..... 1.

2: That he died intestate 2.

3. That.....was his..... 3. But not that he was his only .lawful son.

4. That.....died 4. But not that he died on.....

5. That.....never was married 5.

FORM 38

Notice to Produce (General Form)

In the High Court of Kano State.

In the.....J udicial Division Suit No .....of  
19.....

Between A.B.....Plaintiff

and

CD. E.F., and G.H.....Defendants

Take notice that you are hereby required to produce and show to the Court on the  
trial of

this.....all books, papers letters, copies of letters, and other  
writings and documents in your custody, possession, or power containing any entry,  
memorandum, or minute relating to the matters in question in this.....and  
particularly.....

DATED this.....day of....., 19....

To the above named.....(Signed).....of  
..... agent for.....

G.H. Legal Practitioner or agent Legal Practitioner for the above-named

FORM 39

Issue

In the High Court of Kano State.

In the.....Judicial Division Suit No.....of 19.....

Between A.B.....Plaintiff

and

CD. E.F. and G.H.....Defendants

Whereas A.B., affirms, and CD. denies (here state the question of fact to be tried), and it has been ordered by the Hon. Justice.....that the said question shall be tried, therefore let the same be

tried accordingly.

FORM 40

Subpoena ad Testificandum

In the High Court of Kano State.

In the..... Judicial Division Suit No ....., 19.....

Between.....Plaintiff

and

.....Defendant

To;.....

of.....

You are commanded in the name of the Governor of Kano State to attend" before this

Court.....

off.....the.....day of.....,  
19.....

at.....o'clock in the forenoon; and so from day to day to give evidence in the above-named cause

DATED this.....day of.....,19.....

.....

Judge

FORM 41

Habeas Corpus ad Testificandum

In the High Court of Kano State.

In the.....Judicial Division.....Suit No....., 19.....

Between.....  
.Plaintiff

and

.....  
.Defendant

To .....The Director of Nigerian Prison at.....

You are commanded in the name of the Governor of Kano to have .....,

Who it is said is detained under your custody in..... State of Nigeria  
Prison at ..... before the Court at ..... on  
..... the.....day of.....  
at.....o'clock

in the forenoon, and so from day to day until the above action is tried to give  
evidence in the above named cause and immediately after the  
said.....shall have so given his evidence you safely conduct him to  
the prison from which he shall have been brought.

DATED this.....day of..... 19.....

.....

Judge

FORM 42

Subpoena ducestecum

In the High Court of Kano State.

In the.....Judicial Division-Suit No.....,  
19.....

Between.....  
.Plaintiff

and

.....Defendant

To.....of.....

You are commanded in the name of the Governor of Kano State to attend before the Court ..... at ..... on the.....day of.....19.....at the hour of.....O'clock in the forenoon, and so from day to day until the above cause is tried, to give evidence on behalf of the.....and also to bring with you and produce at the time and place aforesaid  
.....

(Specify documents to be produced)

DATED this..... day of.....19.....

.....

Judge

FORM 43

Commission to Examine Witness

In the High Court of Kano State.

In the..... Judicial Division

Suit No.....,19.....

Between.....Plaintiff

And

.....Defendant

To..... of .....Commissioner named by und on behalf of .....and to ..... Commissioner named by and on behalf of .....

In confidence of your prudence and fidelity you have been appointed Commissioner by these presents and given power and authority to examine on interrogatories and viva voce as hereinafter mentioned witnesses on behalf of the

said..... and ..... respectively  
at.....before you or any two of you so that the Commissioner  
only on each side be

present and act at the examination. And you are requested as follows:

1. Both the said.....and the said.....shall be at liberty to examine on interrogatories and viva voce on the subject matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and viva voce, the party producing any witness for examination being at liberty to re-examine him viva voce; and all such additional viva voce questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.
2. Not less than.....days before the examination of any witness on behalf of either of the said parties, notice, in writing, signed by one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witnesses ex-parte, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.
3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper or, writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.
4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.
5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and viva voce questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religion by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together With any document referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Chief Registrar of the High Court of Kano State, Nigeria on or before the.....,..... day of.....enclosed in cover under the seal of the commissioner or commissioners.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon endorsed or otherwise in such other manner as is sanctioned by the form of your several religions and as considered by you respectively to be binding on your respective consciences. In the absence of any other commissioner a commissioner himself takes the oath.

You are hereby given authority to administer such oath to the other or others of you.

ISSUED AT.....this.....day of.....,19.....

.....

Judge

Witnesses' Oath

I swear by Almighty God that I will truly answer make to all such questions as shall be asked me, without favour or affection to either party, and therein I will speak the truth, the whole truth and nothing but the truth.

Commissioners' Oath

I swear by Almighty that I will, according to the best of my skill and knowledge, truly and faithfully, and without partiality, to any or either of the parties in this cause, take the examination and deposition of all and every witness produced and examined by virtue of the commission within written.

(Where there is only a single commissioner, he may be authorised to administer this oath to himself).

Interpreter's Oath

I swear by Almighty God that I will truly and faithfully without partiality to any or either of the parties in this cause, and to the best of my ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every of the questions which shall exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as I am directed and employed by the

said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English Language.

#### Clerk's Oath

I swear by Almighty God that I will truly, faithfully, and without partiality to any or either of the parties in the cause, take, write down, transcribe, and engross all and every of the questions, which shall be exhibited or put to all and every witness or witnesses, and also the depositions of all and every such witness or witnesses, produced before and examined by the said commissioner named in the commission within written, as far forth as I am directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions.

Direction of interrogatories, etc., when returned by the Commissioners:

THE CHIEF REGISTRAR OF THE HIGH COURT OF Kano STATE, HIGH COURT,  
Kano STATE NIGERIA.

FORM 44

Certificate of the Chief Registrar

(Title as in 1)

In pursuance of the directions given to me by Hon. Justice.....I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgement (or order) in this cause dated the ..... day of ..... is as follows:

1. The defendants....., the executors of.....the testator, have received personal estate to the amount of N.....and they have paid, or are entitled to be allowed an account thereof, sums to the amount of N....., leaving a balance due from (or to) them of N....., on that account.

The particulars of the above receipts and payments appear in the account marked ....., verified by the affidavit of.....filed on the.....day of..... and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that I have disallowed the items of disbursement in the said account numbered ..... and .....



(or in cases where a transcript has been made).

The defendants.....have brought in an account verified by the affidavit of ..... filed on the..... day of.....and which account is marked.....and is to be filed with this certificate. The account has been altered, and the account marked.....and which is also to be filed with this certificate, in a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to N.....

3. The funeral expenses of the testator amounted to the sum of N ..... which I have allowed the said executors in the said amount of personal estate.

4. The legacies given by the testator are set forth in the ..... schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to N.....

5. The outstanding personal estate of the testator consists of the particulars set forth in the ..... schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the ..... schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, etc. (in a form similar to that provided with respect to the personal estate).

8. The incumbrances affecting the said testator's real estate are specified in the ..... schedule hereto.

9. The real estates of the testator directed to be sold, have been sold and the purchase moneys amounting altogether to N.....have been paid into Court.

#### Note

The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:

The evidence produced on this account (or inquiry) consists of the probate of the testator's will, the affidavit of A.B., filed ..... and paragraph numbered ..... of the affidavit of

C.D. filed .....

## RECEIVER'S ACCOUNT

The (.....) account of A.B., the receiver appointed in this cause (or, to accord pursuant

to an order made in this cause, dated ..... day of ..... ), to with the order receive the rents and profits of the real estate , and to collect and get in the outstanding personal estate of C.D., the testator (or, intestate) in this cause, from the day of ..... to the day of .....

## REAL ESTATE – RECEIPT

No of Item

Date when Received

Tenant's name

Description of Premises

Annual Rent Arrears due at

Amount of Arrears remaining

Observations

Payments and Allowances on Account of Real Estate

No. of Date of Payment or allowance Names of persons to whom paid or allowed For what

purpose or Allowed Amount

1.

2.

3. One year's insurance of due.....

Bill for repairs at house let to allowance for a half year's income Tax due .....

Total Payments N

Receipts in Accounts of Personal Estates

Payment and Allowance on Account of Personal Estate

No. of Item

Date when received

Names of Persons from whom received

On what Account received

Amount received

No. of item

Date when paid or allowed

Names of Persons to whom paid or allowed

For what purpose paid or allowed

Amount paid or allowed

Summary

Amount of balance due from receiver on account of real estate on last account  
.....

Amount of receipts on the above account of real estate .....

Balance of last account paid in court .....

Amount of payments and allowance on the above account of real estate  
N.....

Amount of receiver's costs of passing this account as to real estate  
.....

Balance due from the receiver on account of real estate .....

Amount of balance due form receiver on last account of personal estate  
.....

Balance of last account paid into Court N .....

Amount of payments and allowance on the above  
account of personal estate .....

Amount of receiver's costs of passing this account as to personal estate  
.....

Balance due from the receiver's on account of personal estate  
.....

FORM 46

Form of Guarantee for the Acts and Defaults of a Receiver

In the High Court of Kano State.

In the.....Judicial  
Division.

Suit No.....of 19.....Re.....Guarantee for  
N.....

Annual premium N.....

This guarantee is made the..... day of.....  
19.....between (receiver) of..... (hereinafter called "the receiver")  
of the first part, the above named..... the registered office of which  
is at.....in..... (hereinafter called "the surety") of the  
second part and.....the Governor of Kano State by an Order  
of the High Court of ..... State .....  
Judicial Division dated the ..... day of ..... 19....., and  
made in the above-mentioned action the receiver has been appointed to receive  
(and manage) (follow words of the Order). And it was ordered that the receiver  
should give security to the satisfaction of the judge on or before  
the.....day of.....19.....

And whereas the surety has agreed at the request of the receiver to issue this  
guarantee in consideration of the annual premium above-mentioned (the first  
payment of which the surety hereby acknowledges)

which guarantee has been accepted by the Judge as a proper security pursuant to  
the said order in testimony whereof one of the Registrars of the High Court, has  
signed an allowance in the margin hereof.

Now this guarantee witnesses as follows:

1. The receiver and the surety hereby jointly and severally covenant with the  
Governor of Kano State and his successors that the receiver shall and will from time  
to time duly account for what he has already received since the date of the said  
order appointing him and shall hereafter receive or for what since the date of the  
said order appointing him he has or shall hereafter be or become liable to pay or  
account for as such receiver (and manager) as aforesaid including as well every  
sum of money or other property so received during the period for which he has  
been appointed as also every sum of money or other property so received in  
respect of any extended period for which he may be appointed and shall and will  
pay or deliver every such sum or property as court or judge thereof may direct.

2. Provided always that it is hereby mutually agreed as follows:

(a) if the receiver shall not for every successive twelve months to be computed from the date of his appointment as such receiver as aforesaid or within fifteen days after the expiration of such twelve months pay at the office of the surety the annual premium or sum of N....., then the surety shall be at liberty to apply by summons at chambers in the said action to be relieved from all further liability as such surety under this guarantee save and except in respect of any damage or loss occasioned by any act or default of the receiver in relation to his duties as such receiver (and manager) prior to the hearing and determination of such summons;

(b) a statement under the hand of any Registrar of the High Court of Kano State of the amount which the receiver is liable to pay and has not paid under this guarantee and that the loss or damage has been incurred through the act or default of the receiver shall be conclusive evidence in any action or information by the Governor of Kano State against the receiver and surety or either of them or by the surety against the receiver of the truth of the contents of such statement and shall constitute a binding charge not only against the receiver and his personal representatives but also against the surety and its funds and property without its being necessary for the Governor of Kano State to take any legal or other proceedings against the receiver for the recovery thereof and without any further or other proof being given in that behalf in any action to enforce this guarantee.

(c) The liability of the surety under this guarantee is limited to the sum of N.....

Provided nevertheless that a Registrar of the High Court may by his signature to the endorsement on this guarantee (in the form printed thereon) reduce the said liability of the surety still further or (but only with the consent of the surety by an instrument in writing duly executed) increase such liability as may be necessary and upon such endorsement this guarantee shall continue in full force but in that case the premium shall be correspondingly reduced or increased.

3. It is hereby further agree between the receiver and the surety as follows:

(a) The receiver will on being discharged from his office or on ceasing to act as such receiver (and manager) as aforesaid forthwith give written notice thereof to the surety through the post office and also within seven days of such notice furnish to the surety free of charge an office copy of the order if any of the judge discharging him.

(b) The receiver and his personal representatives shall and will at all times hereafter indemnify the surety and its property and funds against all loss damage, costs and expenses, which the surety or its funds or property may or might otherwise sustain by reason of the surety having executed this guarantee at his request.

In witness whereof the receiver has hereunder set his hand and seal and the surety has caused its

Common seal to be affixed the.....day of..... 19.....

In the matter of.....increased liability. (To be attached by way of Endorsement Guarantee).

The liability of the surety under the within written guarantee has with the consent of the receiver and

the surety been increased from..... to N.....in respect of any acts or omissions to which the within written guarantee and this endorsement being limited to the increased sum above relates committed by the receiver subsequent to the date hereof the total liability of the surety in respect of both the within written guarantee stated.

Sealed with the seal of the receiver and also the Common seal of the surety this ..... day of ..... 19....., as evidence of such increased liability and the admission thereof by the receiver

and the surety respectively.

Signed, sealed and delivered by the Receiver in the presence of.....

The Common seal of the surety was hereunto affixed in the presence of.....

FORM 47

Receiver's Security by Undertaking

In the High Court of Kano State.

In the.....Judicial Division

(Title)

Suit No.....of 19.....

Re.....V.....

I, .....of.....

the receiver (and manager) appointed by order dated..... (or proposed to be appointed) in this action hereby undertake with the court to duly account for all moneys and property received by me as such receiver (or manager) or for which I may be held liable and to pay the balances from time to time found

from me and to deliver any property received by me as such receiver (or manager) at such times in such manner in all respects as the Court or a judge shall direct.

And we.....hereby jointly and severally (in the case of guarantee or other company strike out "jointly and severally") undertake with the court to be answerable for any default by the said.....as such receiver (or manager) and upon such default to pay to any person or persons or otherwise as the court or a judge shall direct any sum or sums not exceeding in the whole N..... that may from time to time be certified by a Registrar of the High Court to be due from the said receiver and we submit to the jurisdiction of the court in this action to determine any claim made under this undertaking.

Dated this.....day of.....  
19.....

(Signatures of Receiver and his surety or sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed).....

.....

#### FORM 48

#### Affidavit Verifying Receiver's Account

In the High Court of Kano State.

In the..... Judicial  
Division

Suit No.....

Between A. B.....Plaintiff

and

CD. and E.F.....  
.....Defendant

I,.....of..... the receiver appointed  
..... in this cause, make oath and say as follows:

1. The document now shown to be marked A is, as it purports to be, a full and true account of..... for the period therein specified.

2.....and.....my sureties  
named in the guarantee (or undertaking) dated..... 19..... are both  
alive and neither of them has become bankrupt or insolvent.

3. The..... Co. Ltd., my surety named in the ..... guarantee (or undertaking) dated.....19.....is still carrying on business and no petition or other proceeding for its winding-up is pending. (Additional paragraphs as to wages and petty cash are sometimes necessary).

#### FORM 49

#### Form or Order for Accounts and Inquiries

In the High Court of Kano State.

In the.....Judicial Division. Suit No.....of.....

Between:

A.B.....Plaintiff

and

CD., E.F., and G.H.....Defendants

This Court doth order that the following accounts and inquiry to be taken and made; that is to say:

1. An Account of the personal estate not specifically bequeathed of A.B., deceased, the testator in the pleadings named, come to the hands of, etc.
2. An account of the testators debts, or where deceased died more than six years before judgement, an inquiry whether there is any debt of the deceased remaining unpaid.
3. An account of the testator's funeral expenses.
4. An account of the legacies and annuities (if any), given by the testator's will.
5. An Inquiry what parts (if any) of the testator's said personal estate are outstanding or Undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed by applied in payments of his debts and funeral expenses in a due course of administration and then in payments of the legacies and annuities (if any) given by his will.

(If ordered)

And it is ordered that the following further inquiries and accounts be made and taken ; that, is to say:



6. An inquiry what real estate the testator was seized of or entitled to at time of his death-

7. An account of the rents and profits of the testator's real estate receiver by, etc.

8. An Inquiry what incumbrances (if any) affect the testator 's real estate, or any and what parts thereof.

(If sale ordered)

9. An account of what is due to such of the incumbrances as shall consent to the sale herein after directed in respect of their incumbrances.

10. An Inquiry, what are the priorities of such last mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the judge, etc.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

FORM 50

(Heading as in 1)

Order for payment of principal money or Interest Secured by Mortgage or charge

It is ordered that the plaintiff do recover against the defendant.....

Secured by a mortgage (or charge) dated the..... day  
of..... 19.....,

(being the total of the principal sum of N.....and N..... for  
interest thereon

at.....percent, per annum less tax to the  
..... day of (date of order) and N.....for  
costs (or his costs of the summons to be taxed).

And it is ordered that upon the defendant paying to the plaintiff the moneys  
ordered to be recovered and all other moneys (if any) secured to the plaintiff by the  
said mortgage (or charge) the plaintiff (subject and without prejudice to the due  
exercise of any power of sale for the time being vested in him) do release to the  
defendant the security constituted by the said mortgage or (or charge).

And it is ordered that all parties be at liberty to apply to the court as they may be  
advised.

## FORM 51

(Heading as in 1)

Order for possession of property forming a Security payment to the plaintiff of any principal money or interest.

It is ordered that the defendant do give the plaintiff possession on or before the ..... day of ..... 19 ..... of the land hereinafter described and comprised in a mortgage (or charge) dated the..... day of..... 19..... that is to say .....(here describe the property).

And it is ordered that the plaintiff do recover against the defendant the sum of N..... for costs (or his costs of this summons to be taxed).

And it is ordered that upon the defendant paying to the plaintiff the moneys remaining due to the plaintiff upon the Security of the said mortgage (or charge) the plaintiff (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant possession of the property subject to the said mortgage (or charge) and release to the defendant the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the court as they may be advised.

## FORM 52

Order for payment of principal Money or Interest Secured by Mortgage or charge and for possession of property (comprised) therein.

(Heading as in 1)

It is ordered that the plaintiff do recover against the defendant N..... Secured by a mortgage (or charge) dated the.....day of.....  
..... 19.....(being the total of the principal sum of N..... .and  
N.....for interest thereon at N.....per cent per  
annum less tax to the.....day of (day of order) and N.....for Costs  
(or his costs of this summons to be taxed).

And it is ordered that the defendant to give the plaintiff possession on or before the ..... day of ..... 19 ..... of the land herein after described and comprised in the said mortgage (or charge) that is to say..... (here describe the property).

And it is ordered that upon the defendant paying to the plaintiff the moneys hereby ordered to be recovered and all other moneys (if any) secured to the plaintiff by the

said mortgage (or charge) the plaintiff (subject and without prejudice to the due exercise of any power of sale for the time being vested in him) do re-deliver to the defendant possession of the property subject to the said mortgage (or charge) and release to the defendant the security constituted by the said mortgage (or charge).

And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

#### FORM 53

##### Summons (General Form)

In the High Court of Kano State.

In the..... Judicial Division Suit No .....of.....

Between: A.B.....Plaintiff

and

CD. and E.F.....Defendants

Let all parties concerned attend the Honourable Justice.....in  
Chambers

on.....day, the.....day of.....  
.....19.....at.....O'clock

in the.....noon on the hearing of an application on the

part.....

Dated the.....day  
of.....19.....

This Summons was taken out by.....by.....of  
.....legal practitioner  
for.....

To.....

#### FORM 54

##### General Form of Originating Summons In the High Court of Kano State.

In the.....Judicial  
Division

(If the question to be determined arises in the administration of an estate or a trust entitle it in the

matter of the estate or trust).

Between: A.B.....plaintift

and

C.D. and E.F.....Defendants

Let ..... of ..... in

.....

within eight days after service of this summons on him, inclusive of the day summons which is issued upon the application ..... of ..... who claims to be (state the nature of the

claim), for the determination of the following questions: (State questions).

Dated the.....day of.....19.....

This summons was taken out by....., Legal practitioners for the above-named.

The defendant may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed, at the High Court Registry of

the ..... Judicial Division, ..... State, or by sending them to that office by

post.

NOTE

If the defendant does not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

FORM 55

Originating Summons not Inter Partes

In the High Court of Kano State.

Suit No.....of 19.....

In the ..... Judicial Division

In the Matter of the Trust of the will of A.B.

Let..... of..... in..... of.....within  
eight days after service of this

summons on him, inclusive of the day of such service, cause an appearance to be  
entered for him to this summons, which is issued on the application  
of..... of..... for an order that (state the object of the  
application).

Dated the.....

This summons was taken out by..... of  
..... legal practitioner for

the above.

The respondent may appear hereto by entering appearance personally or by legal  
practitioner either by handing in the appropriate forms, duly completed, at the High  
Court Registry of the ..... Judicial Division  
..... or by sending them to that office by post.

Note

If the respondent may does not enter appearance within the time and at the place  
above mentioned, such order will be made and proceedings taken as the Judge may  
think just and expedient.

FORM 56

Notice of Appointment to hear Originating Summons

(Title, etc, as in Forms 2, 3)

To (inset the name of the defendant or respondent)  
.....

Take notice that you are required to attend the Judge's Chambers at the High Court  
of

the..... Judicial Division.....State on  
the.....day

of..... 19..... at....., o'clock in  
the..... noon, for the hearing

of the originating summons issued herein on the.....day  
of..... 19..... and that if you do not attend in persons or by legal  
practitioner at the time and place mentioned, such order will be made and  
proceedings taken as the Judge may think just and expedient.

DATED,.....

(Signed).....

Legal Practitioner for the Plaintiff

(or Applicant)

FORM 57

Originating Summons

No.....of 19.....

In the High Court of Kano State.

In the ..... Judicial Division

In the matter of A.B. a legal practitioner, (Re: Taxation of Costa, etc)

(or as may be)

Let A.B. of.....attend the Judge or (Chief  
Registrar) in chambers, (or Chief Registrar's Office).

High Court, .....State on the..... day of  
.....19....., at ..... o'clock in  
the.....noon, (on the hearing of an application on the part of  
.....) (State relief sought) (If for leave to enforce  
award under the Arbitration

Act; Laws of Nigeria, add, "And that the respondent do pay the costs of this  
application to be taxed.")

Dated, etc.....

This summons was taken out by.....

FORM 58

Form of Ex-Parte Originating Summons

In the High Court of, Kano State.

In the.....Judicial Division Suit No..... of  
19.....

In the matter of A.B. an infant (or, as may be).

Let all parties concerned attend before the Judge or (Chief Registrar) in Chambers  
of the Judge, or (Chief Registrar's Office), High Court, .....State,  
at the time specified in the margin named A.B., an infant, by CD. his next friend,  
that, etc.

This summons was taken out by.....of.....  
(agents for....., of .....), practitioners,  
for the applicant.

FORM 59

Order (General Form)

(Heading as in Form 1)

\* Judge (Chief Registrar) in Chambers.

Between: A.B .....Plaintiff

and

C.D. and E.F..... Defendants

Upon hearing ..... and upon reading the  
affidavit of ..... filed herein ..... it is ordered  
....., and that the costs of this application be

Dated the.....day of .....

\*Insert name of Judge or Chief Registrar.

FORM 60

Notice in Money lenders Action

(Heading as in Form 1)

TAKE NOTICE of an application on the part of the  
..... plaintiff to the Judge in Chambers, High Court in  
the ..... Judicial Division Kano State, on  
..... the ..... day of

..... 19.....at .....o'clock in the forenoon,  
that he be at ..... liberty to enter final judgement against the  
Defendant..... for N ..... the amount claimed and costs,  
the said Defendant having failed to enter appearance to the writ of summons  
served on the..... day of.....19..... (or to  
DELIVER a defence within time prescribed or as the case may be).

Dated this..... day of .....  
19.....

This notice was taken out by..... of  
.....

.....  
Legal Practitioner for the  
Plaintiff

Notice to the Defendant;

TAKE NOTICE that you may attend either personally or by your legal practitioner at  
the above-mentioned time and place, and in default of your so doing judgement  
may be given in your absence for the full amount of the plaintiff's claim.

FORM 61

Summons for Directions

(Heading as in Form 1)

N.B. —Applicants to complete the text of any matter required and to strike out the  
number opposite any matter not required but not to strike out the text, which must  
be left for the Judge.

In the High Court of Kano State.

In the ..... Judicial Division Suit No ..... of  
.....

Before his Lordship, Hon. Justice.....

Between .....Plaintiff

and

..... Defendants



Let all parties concerned attend the Judge in Chambers, High Court of  
..... State,

..... Judicial Division, on ..... day of .....  
19..... at ..... o'clock in the .....noon on the  
hearing of an application for directions in this action, that:—

1. This action be consolidated with action(s) ,.....  
No..... and.....No.....

2. The action be referred to an official referee, and that the costs of this application  
be costs in the cause.

3. The plaintiff have leave to amend the writ by ..... and that service  
of the writ and the defendant's appearance stand, and that the costs incurred and  
thrown away by the amendment be the defendant's in any event.

4. The plaintiff have leave to amend the statement of claim as shown in the  
document delivered herewith and to re-deliver the amended statement of claim in  
..... days, with leave to the defendant to re-deliver an amended defence (if  
so. advised) in .....days thereafter, (and with leave to the plaintiff to re-  
deliiver an amendment reply (if so davisd) in ..... days  
thereafter and that costs incurred and thrown away by the amendments by the  
defendant's in any event.

5. The defendant have leave to amend the defence as shown in (the document  
delivered with) the defendant's notice under this summons and to redeliver the  
amended defence in.....days (with leave to the plaintiff to re-deliver an  
amended reply (if so advised) in .....days thereafter and that the costs of  
and the costs thrown away as the result of the amendment's be the plaintiff's in  
any event.

6. The plaintiff deliver to the defendant within..... days the further and  
better particulars of the statement of claim specified in (the document delivered  
with) the defendant's notice under this summons.

7. The defendant deliver to the plaintiff within.....days the further and  
better particulars of the defence specified in the document delivered herewith.

8. The plaintiff deliver to the defendant within..... days the further  
and better particulars of thereby specified in (the document delivered with) the  
defendants notice under this summons.

9. The plaintiff give security for the defendant's costs to the satisfaction of the Chief  
Registrar or Registrar, High Court in the sum of .....on the ground  
..... and that in the meantime all further proceedings be stayed.

10. The plaintiff within ..... days deliver to the defendant a list (file, an affidavit) of documents (limited to the documents relating to the (Special damage claimed) (plaintiff's industrial injury, industrial disablement; or sickness benefit rights) (period, from ..... to .....)) issues raised in paragraphs .....of the statement

of claim and paragraphs ..... of the defence) (issues of .....).

11. The defendant within.....days deliver to the plaintiff a list (file an affidavit) of documents

(limited to documents relating to the (period from ..... to.....) (issues raised in paragraphs ..... of the statement) (issues of.....)).

12. There be inspection of documents within .....days of the delivery of the lists (filing of affidavits).

13. The plaintiff have leave to deliver to the defendant the interrogatories shown in the document delivered herewith, and that the defendant answer the interrogatories on affidavit within, ..... days.

14. The defendant have leave to deliver to the plaintiff the interrogatories shown in the documents delivered with the defendant's notice under this summons, and that the plaintiff answer the interrogatories on affidavit within.....days.

15. The plaintiff (defendant) (retain and preserve pending the trial of the action) (upon.....days notice to give inspection of.....) the subject matter of the action, to the defendant (plaintiff) and to his legal adviser (and experts).

16. The statements in..... be admissible in evidence at the trial without calling as a witness the maker of the statements (and, if a copy of that document certified by.....to be true copy is produced, without production of the original document).

17. An affidavit of.....(in the form of the draft affidavit) (delivered herewith) (with the defendant's notice under this summons) (to be delivered within .....days) be admissible in evidence at the trial.

18. It be recorded that the parties (plaintiff ) ( defendant) (refuses to ) admit evidence, of the following fact (s), namely..... be received at the trial by statement on oath of information and belief (by the production of the following document or entries in books or copy entries in books, namely

19. It be recorded that the parties (plaintiff) (defendant) (refuses to) admit for the, purposes of this action that (..... (the truth of the statements in the document delivered (herewith) (with the defendant's notice under this summons).

20. ...., a witness on behalf of the plaintiff (defendant) ; may upon.....days' notice, be examined-before one of the examiners of the court (as special examiner to be agreed upon by the parties) and that the said witness need not attend the trial.

21 A medical report be agreed, if possible, and that; if not the medical evidence be limited to..... witnesses for each party.

22. A report by engineers (surveyors) (expert.....) be agreed if possible; and that, if not, the expert evidence be limited to.....witnesses for each party

23. A plan of the locus in quo other than a sketch plan be receivable in evidence at the trial

24. Photographs and a plan of the locus in quo be agreed if possible.

25. By consent, (the right of appeal be excluded) (any appeal to be limited to questions of law only).

26. Trial, place .....mode.....(Estimated length..... To be set-down within ..... days (and to be tried immediately after the action No ..... of 19.....)

27. The costs of this application be costs in the cause, Dated the ..... day of..... 19..... To the defendant(s) and to his (their) legal practitioner.

28. ....

.....

Legal Practitioner for the Plaintiff.

FORM 62

Short Order for Issue of Commission to Examine Witnesses

(Heading as in Form 1)

Upon hearing .....and upon reading; the affidavit of ..... filed

the .....day of..... 19....,

It is ordered that the.....be at liberty to issue a commission for the examination of witnesses on behalf of .....

And it is further ordered that the trial of this action be stayed until the return of the said commission.

(The usual long order to be drawn up), unless agreed upon by the parties within one week, to be settled by the Chief Registrar or Registrar (or as the case may be) and that the costs of this application be .....

Dated the.....day of .....19.....

#### FORM 63

##### Order for Issue of Letter of Request to take Evidence Abroad

(Heading as in Form 1)

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say:

E.R, of. ....

G.H., of. ....

and I. J., of .....

.....

And it is ordered that the depositions taken pursuant thereto when received be filed at the Judicial Division of the High Court Registry, and be given in evidence on the trial of this action, saving all just exceptions. And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

#### Note

For form of undertaking to be given by legal practitioner on issuing letter of request; see Form 65.

#### FORM 64

##### Letter of Request to take Evidence Abroad (Where no Convention)

(Heading as in Form 1)

To the President and Judges of, etc., (or as the case may be)

Whereas an action is now pending in the.....  
Judicial Division of the High Court of Kano State, in which A.B. is plaintiff and CD. is defendant. And in the said action the plaintiff claims:

(Endorsement upon writ)

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E.F., of .....

G.H., of.....and

I.J., of .....

And it appearing that such witnesses are resident within the jurisdiction of your honourable court.

Now I, the Hon. Justice ..... as the Chief Judge of the said High Court of Kano State have the honour to request, and do hereby request that for the reasons aforesaid and for the assistance of the ..... Judicial Division of the High Court of Kano State you as the President and Judges of the said ..... or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents or the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or viva voce) touching the said matters in question in the presence of the agents of the plaintiff and defendants or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure, and to return the same together with such request in writing if any, for the examination of other witnesses through the Ministry of External Affairs, for transmission to the said High Court of ..... state

Note

"due notice given"—This refers to a notice to be given by the legal practitioner having conduct of the action.

For Form of letter of Request to a Convention Country, as to undertaking by legal practitioner, See Form 65.

## FORM 65

### Legal Practitioners' Undertaking as to Expenses

(Heading as in Form 1)

I (or we) hereby undertake to be responsible for all expenses by the Ministry of External Affairs in respect of the letter of request issued herein on the ....., and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Chief Registrar of the High Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request.

Plaintiff's Agent..... of.....

Defendant's Agent..... of.....

Dated.....day  
of.....19.....

.....

Legal Practitioner for

.....

## FORM 66

### Letter of Request to take Evidence Abroad (Convention Country)

(Heading as in Form 1)

To the Competent Judicial Authority of ..... in  
the..... of

.....

Whereas a civil f commercial) action is now pending in the .....  
Judicial Division of the High Court of ..... State  
Nigeria, in which ..... is plaintiff and .....  
is defendant. And in the said action the plaintiff claims

.....

And whereas it has been represented to the said court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say ..... of ..... and .....

of..... And it appearing that such witnesses are resident

within your jurisdiction.

Now I the Chief Judge of the High Court of.....State,

Nigeria, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said court, you will be pleased to summon the said witnesses (and such other witnesses as the agents of ;the said plaintiff and defendant shall humbly request you in writing so to summon)

To ( ) at such time and place as you shall appoint before you, or such other persons as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined (upon the interrogatories which accompany this letter of request) viva voce touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given attend such examination.

And I further have the honour to request that you will permit the agents of both the said plaintiff and defendant or such of them as shall be present to be at liberty to examine (upon interrogatories and viva voce upon the subject matter thereof or arising out of the answer thereto) such witnesses as may, after due notice in writing be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce) and the party producing the witnesses for examination liberty to re-examine him viva voce.

And I further have the honour to request that you will be pleased to cause (the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination, or reexamination) the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with (the interrogatories and cross-interrogatories, and) a note of the charges and expenses payable in respect of the execution of this request, through the Ministry of External Affairs from whom the same was received for transmission to the High Court of Kano State.

And I further beg to request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated the.....day of .....19.....

FORM 67

Order for Appointment of the Nigerian Diplomatic Agent as Special Examiner

(in Convention Country)

(Heading as in Form 1)

Upon hearing the legal practitioner on both sides, and upon reading the affidavit of ..... dated ..... It is ordered that the Nigerian Diplomatic

Agent or his deputy at..... be appointed as Special Examiner for the purpose of taking the examination, cross-examination, viva voce, on oath or affirmation, of ..... witnesses on the part of the..... at..... aforesaid. The Examiner shall be at liberty to invite the attendance of the said witnesses and production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the Nigerian High Court procedure.

The..... legal practitioners to give the..... legal practitioners ..... day's notice in writing of the date on which they propose to send out this order to.....for execution and that..... days after the service of such notice the legal practitioner for the plaintiffs, and defendants irrespectively do exchange the names of their agents at.....to whom notice relating to the examination of the said witnesses may be sent. And that..... days: (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed, with). And that the dispositions when so taken together with any documents referred to therein or certified copies of documents, or of extracts therefrom, be transmitted; by the Examiner, under seal, to the Chief Registrar of the High Court Kano State, Nigeria, on, or before the ..... day of..... next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of his action, saving all just exceptions. And that the trial of this action be stayed until the filing of such examination and that the cost of the examination be cost in the action.

Dated.....day of..... 19.....

Note:

If the Convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.



FORM 68

Order for Production of Ship- s Papers

In the High Court of Kano State

In the ..... Judicial Division, Suit No ..... of .....

Between: A.B .....Plaintiff

And

C.D. .... Defendant.

Upon hearing the legal practitioners or agents for all parties it is ordered that the plaintiff and all persons interested in these proceedings and in the insurance the subject of this action, do produce and show to the defendant, his legal practitioners or agent upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject matter of the insurance on the ship.....or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship, the cargo on board thereof, and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting of the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or freight thereby on the same voyage. Also all correspondence between the captains or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log-books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifest

accounts, accounts-current, account sales, bills of exchange, receipts, vouchers, books documents, powers of attorney, correspondence, papers and writings (whether originals, duplicates ,or copies respectively), which now are in the custody, possession, or power of the plaintiff or any other person, his or their or any or either of their brokers, legal practitioners, or agents in any way relating to referring to the matters in question in this action, with liberty for the defendant, his legal practitioners or agents to inspect and take copies of or extracts from the same or any or either of them, and that in the like manner the plaintiff and the said other persons interested as aforesaid do account for all such documents as were once but are not now in his, their, or any, or either of their possession, custody, or power, and that in the meantime all further proceedings be stayed, and that the costs of and occasioned by this application be costs in the action.

FORM 69.

Default of Appearance and Defence in case of Liquidated Demand

In the High Court of Kano State

Between: A.B.....Suit

No.....19.....Plaintiff

And

CD. and E.F.....Defendants

The..... day  
of..... 19.....

The defendant (if the defendant resides abroad, add "residing out of the jurisdiction" or if service was substituted, and "having been served by substituted service" and) not having appeared to the writ of summons herein (or, not having delivered any defence), it is this day adjudged that the plaintiff recover against the said defendant N.....and N.....costs (or, costs "to be taxed).

The above costs have been taxed and allowed at N.....as appears by a taxing officer's certificate dated the..... day of.....19...

FORM 70

Interlocutory Judgement in Default where Demand Unliquidated.

In the.....JudicialDivision

Suit No.....of 19.....

Between: A.B.....Plaintiff

and

C.D. and E.F. ....Defendants

The.....day of  
.....19.....

No appearance having been entered to the writ of summons (or no defence having been delivered by the defendant) herein. It is this day adjudged that the plaintiff recover against the defendant the value of the goods (or damages, or both as the case may be) to be assessed.

FORM 71

Interlocutory and Final Judgement in Default where Demand Unliquidated

In the High Court of Kano State

In the..... Judicial Division. Suit No .....of  
19.....

Between A.B.....Plaintiff

and

C.D. and E.F.,.....Defendants

The.....day ..... of.....  
19 .....

No appearance having been entered to the writ of summons (or, no defence having been delivered by the defendant) herein.

It is this day adjudged that the plaintiff recover against the defendant (the value of the goods or damages, or both, as the case may be) to be assessed.

The amount found due to the plaintiff under this judgement having been certified at the sum of N .....as appears by (official Referees certificate or Chief Registrar's finding) filed the ..... day of .....  
19.....

It is adjudged that the plaintiff recover against the defendant N..... and cost to be taxed.

The above costs have been taxed etc.(as in Form 69 supra).

FORM 72

Default Judgement in Detinue

In the High Court of Kano State

In the..... Judicial Division. Suit No ..... of 19.....

Between A.B ..... Plaintiff

and

C.D. and E.F.....Defendants

The.....day of.....,..... 19.....

The defendant not having appeared to the writ of summons herein (or not having delivered any defence). It is this day adjudged that the plaintiff do have a return of the chattels in the writ of summons (or statement of claim) mentioned and described as (description of chattels) or recover against the defendant their value to be assessed, and damages for their detention to be assessed.

The value of the.....having been assessed at the sum of N.....and the damages at the sum of N.....as appears by the Chief Registrar's or Registrar's finding the day of..... 19.....

It is adjudged that the plaintiff recover from the defendant the sum of N..... and costs to be taxed.

The above costs have been taxed, etc, (as in Form 69, supra).

#### FORM 73

Judgement in default of Appearance in Action for Recovery of Land, Damages and Costs,

In the High Court of Kano State.

In the.....Judicial Division. Suit No.....of 19..... Between:

A.B..... Plaintiff

and

C.D. and E.F.....Defendants

No appearance having been entered to the writ of summons herein, it is this day that the plaintiff recover possession of the land in the endorsement on the writ described as

.....

And it is further adjudged that the plaintiff recover against the defendant damages to be assessed.

The amount found due to the plaintiff under this judgement having been certified at the sum of

N.....as appears by (Official Referee's certificate or the Chief Registrar's or

Registrar's finding) filed the.....day  
of.....19.....

It is adjudged that the plaintiff recover against the defendant N  
..... and costs to be taxed.

The above costs have been taxed, etc. (as in Form 69 supra).

(Additional Form in official use, the use of this form is entirely optional).

#### FORM 74

Judgement for Recovery of Land Only In the High Court of Kano State.

In the.....Judicial Division. Suit No.....19.....

Between A.B ..... Plaintiff

and

C.D. and E.F..... Defendants

No appearance having been entered (or, no defence having been delivered) herein  
it is this day adjudged that the plaintiff recover possession of the land in the writ of  
summons (or, statement of claim) mentioned and described as (described the  
property).

Note

No costs in default of appearance. Costs to be taxed in default of defence.

#### FORM 75

Final Judgement after Assessment of Damages

In the High Court of Kano State.

In the ..... Judicial Division Suit No.....of  
.....19.....

Between: A.B.

.....

and

C.D. and E.F.....Defendants

The plaintiff having on the ..... day of .....  
19..... obtained interlocutory judgement herein against the defendant for  
damages (or as may be) to be assessed, and the amount found due to the plaintiff  
having been, certified at N ..... as appears by  
(Official Referee's certificate, or Chief Registrar's or Registrar's finding under order  
or as may be) filed the ..... day of .....19.....

Therefore it is adjudged .that the plaintiff recover against the defendant  
N.....and costs to be taxed,

The above costs have' been taxed, etc

Note

This form is used where forms 71, 72, 73 and 78 are not applicable, at the option of  
the plaintiff.

## FORM 76

Judgement after Appearance and Order

In the High Court of Kano State.

In the.....Judicial Division Suit  
No.....of 19.....

Between A. B.....Plaintiff

and

C.D. and E.F.....Defendants

The ..... day of .....  
19.....

The defendant having appeared to the writ of summons herein, and the plaintiff  
having by the order of ..... dated the ..... day of  
..... 19..... obtained leave to sign  
judgement under section 159 of this Law (or section (s).....  
of.....).

It is this day adjudged that the plaintiff recover against the defendant N.....  
(or, possession of the land in the endorsement on the writ described as .....)  
and N..... costs (or, costs to be taxed).

The above costs have been taxed and allowed at N....., as appears by the Chief Registrar's or Registrar's certificate dated the.....day of 19.....

Unless otherwise ordered the judgement is dated as of the day which the order is made.

FORM 77

Judgement for Unliquidated Demand

In the High Court of Kano State.

In the ..... Judicial Division. Suit No  
.....19.....

Between: A.B.....Plaintiff

and

C.D. and E.F

.....,..Defendants

The defendant having appeared to the writ of summons herein and the plaintiff having by the Order of ..... dated the ..... day of ..... 19..... obtained leave to sign judgement under section 159 of this Law or section (s) ..... of ..... for .....

It is this day adjudged that the plaintiff recover against the defendant (damages, or as the case may be) to be assessed.

The amount found due to the plaintiff under this judgement having been certified at the sum of N..... as appears by (official referee's certificate or the Chief Registrar's or Registrar's finding dated.....) filed the ..... day of .....19.....

It is adjudged that the plaintiff recover against the defendant N..... and costs to be taxed.

The above costs have been taxed and allowed at N.....as appears by the Chief Registrar's or Registrar's Certificate dated the.....day of .....19.....,

(Additional Form in Official Use)

FORM 78

Judgement after Trial before Chief Registrar or Referee

In the High Court of Kano State

In the..... Judicial Division. Suit No.....of.....19.....

Between: A.B ..... Plaintiff

and

CD. and E.F.....Defendants

The matter of (state matter referred) action having by an order dated the .....day of ..... 19..... been referred for trial to (name of Chief Registrar or Official Referee), and the said (Chief Registrar or Official Referee) having tried the said action, and, having by this (Certificate or Report) dated the ..... day of .....19 ....., directed the judgement be entered for (state substance of certificate or report).

It is this day adjudged that N.....and costs to be taxed be recovered by the ..... against..... The above costs have been taxed and allowed at N.....as appears by Chief Registrar's Certificate dated the..... day of ..... 19

FORM 79

Judgement after Trial of questions of Account by Referee

In the High Court Kano State

In the.....Judicial Division. Suit No.....19.....

Between: A. B.....Plaintiff

and

C.D.. and E.F.....Defendants

The .....day of....., 19.....

The questions of account in this action having been referred to .....

and he having found that there is due from the ..... to the ..... the



sum of N.....and directed that the ..... do pay the costs of the reference.

It is this day adjudged that the.....recover against the said ..... 4 ..... and costs to be taxed.

The above costs have been taxed and allowed at N ..... as appears by the Chief Registrar's Certificate dated the ..... day of ....., 19.....

## FORM 80

Judgement upon Motion for Judgement

In the High Court Kano State

In the.....Judicial Division. Suit No.....of 19...

Between: A.B.....Plaintiff

and

C.D. and E.F..... Defendants

Dated and entered the..... day of..... (date of order of Court)

This action having on the..... day of....., 19..... come before the Court on motion for judgement on behalf of the (party moving the Court) and the Court after hearing the legal practitioner for the (plaintiff and defendant as the case may be) having ordered that (recite direction for judgement).

It is this day adjudged that the ..... recover against the ..... N

..... and costs to be taxed

The above costs have been taxed and allowed at N..... appears by a Taxing Officer's certificate dated the ..... day of ....., 19 .....

## FORM 81

Judgement of Dismissal

In the High Court of Kano State.

In the ..... Judicial Division. Suit No, ..... of 19  
.....

Between A.B. ....Plaintiff

and

C. D. and E. F .....Defendants

Dated and entered ..... day of .....  
19 .....

The action having on the.....day of ....., 19..... been called  
on for hearing before ....., and the ..... plaintiff having failed to  
appear and the defendant having thereupon become entitled ....., to  
judgement dismissing the action and the said ..... having the ordered  
that judgement be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with  
costs.

And it is further adjudged that the defendant recover against the plaintiff his costs  
to be taxed.

The above costs have been taxed, etc.

## FORM 82

### Judgement for Defendant's Costs on Discontinuance

The ..... day of....., 19.....

The plaintiff having by a notice in writing dated the.....day of  
....., 19....., wholly discontinued this action(or withdrawn his claim in  
this action, for, or withdrawn so much of his claim in this action as relates to  
.....as the case may be ).

It is this day adjudged that the defendant recover against the plaintiff costs to be  
taxed.

The above costs have been taxed and allowed at N..... as appears by a Taxing  
Officer's Certificate dated the ....., day of ....., 19.....

## FORM 83

### Judgement for Plaintiff's Costs after Confession of Defence

In the High Court Kano State

In the.....Judicial Division. Suit  
No..... of 19.....

Between: A.B.....Plaintiff

and

CD. and E.F.....Defendants

The defendant in his statement of defence herein alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the..... day of ....., 19....., delivered a confession of that defence.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at N.....as appears by a Taxing Certificate dated the.....day of....., 19.....

FORM 84

Judgement for Costs after Acceptance of Money paid into Court

Suit No ..... of 19.....

Between: A.B ..... Plaintiff

and

CD. and E.F.....Defendants

The .....day of ....., 19.....

The defendant having paid into Court in this action the sum of N in satisfaction of the plaintiff's claim, and the plaintiff having notice dated the. ....day of ..... 19....., accepted that sum in satisfaction of his entire cause action, and the plaintiff's costs herein having been axed and the defendant not having paid the same within forty-eight hours after said taxation.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at N..... as appears by a

Taxing Officer's Certificate dated the.....day of..... 19  
.....

FORM 85

Judgement on Motion after Trial of Issue

In the High Court of Kano State

In the ..... Judicial Division

Between: A.B .....plaintiff

and

CD. and E.F, ..... Defendants

Dated and entered the ..... day of ....., 19.....

The issues or questions of fact arising in this action (or cause or matter) by the order dated the

..... day of....., 19..... ordered to be tried before  
.....having on

the.....day of..... 19 ..... been tried before.....  
and the .....having

found.....

Now on motion before the Court for Judgement on behalf of  
the.....

the Court having .....

It is this day adjudged that the.....recover against the .....  
the sum of N .....

and costs to be taxed. The above costs have been taxed and allowed at N .....as  
appears by the Taxing

Officer's Certify dated the .....day of ....., 19.....

FORM 86

Praecipe

In the High Court of Kano State

In the..... Judicial Division Suit No..... of 19.....

Between: A.B .....Plaintiff

and

C.D. and others ..... Defendants

Seal Writ of Subpoena..... on behalf of the  
.....directed to .....

Returnable .....

Dated this.....day of ....., 19.....

(Signed).....

(Address).....

Legal Practitioner for the .....

FORM 87

Legitimation Petition

In the High Court of Kano State

In the .....Judicial Division

In the matter of the Legitimacy Law

and

In the matter of A.B. of.....(State name, address and  
description of the person whose legitimacy the Court is asked to declare)

The petition on the above-named A.B. sheweth as follows:

1. Your petitioner resides at.....

2. Your petitioner is of the.....sex, and was born on the .....  
day of....., 19..... at..... The birth of your petitioner  
is recorded by an entry numbered ..... and made on the ..... day  
of.....19..... in the register of births for etc (or the case may be)

3. Your petitioner is the natural child of C.D. of ..... by E.F.  
of .....

4. At the date of the birth of your petitioner the said E.F. was residing at.....

.....and domiciled in.....

5. The said C.D. and E.F. were lawfully married to one another on the.....

..... day of ....., 19..... at .....

The said C.D. and E.F. have had issue.....children and no more,  
namely:

(State names and dates of birth of such issue).

6. At the date of the marriage the said C.D. was a spinster (or widow or as the case may be) and the said E.F. was a bachelor (or widower or as the case may be) and was residing at..... and was domiciled in.....

7. The following persons are affected by the legitimization as aforesaid of your petitioner:

(State names and addresses and descriptions and relationship).

8. The value of the property involved by the legitimization of your petitioner, so far as is known to

your petitioner, is N.....

9. Your petitioner is not acting in collusion with or with the connivance of any person for the purpose of obtaining a decree and declaration of legitimacy contrary to the justice of the case.

10. No previous proceedings under the Legitimacy Law, or otherwise with reference to the paternity of your petitioner or the validity of the marriage of the said C.D. and E.F. have been taken in any Court (or as may be).

11. Your petitioner undertakes to pay the costs of the respondents to this petition if the Court so directs. (Where the petitioner is an infant or person of unsound mind this paragraph should be struck out and the undertaking of the next friend should be lodged with the petition).

Your petitioner therefore prays:

That it may be decreed and declared that the said C.D. and E.F. were lawfully married at.....on the.....day of.....19.....and that by such marriage your petitioner became legitimated as from the date of the Said marriage (or as from the date of the commencement of the Legitimacy Law) for the purposes of the Legitimacy Law.

That the costs of the respondents to this petition may be taxed or otherwise ascertained.

DATED the.....day of ..... 19.....

## Note

It is to deliver a copy of this petition to the Attorney-General of Kano State and to serve this petition on .....

## NOTICE

(to be endorsed on the petition)

TAKE NOTICE that the within petition will be transferred from the General Cause

List to the Hearing paper for..... the ..... day of  
..... 19 ....., at ..... o'clock in the forenoon at  
..... and will come on to be heard on that day if

the business of the Court permits or otherwise on some adjournment day of which you will receive no further notice.

If any party desires to postpone the hearing he must apply to the Court as soon as possible for that purpose, and, if the application is based on any matter or fact, he must be prepared to give proof of such fact.

If you desire to make answer to the within petition you must file your answer in the above Court within twenty eight days after service of the petition upon you.

If your answer contains matter other than a simple denial of the facts stated in the petition, the answer must be accompanied by an affidavit made by you verifying such other matter as you have personal knowledge of, and deposing to your belief in the truth of the rest of such other matter.

You must file with your answer as many copies of the answer and the affidavit (if any) as there are other parties to the petition, and also two copies for the use of the Court.

.....

Registrar

## FORM 88

Legitimacy Law Affidavit

(Heading as in Form No 1)

..... of  
..... the petitioner (or the next friend of  
the petitioner) in the above matter, make oath and say as follows:

That the statements contained in paragraphs.....of the petition dated the..... day of....., 19..... are true.

That the statements contained in paragraphs.....of my said petition are true to the best of my knowledge, information and belief.

Sworn, etc.

.....

Jurat.

## FORM 89

### Legitimacy Law Undertaking by Next Friend

(Undertaking by Next Friend of Infant to be Responsible for Respondents' Costs)

(Heading as in Form 1)

I, the undersigned G.H. of....., being the next friend of

A.B..... who is an infant and who is desirous for filing a petition in this court under the Legitimacy Law, hereby undertake to be responsible for the costs of the

respondents to such petition in the manner following:

Namely, if the said A.B., fails to pay to the respondents or to any of them when and in such manner as the court shall order all such costs as the court shall direct him to pay to the respondents I will forthwith pay the same.

DATED the.....day of ..... 19.....

.....G-H

## FORM 90

### Legitimacy Law Undertaking for Costs

As legal practitioner for the above-named petitioner I hereby undertake to be personally responsible for any costs which the said petitioner may be ordered to pay to the respondents in this matter or any of them.

Dated the.....day of .....19.....

.....



Legal Practitioner for the Petitioner

FORM 91

Legitimacy Law Notice to Attorney-General of Kano State

TAKE NOTICE that the Petition in the above matter will be transferred from the General Cause List to the Hearing paper for.....the..... day of .....,19 ..... at .....o'clock in the forenoon at ..... and will come on to be heard on that day, if the business of the Court permits or otherwise on some adjournment of which you will receive on further notice.

.....

Registrar

FORM 92

Legitimacy Law Answer to Petition

The respondent L.M. by P.Q. his legal practitioner (or in. person) in answer the petition filed in the above matter, says:

1. That petitioner is not the natural child of E.F. as ..... alleged in the petition (or as may be);

2 .....

Wherefore this respondent humbly prays that the prayer of the petitioner may be rejected.

DATED the.....day of.....19.....

FORM 93

Legitimacy Law Decree

Upon reading the petition of A.B. of..... presented to this Court in the above matter and upon reading the affidavit (s) of..... and the several exhibits thereto.

And after hearing .....

And the Court being satisfied that the allegations contained in the said Petition are true and that copy of the said petition was duly delivered to the Attorney-General of Kano State and that all proper persons have been served with the said petition;

It is DECREED AND DECLARED that C.D. of.....E.F. of ..... in the said petition mentioned were lawfully married at ..... day of..... 19..... and that by such marriage the said A.B. was legitimated for the purposes of the Legitimacy law as from the ..... day of ... 19.....(being the date of the said marriage) (or as from the 17th day of October 1929) (being the date of commencement of the said Law).

AND IT IS ORDERED that the said A.B. do pay to the respondents the costs of the said respondents to the said petition respectively as follows .....

Dated the..... day of..... 19.....

.....

Registrar

FORM 95

Writ of Habeas Corpus ad Subjiciendum

(Heading as in Form 53)

To the Director of the Prison at..... You are hereby ordered to have in the High Court of Justice (or before a judge in Chambers) at..... on the day and at the time specified in the notice served with this writ, the body of..... being taken and detained under your custody as is said, together with a statement of the day and cause of his being taken and detained, by whatsoever name he may be called therein, that the Court (or judge) may then and there examine and determine whether such cause is legal.

.....

Judge of the High Court of.....State

Dated the.....day of..... 19.....

ENDORSEMENT

By order of Court (Justice.....)

This writ was issued by..... of ..... legal practitioner for.....

FORM 96

Notice to be served with Writ of Habeas Corpus ad Subjiciendum

In the High Court of Kano State.

In the..... Judicial Division

(If in a cause already begun, here insert the title, not otherwise)

Whereas this court (or the Honourable Justice.....) has granted a writ of habeas corpus directed to..... (or other person having the custody of ....., if so) Commanding him to have the body of ..... before the said court (or before the judge in Chambers) at the Kano High Court on the day and at the time specified in this notice; together with a statement of the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said ..... before this court (or before the judge aforesaid) on.....

the..... day of 19..... at..... o'clock before noon, and to make a return to the said writ.

In default, thereof, the said court will then, or so soon thereafter as counsel can be heard be moved to commit you to prison for your contempt in not obeying the said writ (or if in vacation, will be made to one of the judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ).

Dated the.....day of..... 19.....

(Signed).....

of.....

Legal Practitioner for.....

FORM 97

Writ of Habeas Corpus ad Tescificandum

(Heading as in From 53)

To the Director of the prison at .....

You are hereby commanded to have before ..... (give description of Court) on ..... the ..... day of ....., 19..... at ..... o'clock in the forenoon, the body of..... being to testify the truth and give evidence on behalf of ..... against ..... for

..... (description of offence or other proceeding) and so from day to day until the said.....shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to the said prison under your custody and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of Law.

.....

Judge/Magistrate

By Order of.....

#### ENDORSEMENT

This writ was issued by ....., of  
.....

Legal Practitioner for .....

FORM 107

Notice of Appeal (Civil)

In the Magistrate's Court of the.....Magisterial District No.....

A.B. Versus C.D.

Take notice that the Plaintiff (or Defendant, as the case may be) A.B. (or C.D.; name the Party who is appealing) appeals from the judgement (or order, or decision) dated the....., day of ....., 19 ..... in the above proceedings.

And further take notice that his grounds of appeal are

.....

.....

.....

Dated.....

.....

A.B. (or C.D.) (or the legal

practitioner acting for him)

To C.D, (or A.B.)

of .....

#### Note

This notice must be filed with the Registrar of the Magistrate's Court within month of the decision appealed from and served on all parties affected by the appeal within that period.

The grounds of appeal should be given in full.

The rules on civil appeals from Magistrates should be looked at carefully.

#### FORM 108

Registrar's Certificate for Fees payable to Bailiff.

For the month of .....19.....

Nature of Duty Number Date Total

.....

Registrar.

#### FORM 109

Receipt to be given by Bailiff

In the High/Magistrate's Court of ..... State

In the.....,..... Judicial Division/Magisterial District Receipt No .....

No. of Suit or Plaint..... of 19.....

Date of writ (or order) (or warrant) .....

Between ..... Plaintiff

And ..... Defendant

Received from..... of.....

N.....,..... (.....) being.....

.....

.....  
Bailiff

Dated ....., 19 .....

#### FORM 110

Return of Process in possession of Bailiff

Return of all Writs, Orders and Warrants in possession of Bailiff, during the month ending....., 19.....

No. of Suit or plaint

Name of plaintiff

Name of Defendant

When process received Nature

of process From what Court received Amount of process Statement as to what has been

done under

process  
.....

Bailiff

I Hereby Certify that I have examined this return in accordance with the Law.

.....  
(Sheriff or Deputy Sheriff)

Date ..... 19 .....

#### FORM 111

Return of Cash receipt of Bailiff

No. of Suitor

Plaintiff/Defendant

Date When Process received

Amount received

When amount received

When paid to Sheriff Remarks

.....

Signature of Bailiff

I HEREBY CERTIFY that I have examined this return in accordance with the Law.

.....

Sheriff or Deputy Sheriff

Date.....

FORM 112

Sheriff's Receipt for Writ

Received from ..... on the ..... day of ..... 19..... at .....  
o'clock in the ..... noon, a writ ..... bearing date the  
..... day of ..... 19..... issued in the  
High/Magistrate's Court of the ..... Judicial Division/Magisteral  
Area in suit (or plaint)

No ..... of ..... 19 ..... Between  
..... Plaintiff

and ..... Defendant.

.....

Sheriff

FORM 113

Sheriff's register for process

No. Suit

Plaintiff/Defendant

Court issuing

Nature of writ

Date sent to Bailiff

Date returned by Bailiff

Gross Amount realized

Balance Paid into Court

Date paid into court

No. of Court receipt Remark

#### FORM 114

Summons for Neglect to levy Execution

In the High/Magistrate's Court of the.....

Judicial Division/Magisterial District of .....State

To..... of ..... bailiff

You are hereby summoned to appear at a court to be held  
at.....

on the day of....., 19....., at the hour of..... in  
the.....noon, to answer a complaint made against you  
by..... of.....against the (specify the  
property) ..... of ..... did, by neglect or connivance or omission  
lose the opportunity of executing such writ, and to show cause why an order should  
not be made against you under section 39 of the Sheriff and Civil Process Law, for  
payment of such (Cap. 118) damages as it shall appear that the said  
.....has sustained by your neglect or connivance or omission.

.....

Judge (or Magistrate)

#### FORM 115



## General Form of Commencement of Process in Transferred Proceedings

(General Title—Form 1)

Suit No/Plaint .....

Judgement No.....

Summons.....

Upon transfer from the High/Magistrate's Court of the..... Judicial Division  
/ Magisterial District

(add for each previous transfer. And upon transfer, etc., (as above)

(Continue in the appropriate form, commencing with the first recital, in which the court where the judgement was given should be named.)

FORM 116

Order suspending or staying judgement of process or for discharge of debtor.

(General Title—Form 1)

On the application of.....and the court being satisfied that the defendant ..... is unable to pay and discharge the sum recovered against him in this (or the instalment due under the judgement (or order) in. this) action (or the defendant ..... having furnished security (or shown cause why he should not furnish security) (or the plaintiff having been non-suited) (or the above action having been struck out) (or the court being satisfied that the interim attachment herein should be lifted) or the defendant ..... having satisfied the sum upon payment of which he may be discharged by order of the court (or having obeyed (or being unable to obey) (or being desirous of obeying and having given security to obey) the order in this action);

It is ordered that the judgement (or order) in this action be suspended against the said defendant (or that the (interim) execution issued in this action (or on the judgement summons in this action) be suspended) (or that the order (and warrant) or commitment made (and issued) in this action be suspended) for (state time) upon the terms following namely: (state terms) ..... (or that the defendant be discharged (or liberated) from custody under the order (or warrant) of commitment issued in this action (after he has been imprisoned thereunder) for ..... from the date of this order unless he shall sooner pay a fine of N ..... (upon the terms following, namely:— state terms, including, if so ordered, liability to re-arrest if the terms are not complied with).

Dated this,.....day of .....19 .....

.....

Judge (or Magistrate)

FORM 117

Registrar's Process Book

High/Magistrate's Court of the ..... Judicial Division/Magisterial District

No of Suit or Plaintiff

Plaintiff/Defendant

Nature of writ

Issued for

Issued against

Date

Time hours..... Minutes..... a.m.....p.m.

-----

Registrar's Signature

FORM 118

Writ of Attachment and Sale against immovable Property

(General Title— Form 1)

(Recitals—Form 1, 5, 6)

AND WEREAS no movable property of the defendant (or plaintiff) can with reasonable diligence be found sufficient to satisfy the said judgement (or order):

AND WHEREAS upon the application of the plaintiff (or defendant) it was on the .....day of.....;.....19....., ordered that writ of attachment and sale should issued against the immovable property of the

defendant (or plaintiff) for the sum of N.....(being part of the sum of N..... (judgement debt, or part thereof ordered to be levied, or plaintiff's costs, or as the case may be) remaining unpaid):

These are therefore to require and order you forthwith to make and levy the said sum of N ..... together with the costs of this writ and the costs of executing the same, by entering upon and attaching the immovable property of the defendant (or plaintiff) wheresoever it may be found within the ..... Judicial Division and by selling the same, and to bring what you shall have so levied into court and to make return of what you have done under this writ immediately upon the execution thereof: (Continue as Form 4, 5, or 6 to the words "the day last mentioned above.

Notice— The immovable property is not to be sold until after the end of fourteen days next following the day on which the attachment shall have been made.

If the defendant (or plaintiff) is a native, and the property attached is his right title or interest in a building owned or occupied by him, and he is not entitled under native law or custom to alienate the building or his right of occupation therein but is entitled to remove the materials used in construction thereof or some of them, then his right title or interest in such building shall not be sold without the leave of the court.

.....

Registrar

#### FORM 119

Notice to Registrar of Foreign Court of payment under warrant or Order of Commitment sent to him

(General Title—Form 1) ,

Take notice that the defendant has this day paid to the plaintiff (or into court) ..... for which sum credit should be given on the warrant (or order) of commitment (or of arrest and detention) which has been sent to you for execution.

#### FORM 120

Public notice of Attachment of Land

(General Title — Form 1)

Notice—This land (or this house, or as the case may be) is hereby attached to secure the enforcement against the defendant.....of the judgement of the Court in the above action, and all persons are from the date hereof prohibited from receiving the land (or house) by purchase, gift, or otherwise.

Dated this.....day of.....19.....

.....

Sheriff

FORM 121

Notice of attachment

(General Title — Form 1)

To the Defendant:

Take notice that a writ has been issued for the attachment and sale of your goods (or land, or house, or as the case may be) in execution of the judgement (or order) obtained against you in this action (or matter) and the amount for which it has been issued is stated below.

And take notice, that your land (or house, or as the case may be) is hereby attached and you are prohibited from selling the same or any right, title, or interest therein.

If you pay to the Bailiff the total amount to be levied, as stated below, within an hour after the service of this notice, you will incur no further fees or expenses.

Thereafter, you may be liable to pay the Sheriff a fee of twenty kobo daily for keeping possession of the property, and also the reasonable expenses, if any, of feeding animals, until the amount to be levied together with the amount of such fees and expenses, is, paid, or the property is sold.

If at any time before the sale of the property you pay to the Registrar or Bailiff (a) the amount to levied, and (b) the fees and expenses, if any incurred after attachment, this execution will be superseded and your property will be released.

If you do not pay. the amount to be levied and any fees and expenses subsequently incurred, the property will be sold and any amount that remains unpaid, together with costs of sale, will be deducted from the proceeds, and the balance, if any, will be paid to you.

Your goods (or land, or house, or as the case may be) will not be sold until after the end of five (or fourteen) days next following the day on which they were (or it was) attached unless they are of a perishable nature, or you request it.

Amount for which the writ has been issued ..... N  
.....k.....

Fees on issue of the writ .....

Total amount to. be levied, exclusive of  
fees.....and expenses incurred after attachment  
.....

Dated this ..... day of .....19.....

.....

Registrar

## FORM 122

### Notice of Claim to Attached Property

(General Title—Form 1)

Take notice that.....of the ..... has claimed the  
goods (or house) (or land) or certain goods) (specify the same) (or, rent  
distrainable upon the goods) attached by the Sheriff under the writ of execution  
issued in this action

If within..... days after receiving this notice you give notice to me  
that you admit the title of the said..... to the said goods (or house)  
(or land), or request the Sheriff to remove the attachment, you will not be liable for  
any costs incurred after the receipt by me or the Sheriff of your notice.

Dated this..... day of..... 19.....

.....

Registrar

To the plaintiff.....

Take notice that I admit the title of.....to the goods attached by the  
Sheriff (or I request you to remove the attachment) under, the execution issued in  
this action

Dated this.....day of..... 19.....

.....

Judgement Creditor

To the Registrar, (or to the Sheriff),

FORM 123

Notice to claimant to attached property to make Deposit or give Security.

(General Title—Form1)

Whereas you have claimed the goods (or house) (or land) (or certain goods) (or land) specify the same) attached in execution by the Sheriff under the Writ of execution issued in this action.

Take notice that you are hereby required/in accordance with section 32 of the Sheriffs and Civil Process

Law, either:

(i) to deposit with the Sheriff the amount of the value of the goods (or house) (or land) so claimed by you, such value (cap. 11) to be fixed by appraisement in case of dispute, to be paid into court to abide the decision of the court, upon your claim; or

(ii) to deposit with the Sheriff the cost of keeping possession of such goods (or house) (or land) until such decision can be obtained; or

(iii) to give to the Sheriff security by bond for the value of the goods (of house) (or land) so claimed

by you.

And further take notice that in default of your making deposit or giving security the goods (or house) (or land) will be sold as if no such claim had been made by you, and the proceeds paid into court to abide the decision of the Court.

Dated this ..... day of ..... 19 .....

.....

Registrar

To the Claimant.....

FORM 124

Notice of Application for private Sale

(General Titled-Form 1)

Take notice that this Honourable Court will be moved on the ..... day of ..... 19

..... at ..... o'clock in the forenoon, or so soon thereafter as (Counsel for) the above named Plaintiff can be heard, for an order for (leave to effect) the sale by private contract of the movable (or immovable) property of the defendant attached under a writ issued in this action (or matter) on the ..... day ..... of 19 ..... at .....

If you do not pay the amount to be levied and any fees and expenses subsequently incurred , the property will be sold and any amount that remains unpaid, together with costs of sale, will be deduced from the proceeds, and the balance if any will be paid to you.

Your goods (or land, or house, or as the case may be) will not be sold until after the end of five (or fourteen) days next following the day on which they were (or it was) attached unless they

Amount for which the writ has been, issued N.....kobo.....

Fees on issue of the writ.....

Total amount to, be levied, exclusive of fees..... and expenses incurred after attachment ...,

Dated this..... day of ....., 19.....

.....

Registrar

FORM 125

Notice to Person in Possession of Sale of Attached Property

(General Title — Form 1)

Take notice that the goods (or as the case may be) specified on the back hereof,

lately the property of the above named ..... and now in your possession have been sold under a writ of execution in the above action to ..... and you are hereby prohibited from delivering possession of the said goods (or as the case may be) to any person except the said ..... the purchaser.

Dated this..... day of..... 19 .....

.....

Sheriff.

## FORM 126

### Certificate of Purchaser of Land

(General Title Form 1)

I hereby certify that..... of .....has been declared the purchaser of the right, title, and interest of the above named .....in the land, messages, and tenements hereinafter mentioned, that is to say.

All that (here describe the land, etc) ..... which said judgement for order in the above action by order of this Court dated the..... day of.....19.....

Dated this...,.....day of .....19

.....

Registrar

## FORM 127

### Writ of Interim Attachment in Judgement Debtor Proceedings

(General Title — Form 1)

WHEREAS upon adjournment to the ..... day of ..... 19..... of the hearing of a judgement summons issued in the above action against defendant ..... an order was made for the interim protection of the property hereinafter specified, and that the said property should be attached forthwith .

These are therefore to require and order you forthwith to seize, take into your hands, enter upon, attach the defendant's property specified on the back of this writ wheresoever it may be found.

(Continue to the end of Form 144 and add)

Sum (including the above fees) on payment of which the judgement summons will be satisfied and this

writ superseded N.....

.....



Registrar

FORM 128

Notice of Consequences of Disobedience to Order of Court

To .....  
of.....

Take notice that unless you obey the directions contained in order you will be guilty of contempt of court and will be liable to be committed to prison,

Dated this..... day of.....19 .....

.....

Registrar

FORM 129

Notice to show Cause why order of Attachment should not be made

(General Title—Form 1)

Take notice that the Plaintiff (or defendant) on..... the day of.....19..... at the hour of.....in the..... noon apply to this court for an order for your committal to prison (for having disobeyed the order of this court made on the ..... day of.....19..... enjoining and restraining you from (here set out the terms of injunction) (or for having neglected to obey the order made on the.....day of.....19..... requiring you to (here set out the mandatory part of the order).

And further take notice that you are hereby required to attend the court on the first mentioned day to show cause why an order for your committal should not be made.

FORM 130

Certificate that Labour has been Ordered for Debtor Prisoner.

(Heading as in Form 1)

I hereby certify that the Court has directed that the herein named ..... be employed in work within the prison during (state period) of the term of his imprisonment.

Dated this..... day of .....19.....

.....

Registrar

FORM 131

Warrant or Committal of Judgement Debtor in Default of Security

(General Title—Form 1)

To the Sheriff, and to the officer in-charge of..... prison

Whereas upon the adjournment to the..... day of.....19..... of hearing of a judgement summons issued in the above action against the defendant .....it is today ordered that the said defendant should give security for his appearance on that day, himself in N .....and ..... surety in N.....(each) and in default of finding such security should be committed to prison until that day, unless he should sooner give such security, or pay the sum stated below as that on payment whereof he is to be discharged.

These are therefore to require you the said Sheriff to take the said defendant and deliver him to the officer in charge of the prison at.....and you the said officer to receive the said defendant and keep him safely in the said prison until the day abovementioned, when you shall bring Him (or deliver him to the Sheriff to be brought) before this court at the hour of....., in the.....noon, unless he shall be sooner discharged by due course of law.

Dated this..... day of .....19.....

.....

Judge (or Magistrate)

Sum on payment of which the debtor is to be discharged.....

(For use when part payment made after issue of warrant).....

Deduct amount paid after issue of warrant.....

Balance on payment of which the debtor is to be discharged.....

.....

.....

Registrar

Note

A separate warrant must be issued in respect of every defendant required to be arrested.

FORM 132

Warrant of Commitment of Remand of Judgement Debtor for Misconduct

(General Title—Form 1)

To the Sheriff, and to the; officer in charge of,..... Prison

(First Recital— Form 17 Sheriffs and Civil Process Law) (Cap. 118).

Whereas on the..... day of..... 19..... at the hearing of (or being the return day of) a judgement summons issued in this action against the said defendant (and duly served upon him) the said defendant refused to be sworn (or to disclose the matters on which he was examined), (or did not answer to the satisfaction of the court) (or it appeared to the court that the said defendant refused or willfully neglected to pay on demand the sum of N.....payable or in pursuance of the said judgement (or order) and had (or had since the date of the judgement or order) sufficient means to pay the said sum) (or that the said defendant, etc., reciting any other misconduct of the kind enumerated in section 65 of the Law) (or the said defendant did not attend and did not excuse his non-attendance to the satisfaction of the court).

AND WHEREAS on the said hearing (or return) day the court made an order calling upon the said defendant to show cause why he should not be punished for such misconduct (or non-attendance) (or issued a warrant for the arrest of the said defendant).

AND WHEREAS on the..... day of..... 19..... (the

return day of the said defendant to show cause) the said defendant was brought before the court in custody (or attended) as directed by the said warrant (or order) and did not show cause why he should not be punished (or the said defendant failed to attend as directed by the said order, and has not established sufficient reason for not attending), and it was ordered that a warrant should issue for the

remand (or arrest and commitment) of the said defendant as or a contempt of court or.....

(unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged).

These are therefore to require you the said Sheriff forthwith to (arrest the said defendant and) safely convey and deliver him (or the said defendant) to the officer in charge of the prison at ..... and you the said officer to receive the said defendant and keep him safely in the said prison for ..... from the arrest under (or date of) this warrant, or until he shall be sooner discharged by due course of law.

Dated this (insert date of issue of warrant) day of, .....19.....

.....

Judge (or Magistrate)

Sum in payment of which defendant has made default at the time of the issue of the judgement summon N.....

Fees and cost, on issue of the judgement summons  
N.....

Deduct amount paid since issue of judgement summons: N.....

Fees for issue of this warrant.....

Sum of payment of which the debtor may (or is to) be discharged by order of the Court N.....

(For use when part payment made after issue of warrant)

Deduct amount paid since issue of warrant  
..... Balance (if any on payment of which  
the debtor may be (or is to) be discharged by order of the court N  
.....

Registrar

Note

A separate warrant must be issued in respect of every defendant required to be remanded or arrested.

Warrant, of Committal for contempt

(General Title—Form 1)

To the Sheriff, and to the officer in charge  
of..... prison

WHEREAS by an order of this court dated the.....day of.....19 .....

(here recite the order).

AND WHEREAS on the.....day of.....19.....the court, being of  
the opinion that the said..... then appearing (or having been duly  
served with the said order), was guilty of a contempt of this court by a breach of  
(or by neglecting to obey) the said order, that is to say by (here set out the  
particular matter of contempt), ordered that he be committed for his contempt.

These are therefore to require you the said Sheriff forthwith to arrest the said  
..... and safely convey and deliver him to the officer in charge of the  
prison at.....and you the said officer to receive the said..... and  
keep him safely in the said prison until further order of the court.

Dated this:.....day of ..... 19.....,

.....

Judge (or Magistrate)

(If required, add):- .....

Note

The costs of the issue and execution of this warrant, and of the application for the  
order grounding the same, were upon the hearing of the application ordered to be  
paid by the said.....

.....

Registrar

FORM 134

Warrant of Arrest and Detention of Judgement Debtor

(General Title—Form 1)

To the Sheriff, and to the officer in charge of  
.....prison

Whereas on the .....day of..... 19..... a judgement summons was issued from this court against the defendant..... in the above action (returnable to the.....day

of .....19....

AND WHEREAS it is necessary to secure or enforce the attendance of the said defendant to answer the said summons or (or appears to the court that) the said defendant has been guilty of misconduct at the hearing of the said summons (or in relation to the judgement debt) and he is required to show cause why he should not be punished for such misconduct) unless he shall sooner pay the sum stated below as that on payment of which he shall be discharged).

These are therefore to require you the said Sheriff to arrest the said defendant and bring him before this court forthwith (or on the..... day of..... 19..... (or on the first convenient opportunity) (or upon the further order of the court) (and in the meanwhile to deliver him to the officer in charge of the prison at..... and you the said officer to receive the said defendant and keep him safely in the said prison until the..... day of ..... 19.....(or until the first convenient opportunity when he may be brought before the court or until the further order of the court) when you shall bring him (or deliver him to the Sheriff to be brought) before this court at the hour of..... in the..... noon) unless he shall be sooner discharged by due course of law.

Dated this.....,.....day of..... 19....

.....

Judge or ( Magistrate)

Sum on payment of which the debtor is to be discharged  
N.....

(For use when part payment made after issue of warrant)  
N.....

Deduct amount paid after issue of warrant N.....,

Balance on payment of which the debtor is to be discharged:  
N.....

Note

A separate warrant must be issued in respect of every defendant required to be arrested.

FORM 135

Production Warrant

(General Title—Form 1)

To (the Sheriff and) the officer in charge of.....prison.

These are to require you the officer in charge of the prison  
at.....

to bring the defendant.....now in your custody (or to deliver the  
defendant ..... now in your custody to the Sheriff, and you the  
said Sheriff to bring the said Defendant) before this court on  
the..... day of..... 19..... at the hour of  
..... in the..... noon, unless he shall be sooner discharged by  
due course of law, and to have there then the order (or warrant) under which the  
said defendant was imprisoned.

Dated this.....,.....day of..... 19.....

.....

Judge (or Magistrate)

FORM 136

Praecipe for Issue of Order or Warrant of Commitment

(General Title—Form 1)

Plaintiff's names in full.....

His residence and occupation or description

.....

Names of all defendants

.....

Name of defendant against whom order of Commitment was made

.....

.....

No. of plaintiffs..... No. of

Suit.....

No. of Judgement  
Summons.....

No. of Order of  
Commitment.....

Subsistence allowance ..... per diem ..... to be  
paid before issue of warrant  
.....

#### Note

A separate order or warrant must be issued against every defendant required to be  
arrested.

His address and occupation or description.....

I hereby request you to issue ( a warrant for the enforcement of) the order of  
commitment (or arrest and detention) made under section 64 (or 67) (or 71) (or  
57) (or 65) of the Law against the above named defendant on  
the..... day of.....19.....

Dated this.....day of.....,.....19.....

.....

Judgement Creditor or Legal Practitioner

#### Note

To be filled out by the Registrar if payment has been ordered through the court.

Date of Judgement (or order).....

Order.....

Committed on..... 19..... for  
..... days

Order suspended for..... on payment of  
.....

Sum in payment of which defendants has made default at the time of the issue of  
the judgement summons N.....

Fees and cost on issue and hearing of judgement summons N  
.....

Deduct.....



Fees for issue of ..... order of warrant.....

#### FORM 137

Notice of payment of Subsistence Money

(General Title—Form 1)

Note

Subsistence money has been fixed at N.....per diem, of which the sum of N..... has been paid to me by the judgement Creditor.

.....

Registrar

#### FORM 138

Endorsement on an Order of Commitment sent to a Foreign Court

(General Title—Form 1)

To the Officer in charge of.....prison. Take notice that, in accordance with the provisions of section 38 of the Sheriffs and Civil Process Law, this Order (or warrant) of commitment has been sent to me and that the debtor, if arrested within the division (or district) of this court, is to be conveyed to the above named prison, and is to be there kept for the time mentioned in this order (or warrant) unless sooner discharged by law.

Dated this.....day of.....19.....

.....

Registrar.....Court.

#### FORM 139

Certificate by Officer in Charge of Prison of Payment of Judgement Debt

(General Title—Form 1)

I hereby certify that the defendant, who was committed to my custody by virtue of an order of commitment made by the High/Magistrate's Court of the

.....judicial Division/Magisterial District bearing date the .....day of..... 19..... has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable in respect thereof (and that I have today discharged him out of my custody).

Dated this..... day of.....19.....

.....

Officer in Charge of Prison,

(To the Registrar of the High/Magistrate's Court of the.....Judicial Division/Magisterial District).

#### FORM 140

Notice of part-payment

(General Title—Form 1)

Take notice that the defendant .....who was committed to your (or any) custody by virtue of an order (or warrant) issued from the.....court of the/.....Division/District bearing the date the.....day of .....19.....has paid the sum of

N .....towards satisfaction of the sum of payment whereof he is to (or may) be discharged (by order of the Court) and you are to deduct (or I have deducted) the sum paid from the last mentioned sum as entered on the said order, (or (or warrant) (which shall henceforth operate as an order (or warrant) of commitment for non payment of the balance).

Dated this.....day of.....19.....

Registrar (or officer in-charge of prison

To the officer in charge of the.....Prison (or to the Registrar of the .....,.....Court of the.....Division/District).

#### FORM 141

Endorsement of Refusal of Discharge Order

To the officer in charge of .....Prison:

Take notice that, upon hearing the application of the within named defendant for his discharge, the court on the.....day of.....19.....

has seen fit to make no order, and this warrant remains in full force and effect and you are to keep the defendant in your custody accordingly.

Dated this.....day of.....19.....

Judge (or Magistrate)

#### FORM 142

##### Endorsement of Recommitment

(General Title—Form 1)

The within named defendant, having failed to comply with the terms upon which he was liberated (or to make a full disclosure of his property), was today Ordered to be recommitted to prison for (state period) and this order (or warrant) now operates accordingly.

Dated the.....day of.....19.....

Judge (or Magistrate)

#### FORM 143

##### Warrant for Arrest of Ship

(General Title—Form 1)

To the Sheriff:

WHEREAS it appears that the ship.....is about to leave Nigeria

AND WHEREAS it has been shown on the application this day of the plaintiff ..... who claims from.....the sum of N..... plaintiff for (or an order for) ..... that it is necessary to stop the clearance and order the arrest and detention of the said ship on the ground that (here recite proved circumstance showing extreme urgency, or as the case may be).

AND WHEREAS the court this day ordered that the said ship be arrested and detained.

These are therefore to require and order you forthwith to detain the said ship until such time as (here recite any condition as to giving of security or otherwise which may have been imposed) or until the said ship shall be otherwise released by due course of law.

Dated this.....day of.....19.....

Judge (or Magistrate.)

FORM 144

Writ of Interim Attachment

(General Title — Form 1) WHEREAS it has been shown to the satisfaction of the court that the defendant..... with intent to obstruct or delay the execution of any judgement that may be given against him in this suit, is about to dispose of (or remove from .....State) or, that the defendant is absent from.....) or that there is probable cause to believe that the defendant is concealing himself to evade service) and that the plaintiff is beneficially entitled to the debts (or, the property herein after specified.

AND WHEREAS on the.....day of.....19..... it was ordered that the said defendant should within.....days thereafter (appear and show cause why he should not) furnish security in the sum of N.....to produce and place at the disposal of the court (the value of) the said property) (or such portion of the said property as may be of the value of N.....);

AND WHEREAS, (it was further ordered that the said property should be attached forthwith, pending the defendant's (appearance) (or furnishing such security) (or the defendant having appeared has failed to show cause as aforesaid and has not furnished such security) (or the said period of.....days has expired, and the defendant (has failed to appear and) has not furnished such security).

These are therefore to require and order you forthwith to seize, take into your hands, (enter upon) and attach (such portion of) the defendant's property specified on the back of this writ (as may be of the value of N.....) wheresoever it may

be found within the.....Judicial Division/Magisterial District (except the wearing apparel and bedding on him and his family and the tools and implements of his trade to the value often naira) and to hold the same until the further order of the court and to make return of what you have done under this writ immediately on the execution thereof.

Dated this.....day of .....19.....

.....

Judge (or Magistrate)

To the Sheriff and Bailiffs of the Court.

Fees on issue of this writ N.....k.....

Application was made to the Registrar for this writ at  
..... minutes past the hour of.....in  
the.....noon of the day last mentioned above.

Endorsement

#### SPECIFICATION OF PROPERTY TO BE ATTACHED

Number Description Estimated Value Where to be found Name of Person indebted  
to defendant, or in control of defendant's property is

#### FORM 145

##### Warrant to Arrest Absconding Defendant

(For use in the High Court)

(General Title — Form 1)

WEREAS there is probable cause for believing that the defendant.....  
is about to leave (or has) or is about to) dispose of or remove (some part of) his  
property from) the jurisdiction of the court by reason where the execution of any  
judgement which may be given against him in this suit is likely to be obstructed or  
delayed.

You are therefore hereby commended to bring the said defendant before this court  
forthwith, in order that he may show why he should not (give bail for his  
appearance at any time when called upon while this suit is pending and until  
execution or satisfaction of the judgement, if any).

Dated the.....day of 19.....

.....

Judge

#### FORM 146

##### Warrant to arrest Absconding Defendant

To the Sheriff and Bailiffs of the Court

Fee on issue of this warrant N.....

Notice—If the defendant gives bail before a Magistrate or Justice of the Peace in the  
sum of N.....with sufficient surety (for his appearance as aforesaid) (or

for the satisfaction of the judgement,) or if he deposit with you for transmission to the court the sum N .....or other property of the same or greater value, he shall thereupon, in respect of this warrant, be discharged out of your custody.

FORM 147

## Affidavit of Delivery

(General Title — Form 1)

WHEREAS on the.....day of.....19..... the Plaintiff obtained judgement against the defendant ..... for the recovery of (specify the goods which the court has ordered to be recovered of the defendant) ..... of the value of N.....(and for the payment of N..... for damages for the detention of the said goods and of) N.....for costs) and it was ordered that the said defendant should return the said good to the plaintiff (or pay the said sum of N.....their value) on or before the.....day of .....19.....

AND WHEREAS the said defendant did not on or before the said.....day of ..... 19.....return the said goods to the plaintiff and default has been made in payment according to the said order of the said sum (s) of N .....for damages (and N.....for costs) (and N.....the value of the said goods.)

These are therefore to require and order you forthwith to seize the said goods, wheresoever they may be found within the.....Judicial Division/

District, you are required and ordered to make and levy the said sum of N..... (the assessed value of the goods) by Judistress and sale may be found within the.....

..... Judicial Division/Magisterial District (except the wearing apparel and bedding on him or his family and the tools and implements of his trade, to the value of ten Naira), and also by seizing and taking any money, bank notes, bills of exchange, promisory notes, bonds, specialities, or securities or money belonging to the said defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution in respect of the said sum of N.....

And you are further required and ordered to make and levy (the said sum of

N..... (damages for detention) and) the said sum of N..... costs, together with) the costs of this writ and the costs of

executing the same, by distress and sale of the goods and chattels of the said defendant, wheresoever they

may be found, within the..... Judicial Division/Magisterial District (except the wearing apparell and of him or his family and the tools and implements of his trade, to the value of ten Naira), and also by seizing and taking any money, bank notes, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to the said defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution.

And you are further required to bring into court what you shall have levied, and to make return of what you have done under this writ immediately upon the execution thereof.

DATED the.....day of.....19.....

.....

Judge (or Magistrate)

To the Sheriff and Bailiffs of the Court.

Assessed value of the specified goods: N.....•.....

Damages for detention of goods N.....

Costs N.....,

Fees on issue of this writ N.....

Total amount to be levied exclusive of further costs, if any, of execution N

.....

Application was made to the Registrar for this Writ at.....minutes past the hour of.....in the.....noon of the day last mentioned above.

Note

The goods and chattels are not to be sold until the end of five days next following the day on which they were seized unless they are of a perishable value or the defendant request it.

.....

Registrar

FORM 148

Writ of Delivery with Execution against Immovable Property

(General Title — Form 1)

(Recitals 1 and 2 - Form 147)

WHEREAS no movable property of the defendant can with reasonable diligence be found (sufficient to satisfy the said sum (s) of N.....(damages) and N.....(costs) and N.....(value of goods).

AND WHEREAS upon the application of the plaintiff it was on the ..... day of .....19..... .ordered that execution might be levied upon the immovable property of the defendant for (the sum of being part of) the said sum(s) of N.....(and N.....) and N.....) remaining unpaid.

These are therefore to require and order you forthwith to seize the said goods, wheresoever they may be found within the.....Judicial Division/Magisterial District, and .to deliver the same to the plaintiff.

And if the same cannot be found by you within such Division/District, you are required and ordered to make and levy the said sum of N ..... the assessed value of the goods) by entering upon and attaching the immovable property or the .....defendant wheresoever it may be found within the..... Judicial Division and by selling the same, or such part or so much thereof as may be sufficient to satisfy this execution in respect of the said sum of N.....

And you are further required and ordered to make and levy (the said sum of N..... costs) together with the costs of this writ and the cost of executing the same, by entering upon Ms and attaching the immovable property of the defendant wheresoever it may be found within the Judicial Division and by selling the same or such part or so much thereof as may be sufficient to satisfy this execution.

And you are further required to bring into court (continue as in form 147 to the words "the day last mentioned above" emitting the words "or Magistrate ).

.....

Registrar

Note

(as in Form 118)

FORM 149

Writ of Sequestration



.(General Title—Form 1)

To.....

WHEREAS on the..... day of.....the plaintiff obtained  
Judgement (or an order) in this court against the defendant..... for the  
sum of N ..... for debt (or the damages) and costs (or that  
.....(receive the effect of the order).

AND WHEREAS upon the failure of the said defendant to pay the said sum (or  
comply with (or obey) the said order) there was issue from this court on  
the..... day of.....19..... an order for the

commitment (or a warrant for the commitment or arrest and detention) of the said  
defendant.

AND WHEREAS the said defendant is not and cannot be found (or is taken and  
detained in custody without obeying the said judgement (or order).

Know ye therefore, that by these presents full power and authority is given to you  
to enter upon all the immovable property whatsoever of the said.....  
and to collect, receive and sequester into your hands not only all the rents and  
profits of the said immovable property, but also all his movable property  
whatsoever; and therefore you are commanded that you do at certain proper and  
convenient days and hours to go and enter upon all the immovable property of the  
said..... and that you do collect, take and get into your hands not  
only the rents and profits of his said immovable property, but also all his movable  
property, and detain and keep the same under sequestration in your hands until  
the said..... shall clear his contempt or this court shall make other  
order to the contrary,

DATED this..... day of.....19.....

.....

Judge

FORM 150

Register of Judgements

Index No. of Registration Date of Registration Fill title Court issuing certificate  
Name and address of party to whom payment is to be made or in whose favor  
judgement is to be given Name of address of party ordered to pay money or to do  
or not to do any act Date of Judgment Abstract of Judgement Remark (Enter here  
order made under section 106 of Cap. 189 and particulars of amount recovered  
Signature of registering officer

FORM 151

Notice of Registration of Certificate of Judgement

In the High Court of Kano State of Nigeria or

(.....)

.....

To the Registrar,

High Court of.....)

Suit No.....Vs.....

TAKE NOTICE that the certificate of judgement, issued out of your court on the.....day of....., 19.....in respect of the above named suit, has this day been registered in the Nigerian Register of Judgements kept in this Court.

GIVEN UNDER my hand this.....day of.....19.....

.....

Registrar, High Court

FORM 152

Notice to issue of process

In the High Court of Kano State of Nigeria or (.....

.....) To the Registrar.....

High Court of.....

Suit No.....Vs.....

TAKE NOTICE that on the.....day of..... 19.....

a..... (herein state nature of process, etc.,) for..... (here state the amount in respect of which process was issued) was issued out of this Court upon the certificate of judgement in the above mentioned suit.

GIVEN UNDER my hand this.....day of..... 19.....

.....

Registrar, High Court

FORM 153

Notice of Payment into Court

In the High Court of Kano State of Nigeria or  
(.....)

To the Registrar,

High Court  
of.....

Suit No.....Vs.....

TAKE NOTIC E that on the.....day of..... 19..... the sum  
of..... was paid into this Court in full (or part as the case may be)  
satisfaction of the judgement certified in the certificate of judgement issued out of  
your court on the.....day of..... 19.....in the above mentioned suit.)

.....

Registrar, High Court

FORM 154

Notice of Payment into Court

In the High Court of Kano State of Nigeria or  
(.....)

.....)

To the Registrar

High Court  
at.....

Suit No.....Vs.....

TAKE NOTICE that in respect of the certificate of judgement issued out of this court  
on the.....day of .....19..... in the above mentioned suit  
and registered in your court on the day of..... 19.....the sum of

.....was on the.....day of..... 19.....paid not this court in full (or part as the case may be) satisfaction of the said judgement.

GIVEN UNDER my hand this.....day of.....19.....

.....

Registrar, High Court

FORM 155

Surety's Guarantee

In the High Court of Kano State of Nigeria

Probate Registrar

Suit No .....

In the Estate

of.....dec  
eased.

WHEREAS.....of.....died on the/.....day of.....  
19..... and ..... (and.....) (hereinafter called "the  
administrators") is/are the intended administrator(s) of this estate.

Now Therefore:

1. I/We..... of .....

(and.....of.....)  
hereby (jointly and severally) guarantee that I/We will, when lawfully required to  
do so, make good any loss which any person interested in the administration of the  
estate of the deceased may suffer in consequence of the breach by the  
administrator(s) of his/her/their duty:—

(a) to collect and get in the estate of the deceased and administer it according to  
law;

(b) when required to do so by the court, to exhibit on oath in the court a full  
inventory of the estate and when so required, to render an account of the estate; or

(c) when so required by the court, to deliver up the grant to the court.

2. The giving of time to the administrator(s) or any other for bearing or  
indulgence shall not in any way affect my/our liability under this guarantee.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our) aggregate total liability shall not in any event

exceed the sum of N.....

DATED this.....day of..... 19.....

Signed, sealed and delivered by the above named in the presence of..... a Commissioner for Oaths, (or other person authorised by law to administer an oath) (The common seal of..... was hereunto affixed in the presence of .....)

FORM 156

Surety's Guarantee on Application for Resealing

In the High Court of Kano State

The Probate Registry.

Suit No.....

In the Estate of.....deceased

WHEREAS..... of..... died on the.....day

of..... 19..... and letters of administration of his estate were on the ..... day

of ..... 19..... granted by the..... to ..... (and.....) and are about to be sealed in the State under the succession Law.

Now THEREFORE

1. I/We....., .....of..... (and.....

of .....) hereby (jointly and severally) guarantee that I/We will, when lawfully

required to do so, make good any loss which any person interested in the administration of the estate of the deceased in the State may suffer in consequence of the breach by the administrator) of his/her/their duty:

(a) to collect and get in the estate of the deceased which is situated in the State and administer it according to law;

(b) when required to do so by the court, to exhibit on oath in the court a full inventory of the estate which is situated in the State and when so required, to render an account of the estate.

2. The liability under this guarantee shall be continued and shall be for the whole amount of the loss mentioned in paragraph 1 above, but (my) (our) aggregate) total liability shall not in any even exceed the sum of N.....

DATED this..... day of.....19 .....

Signed, sealed and delivered by the above named in the presence of ..... a Commissioner for oaths, (or other person authorised by law to administer an oath).

(The common seal of.....was hereunto affixed in the presence of.....  
.....)

#### FORM 157

##### Caveat

In the High Court of Kano State The Probate Registry

Suit No:.....

Let no grant be sealed in the estate of.....late of.....deceased, who died on the..... day of.....19...at..... without notice to .....

DATED this.....day of.....19.....

(Signed).....legal Practitioner for the said caveator whose address for service is .....

#### FORM 158

##### Warning to Caveator

In the High Court of Kano State The Probate Registry,

Suit No:.....

To..... of .....a party who has entered a caveat in the estate of ..... deceased.

You are hereby warned within eight days after service hereof upon you, inclusive of the day of such service:—

(1) To enter an appearance either in person or by your legal Practitioner, at the Probate Registry ..... setting forth what interest you have in the estate of the above named .....of deceased, contrary to that of the party at whose instance this warning is issued; or

(2) If you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for direction by the Registrar of the said Registry.

AND TAKE NOTICE that in default of your so doing the court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

DATED the.....day of .....19.....

.....

Registrar

Issued at the instance of (here set out the name and interest (including the date of the will, if any under which the interest arises) of the party warning, the name of his legal practitioner and the address for service. If the party warning is acting in person, this must be stated).

FORM 159

Appearance to warning or Citation

In the High Court of Kano State

The Probate Registry

Caveat No,.....dated the.....day of.....19.....

Citation dated the.. .....day of.....19.....

Full name and address of deceased:.....

Full name and address of person warning (or citor).....

Interest of person warning (or citor):.....

Full name and address of caveator (or person cited).....

Date of Will:.....

Interest of Caveator:.....

Enter an appearance for the above named caveator (or person cited) in this matter.

DATED the.....day of.....19.....

(Signed).....

Whose address for service is:—

.....

Legal Practitioner (or "in person")

FORM 160

Notice of Election to Redeem Life Interest

In the High Court of Kano State.

The Probate Registry

Suit No:.....

In the estate of ..... deceased.

WHEREAS..... of ..... died on the day of

.....19.....wholly/partially intestate leaving his/her lawful wife/husband and  
.....lawful issue of the said .....

AND WHEREAS Probate/Letters of Administration of the estate of the said  
.....were granted to me, the said..... (and to.....  
of ..... ) at the Probate Registry on the..... day of  
.....19.....

AND WHEREAS (the said.....has ceased to be a personal  
representative because ..... ) and I am (now) the sole personal  
representative.

Now, I, the said .....hereby give notice that I elect to redeem  
the life interest to which I am entitled in the estate of the late  
..... by retaining N.....its capital value and  
N..... the costs of the transaction.

Dated the..... day of.....19.....



(Signed).....

(To the Probate Registrar).

FORM 161

Order 49 Rule 11

Oath for Executor

IN THE HIGH COURT OF JUSTICE OF THE KANO STATE

In the matter of.....deceased

I.....of.....

make Oath and say: That I believed the paper writing hereto annexed and marked by to contain the true

and original last will of..... Late of

..... deceased, and that I am the executor therein named, and that I will faithfully administer the personal property of the Testator.....by paying.....just debts and the legacies given by ..... will so far as ..... personal property shall extend and the law bind .....

That I will exhibit an inventory and render an account of my executorship whenever lawfully required.

That the Testator ..... died at ..... on the ..... day of; ..... 19.....

That at the time of.....death.....had.....fixed place of abode at ..... within the Jurisdiction of this court, and that the whole of ..... personal property does not amount in value to the sum of N..... to the best of my knowledge, information and belief.

Sworn at the High Court Registry at Kano this..... day of.....19.....

.....

(Deponent)

Before me

.....  
(Commissioner for Oath)

FORM 162

Order 49 Rule 11

Oath for Administrator (Will annexed)

IN THE HIGH COURT OF JUSTICE OF THE KANO STATE

In the matter of.....deceased.

I,.....of.....:.....make  
oath and say: That I believed the paper writing hereto annexed and marked by me,  
to contain the true and original last will of .....late of.....deceased  
and that I am the administrator named therein that I will faithfully administer the  
personal property of the testator by paying ..... just debts and the  
legacies given by .....will so far as his personal property shall extend  
and the law bind me, and distributing the residue of.....personal  
property according to law. That I will exhibit an inventory and render an account of  
my administration whenever lawfully required. That the testator died at  
.....on the day of .....19.....

That at the time of.....death.....had.....fixed place  
of abode at ..... within the jurisdiction of this Court, and that the  
whole of.....personal property does not amount in value to the sum of  
N.....to the best of my knowledge, information and belief.

Sworn at the High Court Registry at Kano this..... day of  
..... 19.....

.....  
(Deponent)

Before me

.....  
(Commissioner for Oaths)

FORM 163

Order 49 Rule 11

Declaration of Personal Property

IN THE HIGH COURT OF JUSTICE KANO STATE

In the matter

of.....  
deceased

A true declaration of all the personal property of.....late

of ..... deceased who died on the.....  
day

of .....19.....at.....and had at the  
time

of.:.....death.....fixed place of abode at  
..... within the Jurisdiction of this Court. which has at any time  
since.....death come to the possession or knowledge of  
..... the administrator with the will and by virtue of the oath of  
the said ..... as follows:

First I declare that the deceased was at the time of.....death possessed  
of or entitled to.....

Lastly, I say that no personal property of the deceased has at any time  
since..... death come to my possession or knowledge save as is herein  
before set forth.

.....

Signature of Declarant

On the.....day of.....19.....the said  
was duly sworn to the truth of the above-written declaration.

Before me

.....

Commissioner for Oaths

SCHEDULE

FIRST SCHEDULE

FEEs PAYABLE AND ALLOWANCES TO WITNESS IN THE HIGH COURT

## PART I — FEES PAYABLE

### A FEES PAYABLE IN THE HIGH COURT ON COMMENCEMENT OF CAUSE OR MATTERS (Order 54 Rule 1)

N k

1. For the recovery of a specified sum:

(a) not exceeding N200 ... .. 20. 00

(b) exceeding N200; per N 100 or part thereof... .. 10. 00

(c) maximum fee... .. 120. 00

2. For the recovery of an unspecified sum: the same as the maximum payable under item 1

3. For an account to be taken and payment of the sum found due:

(a) initial fees ... .. 20. 00

(b) second fee (payable before setting down for judgement) per N 100 or part thereof fund due in excess of N200 ... .. 10. 00

(c) maximum total fee ... .. 120. 00

4. For possession of property, as between landlord and tenant:

(a) where the annual rent or value does not exceed N200 ... .. 15. 00

(b) where it exceeds N200; per N100 or part thereof ... ..10. 00

(c) maximum fee ..... .. 300. 00

5. For a declaration of the title to land and for possession of land other than between landlord and tenant:

(a) per N 10 or part thereof the annual rent or value ... .. 6. 00

(b) where no annual rent or value can be specified ... .. 20-60. 00

(c) maximum fee ... .. 120. 00

6. For possession of property (other than as between landlord and tenant and other than land) as under item 1 in the sum claimed in lieu of the property

7. For the administration of the property of a deceased person where there is no dispute regarding succession or distribution:

(a) where the gross value of the property does not exceed N 200; per

N 200 or part thereof.....up ... .. 4. 00

(b) exceeding N200 per N200 or part thereof up to N 20,000 ... .. 300. 00

(c) where no value can be specified ... .. 20. 00

8. For the administration of the property of a person of unsound mind: same as under item 7

9. For the determination of a question relating to the distribution of, or the succession to the property of a deceased person, or to a trust whether the person who created the same be dead or alive:

(a) where the gross value of the property of the deceased or of the property under trust does not exceed N200 ... .. 15.00

(b) where it exceeds N200 or part thereof up to N20,000... .. 10.00

(c) where no gross value can be specified ... .. 150.00

10. For any other relief or assistance not specially provided for ... 7.50

#### MATRIMONIAL CASES

11. For any petition (other than alimony) ... .. 4.00

12. For the first citation ... .. 4.00

13. For any subsequent citation ... .. 4.00

14. For a petition for alimony ... .. 4.00

15. For the Registrar's Certificate... .. 4.00

16. For any application for decree absolute... .. 4.00

17. For reducing a petition and affidavit to writing ... 4.00

18. For setting down the case for hearing... .. 8.00

#### LEGITIMACY CASES

19. For the petition... .. 10.00

20. For a sealed decree or copy of ... .. 4.00

## PROBATE AND ADMINISTRATION

21. On drawing up an administration decree... .. 1.00

22. On drawing up order on further consideration where the property administered exceeds N 400 ... .. 8.00

23. On filing application for probate or administration ... 2.00

24. On filing oath of executor or administrator ... .. 5.00

25. On taking justification or sureties for each surety ... 0.50

26. On filing administration bond ... .. 2.00

27. On entering a caveat ... .. 4.00

28. On every warning to a caveat ... .. 4.00

29. On probate or letters of or order for administration: Where the value of the property affected by the grant of order:

(a) does not exceed N 50—Free

(b) exceeds N50not N 100 ... .. 2.00

(c) exceeds N100 but not N1,000 per N100 or part thereof ... .. 40.00

(d) exceeds N 100: per N 200 or part thereof .....

30. For resealing a grant so as to bring it into force in Nigeria a fee reckoned under item 29 on the value of the property in Nigeria affected by the re-sealing.

31. On inventory taken by a court office:

(a) for the first three hours or part thereof ... .. 20.00

(b) for every subsequent hour or part thereof ... .. 15.00

32. On application to search index to grants or wills or to inspect or a grant or will ... .. 15.00

33. On deposit of will for safe custody ... .. 6.00

34. On application for warrant to detain a ship ... .. 40.00

35. On application for a writ of Habeas Corpus ... .. 4.00
36. On filing any other application:
- (a) if alone ... .. 2.00
- (b) if accompanied by other papers ... .. 3.00
37. On filing an affidavit ... .. 10. 00
38. On filing a security bond ... .. 3. 00
39. On filing any other paper ... .. 1. 00
40. On justification of sureties: for each surety ... .. 2. 00
41. For the issue of warrant to detain an absconding defendant or ship ... .. .  
.. 4. 00
42. For the issue of a writ of Habeas Corpus ... .. 4. 00
43. For the drawing up of any order or judgement ... 6. 00
44. For a special interpreter of a language not in common use: per day or part  
thereof, as the court may order but not exceeding... .. 6.00
45. For an inquiry by a court officer where so ordered: for each sitting ... ..  
6. 00
46. For an account taken by a court officer where so order: per N 100 or part  
thereof found to have been received. ... .. 2. 00
47. For taking down a person's statement where so ordered as the court may direct  
but not exceeding ..... 2. 00
48. For searching the archives: for each period of six months or part thereof ... ..  
... .. 1. 00
49. For drawing up a bill of costs where so directed: per folio of 72 words ... ..  
... .. 5. 00
50. For taking costs where so ordered: per N10 or part thereof ... .. 10.00
51. For preparing a copy where authorised: per folio of 72 words ... ..  
10. 00
52. For every subpoena ... .. 5. 00
53. On warrant for prisoner to give evidence ... .. 5. 00

54. On commission to take evidence :

(a) out of the jurisdiction ... .. 20. 00

(b) within the jurisdiction ... .. 6. 00

55. For attesting the execution or signature of an instrument (other than an instrument regarding payment of pension by Government) not otherwise provided for ..... 1. 00

56. For swearing an affidavit or making a declaration (other than under section 20 of the Sales by Auction Law (or the Marriage Act or one required by the regulations of a Government Department) per deponent ... .. 5. 00

57. For marking any paper annexed to an affidavit or declaration ... .. 1. 00

58. For sealing a document not in proceeding ... .. 2. 00

59. For certifying a copy as a true copy per folio of 72 words or part thereof ... .. 5. 00

60. For payment into court (except when ordered by the Court or proceeds of execution) :—

(a) not exceeding N 100; per N20 or part thereof ... 1. 50

(b) exceeding N100; per N100 or part thereof ... .. 4. 00

61. On appointment of Commissioner to administer oaths and take declarations (not being a Government Officer)... .. 14. 00

62. For sealing a letter of request ... .. 6. 00

63. On transfer of a foreign judgement ... .. 10. 00

64. For certificate of service of foreign process (where not disallowed by convention) ... .. 10. 00

65. On every petition to the Chief Judge or a Judge or a Registrar (not being an application otherwise provided for) unless waved by a Judge or the Chief Registrar ... .. 2. 00

66. For the service of any document or process initial fees plus Milage ... .. 0. 20

(a) if within two kilometres from the court ... .. 1 km 0. 40

(b) if beyond two kilometres but not beyond twelve:—



(i) for the first two kilometers ... .. 0. 30

(ii) for every subsequent two kilometres or part thereof (one way) 0. 30

#### TRANSFER OF CASES:

67. On an application to transfer a civil case before the High Court from one Judge to another, or to a Magistrate, or to a customary Court, save where the application is allowed to be made orally at the hearing of the case ... .. 20.00

68. On an order transferring a civil case before the High Court from one judge to another, or a Magistrate's Court or to a Customary Court, where the order is made on the application of a party ... .. 20.00

69. On an application to the Chief Judge or a Judge to transfer a Civil Case from one Magistrate's Court to another within the same district or to the High Court. ... .. 10.00

70. On an order transferring a civil case from one Magistrate's Court to another Magistrates Court or the High Court, or from one Magistrate to another within the same district where the order is made on the application Of the party ... .. 10.00

71. On setting down for hearing a civil case transferred from a Magistrate Court to the High Court, whether or not the transfer was made on the application of a party, the difference between the fee for instituting the case in the Magistrate's Court and the fee which would have been charged had the case been instituted in the High Court in the first instance or whichever be the greatest .

#### PART II: ALLOWANCES TO WITNESS

(Order 54 Rule 1)

Professional men, merchantile agents, bank managers, chiefs surveyors and any officer of the public service whose salary is not less than N5,000 a year  
..... 20.00

Merchants captains of ships, merchantile assistants and officers in the public service: whose salary ,s

N2,000 but less than N5,000 ... .. 15.00

Salary of N1,000 and less than N2,000 ... .. 12.00

Salary of N500 but less than N 1 ,000 ... .. 10.00

Salary of N 300 but less than N 500 ... .. 5.00

Women as in above scale/or if not gainfully employed according to husband's status  
50% of above scale or if living with parents or relatives and not gainfully employed  
... .. 2.00

#### TRANSPORT ALLOWANCES

(a) By private car per kilometre ... .. 2.00

(b) By private motor-cycle per kilometer ... .. 2.00

#### NOTE:

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid. No allowance is made to an officer of the public service who is summoned as a witness by the Government. In all other cases he is allowed costs and travelling expenses as if he were not in public service . Fees, costs, expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

#### THIRD SCHEDULE

##### PART 1 - ALLOWANCES TO WITNESSES

(Order 44 Rule No. 21)

Professional men, mercantile agents bank managers, chiefs, surveyor and any officer of the public service whose annual Salary is not less than N 5.000 a year ... .. 6.00

Merchants, captains of ships, mercantile assistants and officers in the public service whose annual salary is N2,000 but not less than N 5000 ... .. 4.00

Salary of N 1,000and less than N 2,000 ... .. 3.00

Salary of N500 but less than N1,000 ... .. 2.00

Salary of N300 but less than N500 ... .. 1.00

Less than N300 ... .. 0.50

#### TRANSPORT ALLOWANCES

##### PART II

By private car per kilometer ... .. 0.10

By private motorcycle per kilometer ... .. 0.05

NOTE:

The travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid.

No allowance is made to an officer of the public service who is summoned as a witness by Government or by any Department of the Government. In all other cases he is allowed costs and travelling expenses as if he were not in the public service. Fees, costs, expenses payable to an officer in the public service shall be paid into revenue unless otherwise ordered.

FOURTH SCHEDULE

Notaries Fees of Office

(Order 47 Rule6)

N k

Noting protest on bill or note ... .. 0.50

Extending protest on bills of exchange or note out of town and the notary have to present the bill or note, a further charge for the first two kilometres of ... ..  
... .. 0.50

And for additional two kilometres ... .. 0.10

Minuting or noting ship's protest ... .. 0.80

Extending ship's protest ... .. 3.20

Furnishing copy of extended protest ... .. 1.60

Attestation to any document ... .. 1.00

Declaration thereto for each additional declarant ... .. 0. 10

Attendances each ... .. 0.50

TRANSLATIONS:

For every folio of seventy-two words ... .. 0.50

Attestation to translation ... .. 1. 00

Translation of common attestation to power for stocks ... .. 1.00

## FIFTH SCHEDULE

### FEES FOR REGISTRATION OF JUDGEMENTS

Registration of a certificate of a judgement of a High Court ... 4. 00

Registration of a certificate of a judgement of any other Court ... 2. 00

## SIXTH SCHEDULE

### REGULATIONS REGARDING FEES

(Order 54 Rule 2)

1. No summons, warrant, writ or subpoena shall except by special Order of the Court be issued until:—

(a) all fees payable thereon as contained in the appropriate schedule of fees shall have been paid; and

(b) an account thereof, initialled as received, shall have been set forth by the officer issuing the process both in the margin and in the counterfoil thereof.

2. All such fees shall be carried to account immediately on the process being signed by the Judge.

3. Every documents for or in respect of which any fee or fees shall have been paid, shall bear an endorsement initiated by the Registrar or other officer showing the amount of the fee or fees so paid and the number of the receipt referring to the payment.

Provided that when any form of process specifies the fees thereof, it shall be sufficient for the Registrar or other officer to initial the amount of such fees appearing thereon and to quote the number of the receipt.

4. Every Registrar or other officer submitting any writ of summons or other process whatever for signature by a judge shall the same time produce the stamp of the receipt given for the fees of signature such process.

5. No document in respect whereof a fee is payable shall be used in any legal proceeding, unless it shall have been initialled as aforesaid by the Registrar be otherwise satisfied that the proper fees in respect thereof have been paid.

6. All fees for service, execution, and mileage shall be paid into revenue.

7. No hearing fees of other fee shall be returned except upon a voucher payable at the Treasury, in favour of the party entitled to receive the same prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing.

MADE AT KANO THIS 12th, day of November, 1987

GROUP CAPTAIN MOHAMMED N. UMARU

Military Governor,

Kano State of Nigeria

#### EXPLANATORY NOTE

(This note Does not form part of this Edict and has no legal effect).

The purpose of this edict is to replace the High Court (Civil Procedure) Rules 1976, with a new set of Rules, to facilitate smooth administration of justice in the High Court.

#### PRACTICE DIRECTIONS 2008

KANO STATE

HIGH COURT

PRACTICE

DIRECTIONS 2008

KSJ/HC/SEC. 97/VOL. I

Office of the Hon. Chief Judge,

Kano State Judiciary, High Court of Justice, Kano.

25th February, 2009

To: -

All their Lordships, Judges of Kano State High Court,

The Hon. Attorney General/Commissioner of Justice, Kano State,

The Senior Advocates, The Leadership and Membership of the NBA Kano Branch,

CIRCULAR

PRACTICE DIRECTIONS 2008

NOTICE OF COMMENCEMENT

This is to notify the Judges, legal practitioners, litigants etc that the provisions of the 2008 Practice

Directions regarding:

- (1) Regular proceedings in the Kano State High Court of Justice;
- (2) Proceedings in respect of the Kano State Multi-Door Court House;
- (3) Procedure relating to Fast Track;

Come into force today.

2. Please endeavour to lay your hand on a copy of the Practice Directions 2008.

3. All payments of court, fees, fine etc for the High Court or into the High Court should be by a Bank Teller of an approved Bank.

4. Here, Unity Bank is the approved Bank.

JUSTICE SHEHU ATIKU

Chief Judge/Chairman JSC

Kano State.

PART:

PRACTICE DIRECTIONS

REGULAR PROCEEDINGS

FAST TRACK PROCEDURE RULES

3. KANO MULTI-DOOR COURT RULES

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999.

THE HIGH COURT LAW (CAP 57) LAWS OF KANO STATE OF NIGERIA 1991.

WHEREAS by the provisions of section 274 of the Constitution of the Federal Republic of Nigeria 1999, the Chief Judge of Kano State of Nigeria may, subject to the provisions of any law made by the House of Assembly of Kano State of Nigeria, make rules for regulating the practice and procedure of the High Court of Kano State of Nigeria.

AND WHEREAS the Chief Judge of Kano State of Nigeria deems it proper to make rules of practice regulating the practice and procedure of the High Court of Kano State of Nigeria.

NOW THEREFORE in exercise of the powers conferred upon me by section 274 of the Constitution of the Federal Republic of Nigeria 1999 and section 116(1) of the Kano State High Court Law, Cap 57 of the Laws of Kano State 1991 and all other powers enabling me in that behalf.

I, Hon. Justice Shehu Atiku, the Chief Judge of Kano State of Nigeria, do hereby make the following rules for regulating the practice and procedure of the High Court of Kano State of Nigeria.

PRELIMINARY

The practice Rules may be cited as Practice Direction 2008

and shall come into force on the 2nd day of March 2009.

These Rules shall apply to:

- (1) Regular Civil Proceedings of the High Court.
- (2) Fast Track Proceedings of the High Court; and
- (3) The Multi-Door Proceedings of the High Court.

3. (1) As from the commencement of these rules any payment of money (whether in form of fees, fines etc) for the High Court or into the High Court shall be through the bank approved by the Chief Judge of the Kano State Judiciary.

(2) On production of a receipt of such payment by the payee or any person on his behalf, a judge or any officer of the High Court may entertain or listen to any suit, petition, or application on respect of which the payment is made.

(3) Any payment made in violation of sub-rule (1) of this rule any receipt thereto shall be invalid

4. The Rules shall be as contained in the schedule to the Practice Direction

## PART ONE

### REGULATION PROCEEDINGS

#### ORDERS

##### ORDER 1 - INTERPRETATION

CENTRAL APPEAL REGISTRY OF MAGISTRATE'S COURTS: means Central Registry of all Magistrates Courts in Kano State where Notice of Appeal from decisions of Magistrates Court to the Court are lodged.

COURT: means the High Court of Justice of Kano State.

JUDGE: means Judge of the Court.

REGISTRY: means Registry of the Court.

##### ORDER 2

#### PRACTICE DIRECTIONS - REGULAR PROCEEDINGS

##### COMMENCEMENT OF ACTION AND FILING OF PLEADINGS

All civil proceedings commenced by writ of summons shall be accompanied by: -

- A. Statement of Claim;
- B. List of witnesses the Plaintiff intend to call in proof of his case;
- C. Written statement of Oath of the witnesses; and
- D. List of documents and other movable items to be relied on at the trial.

Where a Plaintiff fails to comply with direction in Order 1 Rule 1 above, his writ of summons shall not be accepted for filing by the Registry.

##### ORDER 3 - STATEMENT OF DEFENCE AND REPLY

A Statement of Defence shall be accompanied by: -

- B) List of initials of witnesses to be called at the Trial;
- C) Written Statement on Oath of the witnesses; and



D) List of documents or other movable items pleaded in the statement of defence.

Where the Plaintiff files a reply to a statement of defence, such reply shall be accompanied by copies of documents and a list of other movable items pleaded therein.

Where the Defendant/Plaintiff as the case may be fails to comply with direction Order 2 Rules 1 and 2 in the case of a reply, the Statement of defence or reply shall not be accepted for processing by the Registry.

Subject to any statutory provision or any of these directions relating to evidence, any fact required to be proved at the hearing of a suit or a cause shall be proved by written deposition and oral examination of witnesses in open court.

Documents which parties consented to or other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner.

There shall be no Oral Examination of a witness during the evidence in chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition.

#### ORDER 4 - PRE-HEARING SESSION AND SCHEDULING

Within 7 days after the filing and service of the Plaintiffs reply on the Defendant, or 7 days after the filing and service of the Defendant's reply, whichever is the case, the Plaintiff shall apply for the issuance of pre-hearing notice as in the prescribed form.

Upon application by a Plaintiff under Order 3 Rule 1 above, the court shall issue to the parties or their legal practitioners (if/any) a pre-hearing conference notice as in FORM 1 accompanied by a pre-hearing information sheet as in FORM 2 for the purpose set out hereunder:

disposal of all matters which can be dealt with on interlocutory application,

b) giving such directions as to the future course of the suit as it may appear best adopted to secure its just, expeditious and economic disposal in view of the urgency of pre-hearing session.

c) giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases.

d) fixing clear dates for hearing of the suit.

The Defendant may bring the application in accordance with Order 3 Rule 1 above where the Plaintiff fails to do so, or by motion, which shall be served on the Plaintiff and returnable in 3 clear days, apply for an order to dismiss the suit.

4. Where the Plaintiff or Defendant fails to bring an application under this paragraph, the court shall dismiss the suit as abandoned suit and no application for extension of time to take that step shall be filed or entertained.

5. Dismissal of a suit pursuant to Order 3 Rules 3 and 4 above is final, and accordingly the court shall be functus officio.

At the pre-hearing session, the court shall enter a scheduling order:

- (a) joining other parties to the suit;
- (b) amending pleadings or reply or any other processes;
- (c) filing and adoption of written addresses on all interlocutory applications;
- (d) additional pre-hearing session;
- (e) order of witnesses and tendering of documents that will be necessary for the expeditious disposal of the suit;
- (f) any other matters that will promote the quick disposal of the suit in the circumstances.

7. At the pre-hearing session, the court shall consider and take appropriate action in respect of the following as may be necessary or desirable:

- a) amendments and further and better particulars;
- b) the admission of facts, documents and other evidence by consent of the parties;
- c) formulation and settlement of issues for trial;
- d) hearing and determination of objections on points of law;
- e) control and scheduling of discovery, inspection and production of documents;
- f) narrowing the field of dispute between certain types of witnesses that appear at the session, by their participation at pre-hearing session or in any other manner;
- g) giving orders or directions for hearing of cross-action or any particular issue on the action or for consolidation with other suits.
- h) Determining the form and substance of the pre-hearing order; and
- i) Such other matter as may facilitate the just and speedy disposal of the matter.

8. At the pre-hearing session, the court shall ensure that hearing is not delayed by number of witnesses and objection to documents to be tendered and shall pursuant to Order 3 Rule 6(b) above:

(a) allow parties to admit or exclude documents by consent;

(b) direct parties to streamline the number of witnesses to those whose testimonies are relevant and indispensable.

The Pre-hearing session or series of pre-hearing sessions with respect to any suit/matter shall be completed within 30 days of its commencement, and the parties and their legal practitioners shall cooperate with the court in working within this time-table. As far as practicable, pre-hearing session shall be held from day to day or adjourned only for purposes compliance with pre-hearing session, unless extended by the presiding Judge.

After a pre-hearing session or series of pre-hearing sessions the court shall issue a Report. This Report shall guide the subsequent course of the proceedings unless modified by the court.

If a party or his legal practitioner fails to attend the pre-hearing session or obey a scheduling or prehearing order or is substantially unprepared to participate in the session or fails to participate in good faith, the court shall:

b. in the of Plaintiff dismiss the suit.

c. in the case of Defendant enter judgment against him.

Any judgment given under Order 3 Rule 11 above may be set aside upon an application made within order as to the cost of the sum not less than #20,000.00. The application shall be accompanied by an undertaking to participate effectively in the pre-hearing session jointly signed by the Applicant and the legal practitioner representing him.

The court shall direct the pre-hearing session with due regard to its purpose and agenda as provided under this paragraph and shall require parties or their legal practitioners to cooperate with it effectively in dealing with the session's agenda.

#### ORDER 5 - MOTIONS AND SUITS ON THE UNDEFENDED LIST

Whereby the High Court Rules or any other Rules of Procedure, any application is authorized to be made to the court for the issue of a writ of summons in the undefended list or for seeking other reliefs by way of Motions or Originating summons or notice of preliminary objection, every such application shall be accompanied by:-

a) an affidavit setting out the facts relied upon;

b) all exhibits to be relied upon; and

c) a written address in support of the application inclusive of the authorities to be relied upon.

Where the other party intends to oppose the application, he shall within eight (8) days of the service on him of such application, file his written address including the authorities to be relied upon and may accompany it with a notice of intention to defend supported by an affidavit in actions under the undefended list or counter affidavit in other cases.

The applicant may on being served with a written address of the Defendant file and serve an address in reply on points of law within 3 days of being served. Where a counter-affidavit is served on the Applicant he may file further affidavit with his reply.

On the day fixed for hearing of the application referred to in Order 4 Rule 1 above the parties shall adopt their respective written addresses and, no oral argument shall be allowed.

Where any party fails to file or comply with the time limit set out above for filing and serving the written addresses, he will be deemed to have nothing to urge in the court and shall not be heard in oral argument.

#### ORDER 6 - FILING OF WRITTEN ADDRESS

This direction shall apply to all applications and final addresses.

A written address shall be printed on white opaque A4 size 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(s) attached to the application or tendered at the trial;
- (iii) the issues arising from the evidence; and
- (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.

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.

#### ORDER 7 - CHANGE OF LEGAL PRACTITIONER

A party to any cause or matter who represented by a counsel, may change his 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 former legal practitioner, the former legal representative shall be considered the legal practitioner of the party until the final conclusion of the matter.

A copy of the notice endorsed with an affidavit stating that the notice has been duly filed in the registry shall also be filed.

The party giving the notice may perform the duties prescribed by this order in person or by his new legal representative

Where a legal practitioner who has acted for a party in a cause/matter ceases so to act and the party has not given notice of the change in accordance with Order 6 Rule 1, the legal practitioner may apply to the court for an order declaring that the legal representative has ceased to be one acting for the party in the cause/matter and the court may make an order accordingly.

An order under Order 6 Rule 4 shall not be made until the legal practitioner serves on every party to the cause or matter a copy of the notice otherwise he shall be considered the legal practitioner of the party till the final conclusion of the cause or matter.

An application for an order under Order 6 Rule 4 of this rule shall be made by originating motion supported by an affidavit stating the grounds of the application.

An order made under this paragraph shall not affect the rights of the legal representative and the party whom he acted for as between themselves.

## ORDER 8 - NOTICE OF APPEAL

Notice of Appeal from the decision of any Magistrate's Court shall be lodged in the Central Appeal Registry of Magistrate's Court within the appropriate time provided by law.

Notice of Appeal from decisions of other Courts or Tribunals shall be lodged in the Registry of the Court within the appropriate time provided by law.

## FORMS

### FORM 1

Hearing Notice for Pre-Trial Conference (o.....r.....)

In the High Court of Kano State

In the.....judicial Division 20.....

Between

A.B.....Claimant

And

CD.....DEFENDANT

To (insert name of parties)

Take Notice that you are required to attend the court No.....

At the High Court of Kano State at the.....Judicial Division, on the  
..... day

Of .....20 ..... at 9 o'clock in the forenone, for Pre-Trial Conference  
for the purpose set out hereunder.

1.(a) disposal of non-contentious 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  
adopted to secure its just, expeditious and economical disposal;

(c) promoting amicable settlement of the case or adoption of alternative dispute  
resolution.

Please answer the questions in the attached Pre-Trial Information Sheet (Form 2)  
on a separate sheet and submit 7 dear days before the above-mentioned date.

Take Notice that if you do not attend in person or by legal practitioner at the time  
and place mentioned, such proceeding will be taken and such order will be made as  
the judge may deem just and expedient.

DATED.....day of.....20.....

Signed.....

Chief Registrar

FORM 2

Hearing Notice for Pre-Trial Conference (o....., r.....)

In the High Court of Kano State

In the.....Judicial Division 20.....

Between

A.B.....Claimant

And

CD..... DEFENDANT

This Pre-Trial Information Sheet is intended to include reference to all applications, which the parties would wish to make at the Pre-Trial Conference. Applications not covered by the standard questions raise in this Pre-Trial Information Sheet should be entered under item 12 below.

All parties shall not later than 7 days before the first Pre-Trial Conference, file and serve on all parties:

(a) all applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder.

(b) written answers to the questions contained in this Pre-Trial Information Sheet.

2. Are amendments to any originating or other process required?

3. Are further and better particulars of any pleading required? If so specify what particulars are required.

4. Do you object to any interrogatories that may have been delivered pursuant to Order.....rule.....of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order.....Rule..... of the Rules.

5. Do you object to producing any document in respect of which a request for discovery has been made pursuant to Order.....Rule..... of the High Court (Civil Procedure) Rule? If so, state the grounds of such objection in compliance with Order.....Rule.....of the Rules.

6. If you intend to make any additional admissions, give details.

7. Will interpreters be required for any witness? of so, state in what language.

8. Is this a case in which the use of a single or joint expert might be suitable? If not state reasons.

9. Is there any way in which the court can assist the parties to resolve their dispute or particular issues in it without the need for a trial or full trial?

10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issues in it? if yes state the steps that have been taken. If not state reasons.

11. State any question or questions of law in your case, if any which you require to be stated in the form of a special case for the opinion of the Judge in accordance with Order.....of the Rules.

12. List the applications you wish to make at the Pre-Trial Conference.

13. Do you consent that this case be allocated to the Fast Track and managed according to the applicable Practice Directions? If not state your reasons below.

DATED this.....day of.....20.....

Signed.....

(Legal Practitioner)

FOR SERVICE ON:

.....

## PART TWO

### FAST TRACK PROCEDURE

#### PRACTICE DIRECTIONS FOR THE MANAGEMENT OF CASES ON FAST TRACK

#### INTRODUCTION:

##### Objectives of the Fast Tract Court

The main objectives of the Fast Track Court is to reduce the time spent on litigation to a period not exceeding 8 months. After the commencement date of these practice directions, final judgment in a case allocated to the Fast Track should be delivered within 8 months of the date of filing.

#### ORDERS

##### ORDER 1

#### APPLICATION OF THE HIGH COURT OF KANO STATE (CIVIL PROCEDURE) RULES

The High Court of Kano State current Civil Procedure Rules shall apply to cases allocated to the Fast Track, subject to such modifications as are affected by these practice directions.



Cases qualified for the Fast Track:

A suit shall qualify for the Fast Track where:

- a. the total sum of claim or counterclaim is #100,000,000 (One Hundred Million Naira) or more; or
- b. one or more of the parties is a non-resident investor in the Nigerian economy; or
- c. the claim involves a mortgage transaction.

### 3. Identification mark and Speedy Processing.

Where a case satisfies any of the criteria in clause 2 above, the Director for Litigation or any other person in charge of the Litigation section shall cause the originating process (es) to be marked "QUALIFIED FOR

FAST TRACK".

### 4. Time for Completion of Registry Processes

All filing and service of processes in the Registry shall be concluded not later than 8 weeks from the filing date of the originating process, the response time for the defence inclusive.

### 5. Time to Apply for Hearing in the Fast Track Cases

Where a suit qualifies for the Fast Track procedure and a claimant so consents, the claimant shall apply for the issuance of a Pre-Trial conference notice as in Form 1 and 2 within 7 days of the close of pleadings, and his application shall include a formal request for Fast Track allocation.

## ORDER 2 - PRE-TRIAL

### Pre-trial Conference in Fast Track Cases

Where a claimant has requested for Fast Track allocation, the Pre-Trial Conference Information Sheet to be issued to the parties and their legal practitioners (if any) shall include the following question:

"Do you consent that this case be allocated to the Fast Track and managed according to the applicable practice directions? If not, state your reasons below."

### Time Limited for Pre-Trial Conference

Once a case is allocated to the Fast Track Pre-Trial Conference or series of Pre-Trial Conference in that case shall be held from day to day or adjourned only for the purpose of compliance with Pre-Trial conference orders. Provided that the Pre-Trial conference or series of Pre-Trial conferences shall be completed within a period of 30 days.

#### Extension of Time for Pre-Trial Conference

Where the Pre-Trial judge determines that an extension is necessary, he may allow the Pre-Trial conference to continue for a further period of 14 days only without reference to the Chief Judge.

### ORDER 3 - TRIAL

#### 1. Commencement of Trial and Time Table

a. immediately upon completion of Pre-Trial conference and upon the issuance of the Pre-Trial report, the trial Judge shall, cause Hearing Notices to issue to the parties as in Form 3.

b. at the first appearance of the parties before the trial Judge, the court may approve directions proposed by the parties if: -

i. the parties have failed to agreed directions for the management of the case, and or

ii. the court considers that the directions are suitable.

c. after considering the parties' agreed directions (if any), the court shall give directions for the trial, including a trial time table which it considers appropriate. Variation of directions.

#### 2. Variation of Direction

(a) where there has been a change in the circumstances since trial directions were issued, the court may set aside or vary any of the directions based on an application or on its own initiative.

(b) where the parties agree about changes to be made to the trial directions given, they must immediately appear for an order by consent, including an agreed statement of the reasons why the variation is sought.

Where the court varies any direction because of a defaulting party or his legal representative, it may impose costs and daily default fees as prescribed in the rules.

(c) the court may make an order of variation without a hearing.

## ORDER 4

### 1. Enforcement of compliance with Directions

- a. Where a party has failed to comply with a court direction, any other party may apply for an order to enforce compliance or for a sanction to be imposed or both.
- b. Failure to comply with directions will not lead to the postponement of the trial unless the circumstances of the failure are exceptional.

### 2. Application to be Made and Heard Timeously

- a. Save in exceptional circumstances as may be determined by the court, no application which is not included in the trial timetable may be brought by any party.
- b. The court shall make arrangements to ensure that applications and other hearings are promptly made to avoid delay in the conduct of the cases in the Fast Track.

### 3. Trial Proceedings from day to day

Unless the trial court otherwise directs, the trial will be conducted from day to day and in accordance with any order previously made.

### 4. Adjournment for shortest possible time only

- a. The court will regard the postponement of a trial as an order of last resort.
- b. Where the court has no option but to postpone the trial, it will do so for the shortest possible time.

### 5. Latest Date for End of Trial.

The entire trial period, including the final addresses of counsel shall not be later than 3 months from the date the trial directions are made. Provided that: -

- (A) when the party beginning has concluded his evidence, the judge shall ask the other party if he intends to call evidence.
- (b) if the other party does not intend to call evidence, the party beginning shall within 14 days after close of evidence file a written address.
- (c) Upon being served with the written address, the other party shall within 14 days file his own written address.
- (d) Where the other party calls evidence he shall within 14 days after the close of evidence file a written address.

(e) Upon being served with the other party's written address the party beginning within 14 days file his own written address.

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

## 6. Delivery of Judgment

In all Fast Track cases, the Judge shall endeavour to deliver judgment within 60 days of the completion of trial.

## FORMS

### FORM 1

Hearing Notice for Pre-Trial Conference (o....., r.....)

In the High Court of Kano State

In the.....Judicial Division 20.....

Between

A.B.....Claimant

And

CD.....DEFENDANT

To (insert name of parties)

Take Notice that you are required to attend the court No.....

At the High Court of Kano State at the..... Judicial Division, on the.....day

of.....20..... at 9 O'clock in the forenone, for Pre-Trial Conference for the purpose set out hereunder.

1. (a) disposal of non-contentious 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 adopted to secure its just, expeditious and economical disposal;

(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

2. Please answer the questions in the attached Pre-Trial Information Sheet (Form 2) on a separate sheet and submit 7 clear days before the above-mentioned date.

Take Notice that if you do not attend in person or by legal practitioner at the time and place mentioned, such proceeding will be taken and such order will be made as the judge may deem just and expedient.

DATED.....day of.....20.....

Signed.....

Chief Registrar

FORM 2

Pre-Trial Information Sheet (o.....r,.....)

In the High Court of Kano State

In the.....Judicial Division 20.....

Between

A.B.....Claimant

And

CD.....DEFENDANT

This Pre-Trial Information Sheet is intended to include reference to all applications, which the parties would wish to make at the Pre-Trial Conference. Applications not covered by the standard questions raise in this Pre-Trial Information Sheet should be entered under item 12 below.

All parties shall not later than 7 days before the first Pre-Trial Conference, file and serve on all parties:

(a) all applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder.

(b) written answers to the questions contained in this Pre-Trial Information Sheet.

2. Are amendments to any originating or other process required?

3. Are further and better particulars of any pleading required? If so specify what particulars are required.

4. Do you object to any interrogatories that may have been delivered pursuant to Order.....rule.....of the High Court (Civil Procedure) Rules? If so, state the

grounds of such objection in compliance with Order ..... Rule ..... of the Rules.

5. Do you object to producing any document in respect of which a request for discovery has been made pursuant to Order.....Rule.....of the High Court (Civil Procedure) Rule? If so, state the grounds of such objection in compliance with Order.....Rule.....of the Rules.

6. If you intend to make any additional admissions, give details.

7. Will interpreters be required for any witness? of so, state in what language.

8. Is this a case in which the use of a single or joint expert might be suitable? If not state reasons.

9. Is there any way in which the court can assist the parties to resolve their dispute or particular issues in it without the need for a trial or full trial?

10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issues in it? if yes state the steps that have been taken. If not state reasons.

11. State any question or questions of law in your case, if any which you require to be stated in the form of a special case for the opinion of the Judge in accordance with Order.....of the Rules.

12. List the applications you wish to make at the Pre-Trial Conference.

13. Do you consent that this case be allocated to the Fast Track and managed according to the applicable Practice Directions? If not state your reasons below.

DATED this.....day of.....20.....

Signed.....

(Legal Practitioner)

for service on:

.....

FORM 3

IN THE HIGH COURT OF KANO STATE

IN THE.....JUDICIAL DIVISION

HEARING NOTICE FOR FAST TRACK CASES

SUIT No.....

Between

..... Claimant

And

.....DEFENDANT

To.....

CLAIMANT'S COUNSEL ON RECORD

.....

.....

AND

DEFENDANT'S COUNSEL ON RECORD

.....

.....

The above.....is now before

this Honourable Court for trial and will be on the General Cause List for trial  
directions ..... day of ..... 20.....

At 9 O'clock in the forenoon or so soon thereafter as counsel may be heard on  
behalf of the parties.

Dated this.....day of.....20.....

BY ORDER OF THIS COURT

.....

REGISTRAR

PART THREE

KANO MULTI-DOOR COURT RULES

RULE 1: APPLICATION AND INTERPRETATION OF THE RULES

(a) these Rules may be cited as the Kano Multi-Door Court-Rules Mediation Procedure Rules 2008.

(b) The provisions contained in these Rules shall be the rules of Mediation to be followed in the Kano Multi-Door COURT.

(c) Whenever, by mutual agreement or contract, the parties have provided for or agreed to mediate existing or future disputes under the auspices of the Kano Multi-Door Court (KDMC), they shall be deemed to have made these Rules part of agreement

(d) These Rules shall apply to matters referred to the KM DC for mediation from high courts of Justice in Kano State and other jurisdictions outside Kano State, Federal High Court, private persons, Corporations, Public Institutions and Dispute Resolution Organisations.

(e) These Rules shall be interpreted in accordance with the Interpretation Act or any modification or re-enactment thereof.

## RULE 2: INITIATION OF MEDIATION

(a) Any party or parties to a dispute may initiate mediation by filing with the KMDC a written request for mediation or a submission to mediation (dispute resolution) pursuant to these rules, together with the appropriate filing fee.

(b) Where there is no submission to mediation of contract providing for mediation, the party may request the KMDC to invite another party to join in submission to mediation.

(c) Upon receipt of such request, the KMDC will contact the other party involved in the dispute and attempt to obtain a submission to mediation.

(d) Upon receipt of an Enrolment order from the referral court, the KMDC invites the parties to submit to the Alternative Dispute Resolution (ADR) process.

(e) The KMD can also assist parties in the resolution of their disputes by extending an invitation to the disputing parties.

## RULE 3: REQUEST FOR MEDIATION

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses and telephone numbers of all parties to the dispute and those who will represent them (if any) in the mediation. The initiating parties shall simultaneously file three copies of the request with KMDC and one copy for every other party to the dispute.



#### RULE 4: SUBMISSION TO MEDIATION

(a) the other party on receipt of the Notice of Referral, notifies the KMDC in writing within 7 days that he shall submit to the mediation in accordance with the Mediation Procedure Rules of the KMDC.

(b) Upon the refusal to submit by the refusing party within the stipulated time the judge shall order the refusing party to appear before him and he shall make orders and give directives as shall be considered desirable in fulfilling the overriding objectives of the KMDC.

#### RULE 5: THE MEDIATION AGREEMENT

The parties, the Mediator and the KMDC will enter into an agreement ("Mediation Agreement") in relation to the confidentiality and conduct of the mediation process.

#### RULE 6: APPOINTMENT OF THE MEDIATOR

(a) upon filing of a request for mediation, the KMDC will, subject to the parties' approval, appoint a qualified mediator from its panel of Neutrals to serve or, alternatively, provide the parties with a short list of mediators from its Panel of Neutrals to choose from.

(b) There shall be a single mediator appointed unless the parties or the KMDC advise otherwise.

(c) If by agreement of the parties, or the contract between them a mediator is named, or a method of appointing a mediator is stipulated, the mediator so named, or the method so stipulated shall be followed.

(d) In the event that the parties are unable to agree within 7 days from the date of the notice initiating the mediation, as to who should serve as the mediator or on any issue concerning the conduct of the mediation, the KMDC will, at the request of either party, decide the issues for the parties having consulted them.

(e) KMDC is authorized to appoint another mediator if both parties are not satisfied with the appointed mediator or if the appointed mediator is unable to serve for one reason or the other.

(f) The prospective mediator shall by accepting the appointment be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

## RULE 7: THE MEDIATOR'S QUALIFICATION

- (a) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except with the written consent of all parties.
- (b) Every prospective mediator shall, prior to accepting an appointment disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties.
- (c) The KMDC shall upon receipt of such information either replace the mediator or immediately communicate the information to them for their comments.
- (d) In recommending or appointing a mediator, the KMDC shall have regard to such considerations as are likely to secure the appointment of an independent, impartial and experienced mediator.
- (e) The mediator shall abide by the terms of the Mediation Procedure Rules, the Mediation Agreement and the Code of Conduct for Mediators.

## RULE 8: REPRESENTATION

The role of parties is to attend all mediation sessions either personally or by a duly authorized representative

- (b) Parties are expected to attend the KMDC session in good faith without undue request for adjournments or unwarranted delays.
- (c) Parties must prepare adequately for a KMDC session, be actively involved and be willing to explore various options towards settlement.
- (d) Parties shall respect the confidentiality of the Mediation session(s).
- (e) Every party shall cooperate fully with the mediator and the other party or parties throughout the mediation process to ensure a speedy resolution of the dispute.

## RULE 9: DATE, TIME AND PLACE OF MEDIATION

- (a) The mediator shall in conjunction with the KMDC fix the date and time of each mediation session. The mediation shall be held at the appropriate office of the KMDC, or at any other convenient location agreeable to the mediator and the parties.
- (b) The dates fixed by the mediator and the parties for each mediation session shall not exceed ten

(10) days from the date of the last mediation session.

(c) The mediator shall exercise all due diligence in encouraging the parties to reach a settlement within a maximum of three (3) mediation sessions.

#### RULE 10: SUBMISSION OF STATEMENT

(a) Within such time as stipulated by the KMDC each party shall through the KMDC exchange with the other and send to the mediator:

i. A concise summary ("the statement") setting forth his position with regard to the issues that need to be resolved.

ii. Copies of all the documents to which he refers in the summary and to which he may want to refer in the mediation ("the documents").

In addition, each party may send to the mediator (through the KMDC and/or bring to the mediator further documentation which he wishes to disclose in confidence to the mediator but not to any other party clearly stating in writing that such documentation is confidential to the mediator and/or KMDC.

At any stage of mediation process, the mediator and/or may request a party to submit to him such additional information as he deems appropriate.

#### RULE 11: ROLE OF MEDIATOR

(a) the role of mediator is to assist the parties in an impartial manner in their attempt to reach an amicable settlement of their dispute. He does not have the authority to impose a settlement on the parties.

(b) The mediator should in his conduct of the mediation process take into account the circumstances of case, the underlying interest of the parties and the need for a speedy settlement of the dispute.

(c) The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further effort at mediation would not contribute to a resolution of the dispute between the parties.

(d) The mediator may assist the parties in drawing up settlement agreement.

#### RULE 12: THE MEDIATION PROCESS

(a) The mediator is authorized to conduct joint and separate meetings with the parties.

(b) No formal record or transcript of the mediation will be made without the prior consent of the parties.

(c) Each party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

(d) If the parties are unable to reach a settlement in the negotiations at the mediation and if all the parties, or their representatives, so request and the mediator agrees, the mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but merely set out what the mediator suggests are appropriate settlement terms in the circumstances.

(e) Endeavours shall be made to conclude the mediation within 30 days of the appointment of the mediator, which includes the signing of the Settlement Agreement by the mediator and the parties and endorsement by the Referral Judge.

#### RULE 13: CONFIDENTIALITY

(a) Every person involved in the mediation including, in particular the mediator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediator and will keep confidential and not use (unless otherwise agreed by the parties and the mediator) for any collateral or ulterior purpose:

i. All information, (whether given orally, in writing or otherwise) produced for, or arising in relation to, or in connection with the mediation including the settlement agreement, except in so far as is necessary to implement and enforce any such settlement.

ii. Proposals made or views expressed by the mediator.

(b) All records, reports or other documents, arising in relation to the mediation will be, without prejudice, privileged and not divulged or admissible as evidence or discoverable in any current or subsequent litigation or other proceedings whatsoever except any document or other information which would in any event have been admissible or discoverable in such arbitration or litigation proceedings.

(c) None of the parties to the mediation agreement will call the mediator or the KMDC (or any employee consultant or representative of the KMDC) as a witness, consultant, arbitrator or expert in any arbitration, litigation or any other proceedings whatsoever arising from, or in connection with or in relation to the dispute. The mediator and the KMDC will not voluntarily act in any capacity without the written agreement of the parties.

(d) All parties to the mediation, including the mediator, are bound by the Confidentiality Agreement even after conclusion of his services as Mediator or after conclusion of the Mediation.

#### RULE 14: SUGGESTIONS FOR SETTLEMENT OF DISPUTE

Each party may, on his own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the dispute.

#### RULE 15: SETTLEMENT AGREEMENT

(a) when it appears to the mediator that there exists elements of settlement which would be acceptable to the parties, he formulates terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of such observations.

(b) Each party may, on his own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

(c) If the parties reach an agreement upon a settlement of the dispute, they will draw up and sign a written Settlement Agreement. Where requested by the parties, the mediator shall draw up or assist the parties in drawing up the Settlement Agreement.

(d) The parties on signing the Settlement Agreement are bound by the terms of the agreement.

#### RULE 16: EXPENSES FEES AND COSTS

(a) The expenses of witnesses, if any, called by either side shall be paid by the party producing the witnesses.

(b) All other expenses of the mediation including the KMDC administrative fees, the mediator's fees, and all such other incidental expenses shall be borne equally by the parties, unless they agree otherwise.

(c) Payment of these fees and expenses will be made to the KMDC in accordance with its fees schedule and terms conditions of service.

(d) Any payment under this Rule shall be made through a bank approved by the Governing Council of the KMDC as from 01/02/09.

#### RULE 17: PRIVACY

(a) Mediation sessions are private. The parties and their representatives are to attend mediation sessions. Other persons may attend only with the permission on the parties and with the prior consent of the mediator.

(b) There shall be no stenographic or any other record of the mediation process without the prior consent of the parties.

#### RULE 18: SUSPENSION OF RUNNING OF LIMITATION PERIOD UNDER THE STATUTE OF LIMITATION

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under the Statute of Limitation or an equivalent law shall be suspended in relation to the dispute that is the subject matter of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

#### RULE 19: WAIVER OF LIABILITY

Neither the mediator nor the KMDC shall be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to the mediation, unless the act or omission is fraudulent or involves willful misconduct in which case only the individual person concerned is directly responsible for consequent liability.

#### RULE 20: INTERPRETATION AND APPLICATION OF RULES

(a) Once the KMDC has the parties agreement to submit a dispute to alternative dispute resolution, it will administer the case under its applicable rules or procedures or under such rules stipulated by the parties.

(b) Beyond mediation, the KMDC might offer, (or parties might choose) executive dialogue, neutral evaluation or any variation of these procedures on which the parties agree.

(c) All articles herein shall be interpreted and applied by the KMDC.

(d) Referral Judge: is a Judge of High Court of Justice Kano State.

(e) Court: means Kano State High Court of Justice.

(f) KMDC: means "Kano Multi-Door Court

MADE AT KANO THIS.....DAY OF.....2009.

HON. JUSTICE SHEHU ATIKU

CHIEF JUDGE

KANO STATE

NIGERIA

PRACTICE DIRECTIONS 2010

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999.

THE HIGH COURT LAW (CAP 57) LAWS OF KANO STATE OF NIGERIA 1991.

WHEREAS by the provisions of section 274 of the Constitution of the Federal Republic of Nigeria 1999, the Chief Judge of Kano State of Nigeria may, subject to

the provisions of any law made by the House of Assembly of Kano State of Nigeria, make rules for regulating the practice and procedure of the High Court of Kano State of Nigeria.

AND WHEREAS the Chief Judge of Kano State of Nigeria deems it proper to make rules of practice regulating the practice and procedure of the High Court of Kano State of Nigeria.

NOW THEREFORE in exercise of the powers conferred upon me by section 274 of the Constitution of the Federal Republic of Nigeria 1999 and section 116(1) of the Kano State High Court Law, Cap 57 of the Laws of Kano State 1991 and all other powers enabling me in that behalf.

I, Hon. Justice Shehu Atiku, the Chief Judge of Kano State of Nigeria, do hereby make the following rules for regulating the practice and procedure of the High Court of Kano State of Nigeria.

#### Preliminary

1. The Practice Rules may be cited as Practice Directions 2010 and shall come into force on the 1<sup>st</sup> day of January 2010.
2. The Rules shall be as contained in the schedule to the Practice Direction.

#### THE SCHEDULE

Part A - These Rules shall apply to Civil suits Tried with Pleadings.

Part B - The Rules shall apply to causes and matters not involving pleadings (i.e. Un defended List Actions, Motions and Originating Summons)

#### PART A

##### Filing of Written Address for Suits Tried with Pleadings

1. Upon the close of the case for the parties in a suit, the suit shall be adjourned for final addresses to such day as the Judge may direct.
2. Where the other party does not call evidence at the trial, the party beginning shall within two (2) weeks after the close of evidence file and serve a written address on the other party. The other party shall within two (2) weeks thereafter file and serve his own written address.
3. Where the other party calls evidence he shall within two (2) weeks after the close of evidence file and serve a written address on the other party. Upon being

served with the other party's written address the party beginning shall within two (2) weeks file and serve his own written address.

4. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within seven days after service of the other party's written address, but in any event, not later than two (2) weeks before the date fixed for final addresses.

5. A written address shall be printed on white opaque A4 size 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 making references to the exhibits tendered at the trial;

iii. The issues for determination arising from the pleadings and evidence;

iv. A succinct statement of argument in note form on each issue incorporating the purport of the authorities referred, together with full citation of each such authority.

6. 1. Written addresses shall be concluded with a numbered summary of the points raised and the party's prayer.

6. 2. The list of all authorities referred to with their ratio decidendi shall submitted with the written address.

7. Oral argument of not more than 30 minutes shall be allowed for each party on the date fixed for final addresses, to emphasise and clarify the written address already filed.

8. Where any party fails to file or comply with the time limits set out above for filing and serving the written addresses he will be deemed to have nothing to urge the court and shall not be heard in oral argument.

9. Service of written addresses shall be by Counsel to Counsel. Each party shall file two copies of his written address in court and serve a copy thereof on every party to the suit.

## PART B

Filing of Written Address for Causes and Matters not Involving Pleadings (i.e. Undefended List Actions, Motions and Originating Summonses)

1. Where by the High Court Rules or any other Rules of Procedure, any application is authorized to be made to a Judge for the issue of a Writ of Summons in the Undefended List or for seeking other reliefs by way of Motions or Originating



Summons which may be supported by affidavit, every such application shall be accompanied by a written address in support of the relief sought.

2. Where the other party intends to oppose the application, he shall within five (5) days of the service on him of such application, file his written address and may accompany it with a notice of intention to defend and an affidavit in actions under the Undefended List or a counter affidavit in other cases.

3. The documents referred to on the affidavits and counter affidavits shall be referred to as exhibits (not annexures) and shall be duly identified, marked and numbered on the top right hand side of the first page thereof. They shall be endorsed at the back by the commissioner for oaths before whom the affidavits is sworn.

4. The Applicant may on being served with the written address and affidavit/counter affidavit of the opposing party file and serve address in reply on matters of law and facts arising from the Respondent's counter affidavit not later than five (5) days from the date of service on him of the written address etc.

5. The hearing of any motion or application may from time to time be adjourned suo motu by the Judge. Application for adjournment at the request of a party may be granted provided that such application shall not be made more than two times in the life of a cause or motion.

6. A written address shall be printed on white opaque A4 size paper and set out in paragraphs numbered serially and shall contain: -

i. the substance of the application;

ii. a brief statement of reasons for the prayers of the Applicant or the opposition of the Respondent in numbered paragraphs;

iii. each paragraph of the reasons in Applicant's written address shall comprise of;

a. a concise statement of facts relevant to the said reason referring to the relevant paragraphs of his counter affidavit and the affidavit of the Applicant (where necessary) in parenthesis.

b. a succinct statement of argument in note form in support of the said reason, incorporating the legal authorities with full citation of cases and authorities relied upon.

7. The list of authorities referred to with their ratio decidendi shall be submitted with the written address of each party.

8. The written address shall with such modifications as circumstances may admit, be in the form next following for a prayer for interlocutory injunction, viz-

1. Introduction:

This is a motion on notice brought under section 21 of the High Court Law of Kano State and order 17 Rule 1 of the High Court Rules 1988 praying for an order of interlocutory injunction to restrain the Defendant/Respondent from .....

2. The reasons for the prayer are:-

a. That the Applicant has a legal right over the property in dispute which ought to be protected pending the determination of the substantive suit and there is a serious issue to be tried (paragraph 3, 4 and 5 affidavit in support).

b. That the res is in danger of being destroyed and the maintenance of the status quo ante bellum is of primary importance (paragraph 9, 11, 12 and 13 affidavit in support).

c. That the balance of convenience is in favour of the Applicant (paragraphs 16, 17 and 19 affidavit in support).

d. That damages cannot assuage the Applicant for the wrong or threatened injury to the res (paragraphs 14 and 15 affidavits in support).

e. That the Applicant shall give an undertaking for indemnity to the Respondent (paragraph 12 affidavits in support).

3. Conclusion.

The Applicant prays the court to grant the application in terms of the motion paper.

9. Counsel are further directed to become conversant with the form of written address as shown in Appendix 6 to the manual of brief writing (2nd Edition) 1991, by Philip Nnaemeka - Agu, JSC.
10. On the day fixed for hearing of the matter under the Undefended List procedure or the Motion/Originating Summons the parties shall adopt their written addresses. No oral argument shall be necessary unless specifically ordered by the Judge and in that event, not more than 15 minutes shall be allowed for each party to emphasize on his address already filed.
11. Where any party fails to file or comply with the time limits set out above for filing and serving the written addresses he will be deemed to have nothing to urge the court and shall not be heard in oral argument.

Made at Kano this 31st day of December, 2009.

(HON. JUSTICE SHEHU.ATIKU)  
Chief Judge/Chairman-Judicial Service Commission  
Kano State of Nigeria.\_\_\_\_