

DELTA STATE OF NIGERIA

HIGH COURT

(CIVIL PROCEDURE)

RULES, 2009

HIGH COURT OF DELTA STATE

(CIVIL PROCEDURE) RULES, 2009

In exercise of the powers conferred on me by sections 274 and 315 of the Constitution of the Federal Republic of Nigeria 1999 and section 53 of the High Court Law Cap. 65 Volume III Laws of the defunct Bendel State of Nigeria 1976 as made applicable to Delta State by virtue of section 11 of States (Creation and Transitional Provisions) Decree No. 37 of 1991 (now Act), I, ROSALINE PATRICIA IROREFE BOZIMO, (MRS.), Chief Judge of the Delta State hereby make these Rules:

1. Rules of Civil Procedure

(1) The Civil Procedure Rules set out in the First Schedule hereinafter called "The Rules" shall be the Rules of procedure to follow in the High Court of the State.

(2) Where no rules exist

Where a matter arises in which no provisions or no adequate provision exist in the Rules, a Court shall adopt a procedure as may do substantial justice between the parties concerned.

2. Construction of references under these Rules

(1) A reference in these Rules to anything done under these Rules include a reference to anything done before the commencement of these Rules under any enactment or rule of court ceasing to have effect on the commencement of these Rules.

(2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

3. Forms

The Forms set out in the Appendix shall be used where applicable with such variations as the circumstances of a particular case may require.

4. Short Title and Commencement

These Rules may be cited as the High Court of Delta State (Civil Procedure) Rules, 2009 and shall come into effect on 31stDecember2009

5. Cessation of application

The High Court (Civil Procedure) Rules Law 1988 of the defunct Bendel State of Nigeria shall cease to apply to Delta State upon the coming into effect of these Rules.

Dated this 31st day of December 2009

ROSALINE P. I. BOZIMO

Chief Judge

Delta State

FIRST SCHEDULE

HIGH COURT OF DELTA STATE

(CIVIL PROCEDURE) RULES 2009 Section 1(1)

ARRANGEMENT OF RULES

[ORDER 1](#)

APPLICATION AND INTERPRETATION

1. (1) Application
- (2) Objectives of the Rules
2. Interpretation of terms

[ORDER 2](#)

PLACE OF INSTITUTING AND TRIAL OF SUITS

1. Suits relating to land and personality distrained or seized
2. Suits for recovery of penalties and forfeiture
3. Suits upon contract
4. Other suits
5. Suits commenced in wrong Division
6. Suits against Government and its agencies

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FORM AND COMMENCEMENT OF ACTION

1. Mode of beginning Civil Proceedings
2. Proceedings which must be begun by writ and mode of commencement of same
3. Effect of non-compliance
4. Form of writ of summons: Civil Form 1
5. Form of writ for service out of Nigeria: Civil Form 2
6. Writ of Summons to be issued by the Registrar

7. Contents of a writ of summons
- 8 (1) Alteration of writ
- (2) Provision for framing additional forms
9. Sealing of writ
10. Endorsement as to capacity
11. Probate actions
12. Endorsement of address by claimant or by Legal Practitioner
13. "Issue," when effected
14. Duration and renewal
15. Application
16. Discretion of the Judge
17. Forms of originating summons: Civil
Forms 3,4,5 or 6
18. Form of originating summons for service
outside Delta State
19. Originating process to be tested by its date
20. Contents of summons
21. Endorsement as to capacity
22. Endorsement as to Legal Practitioner and address
23. "Issue "when effected
24. Duration and renewal
25. Proceedings to be begun by motion or petition

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ORIGINATING SUMMONS PROCEEDINGS

1. Power to make declaration on summon
2. Construction of enactment
3. Service
4. Evidence
5. Discretion of Court

6. Court may make the order sought for
7. Applications affecting party in default of appearance
8. Counter-claim by defendant

ORDER 5

EFFECT OF NON-COMPLIANCE

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2. Application to set aside for irregularity

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1. Definition
2. Practice and rules
3. Matters to be stated
4. Petitioner resident outside the state
5. Security for cost 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 the papers to be sent to Attorney-General
10. Personal service on other respondents
11. Filing of answers
12. Evidence
13. Costs
14. Copy of order to be supplied

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- (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) General provisions
13. Where violence threatened
14. Affidavit of service
15. Expenses of service
16. Service on Sunday or public holiday
17. Recording of service

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SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. Cases where service of originating process,
etc., are allowed out of Nigeria
2. Agreement as to service
3. Service abroad by Letter of Request
4. Where leave is granted or not required
5. Service of foreign processes
6. Inapplicability of Rule 4
7. Service on behalf of foreign tribunals
8. Substituted service of foreign process

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1. Mode of entry of appearance
2. Defendants appearing in person or represented by legal practitioner
3. Defendant appearing through same legal practitioner
4. Late appearance
5. Intervener in probate matters
6. Recovery of land
7. Landlord appearing
8. Person under legal disability appearing
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1. Default of appearance by person under disability
2. Default of appearance generally
3. Liquidated demand
4. Liquidated demand: several defendants
5. Judgment in default of appearance
6. Several defendants
7. Detention of goods, damages and liquidated demand
8. Judgment for costs: upon payment, satisfaction, etc
9. Setting aside judgment
10. Default of appearance in actions not otherwise specifically provided for
11. Leave in absence by moneylender
12. Compulsory service

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1. Where claimant believes there is no defence
2. Delivery of extra copies
3. Service
4. Where defendant intends to defend

5. Where defendant has good defence or has no good defence

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6. Where there are several defendants

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1. Instructions to referees

2. Interim inquiries or accounts

3. General power of the referees

4. Evidence

5. Referee's authority in the inquiry

6. Limitation in certain particulars

7 (1) Report made in pursuance of reference

(2) Referees may report questions of fact specially.

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8. Application for receiver and injunction

9. Giving of security by receiver

10. Remuneration of a receiver

11. Receiver's account

12. Payment of balance, etc., by receiver

13. Default by receiver

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PARTIES

A. General

1. Persons claiming jointly, severally, or in the alternative may be claimants

2. Action in name of wrong claimant

3. All persons may be joined as defendants

4. Counter-claim: misjoinder

5. Defendant need not be interested in all the reliefs sought

6. (1) Non-joinder
- (2) Misjoinder of parties
7. Joint and several demand
8. Proceeding not defeated by misjoinder or nonjoinder
9. Guardian
10. Partners
11. Infant as parties
12. Lunatic, etc
13. Appearance by infant: Civil Form 14
14. Numerous persons ;
15. Next friend
16. Representation of persons or classes of persons in certain proceedings
17. Power to approve compromise
18. Where there is no personal representative
19. Trustees, executors, etc., may be sued as representing the estate
20. Application to add or strike out party
21. (1) Third party notice
- (2) How leave obtained
22. Form and issue of notice: Civil Forms 13 and 14
23. Effect of notice
24. Appearance
25. Default by third party
- 76 Procedure after default
27. Third party directions
- 78 Leave to defend
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30. Persons trading as firms
31. Claimant to assign place for service
32. Act may be done by legal practitioner or agent

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

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1. All causes of action may be joined
2. Counter-claim against claimant
3. Court may order separate trials, etc
4. Recovery of land
5. Executors and administrators
6. Claims by joint claimants

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1. Filing of pleadings
2. (1) Pleadings to state material facts and not evidence
- (4) How facts to be stated
3. Particulars to be given where necessary
4. Matters which must be specifically pleaded
5. Further and better statement or particulars
- (2) Letters of particulars
- (5) Particulars before defence

6. Order for particulars not a stay
7. Specific denial
8. Denial by joinder of issues
9. Pleadings to be consistent
10. 1. Grounds of claim founded on separate facts to be separately stated
3. The relief claimed to be stated
11. Allegations shall not be made generally but specifically
12. Denial of fact must answer point of substance
13. Admissions
14. Set-off or counter-claim to be pleaded
15. Evidence in denial of allegation or in support of defence not set up in pleading
16. Further pleadings
17. Costs in certain cases
18. Striking out pleadings
19. Denial of contract
20. Effect of document to be stated
21. Malice, knowledge, or other condition of mind
22. Notice
23. Implied contract or relation
24. Presumptions of Law
25. Pleadings: probate actions
26. Technical objection
27. Application
28. Claim beyond endorsement
29. Stated or settled account
30. Defence of tender
31. Defence of set-off
32. Judgment for balance
33. Close of pleadings

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1. Statement of claim
2. Claim beyond endorsement

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DEFENCE AND COUNTER CLAIM

1. Statement of defence
2. Evasive denials
3. Denial generally
4. Persons in representative capacity
5. Pleadings to damages
6. Set-off and counter-claim
7. Title of counter-claim
8. Claim against persons not party: Civil Form 15
9. Appearance by added parties
10. Reply to counter-claim
11. Discontinuance of the claimant's claim
12. Judgment for balance
13. Grounds of defence after action brought
14. Further defence or reply
15. Concession to defence
16. Defence to originating summons

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REPLY

1. Filing of reply
2. Reply to counter-claim

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ADMISSIONS

1. Notice of admission of facts

2. Notice to admit document
3. Notice to admit facts
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5. Cost of notice where documents unnecessary
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1. Claim for debt or liquidated demand
2. Several defendants: one-default
3. Default of defence: claim for unliquidated damages
4. Default of defence: claim in detinue
5. Default of defence: claim for possession of land
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7. Default of defence: other claims
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1. Payment into Court: Civil Form 17
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3. Acceptance of sum paid
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5. Payment into Court with denial of liability
6. Custody of money: payment into bank
7. Payment by claimant
8. No payment out without order
9. Payment out: small intestate estate
10. Tender before action

11. Tender by one or several defendants
12. Persons under legal disability
13. Steps to be taken after payment
14. Acceptance in satisfaction

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

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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
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1. Amendment of originating process and pleadings
2. Application
3. Amendment of originating process
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5. Filing and service of amended process
6. Date of order and amendment to be displayed
7. Clerical mistakes and accidental omissions

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1. 1. Pre-trial Conference notice:

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2. Scheduling and planning

3. Agenda

4. Timetable

5. Report

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1. Discovery by interrogatories

2. Form of interrogatories: Civil Form 20

3. Corporation or companies

4. Objection to interrogatories by answer

5. Affidavit in answer: filing of

6. Form of affidavit in answer: Civil Form 21

7. Order to answer or answer further

8. Application for discovery of document: CivilForm22

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10. Attachment of party after service on legal practitioner

11. Attachment of legal practitioner

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2. Summary order for accounts, etc
3. Court may direct taking of account, etc
4. Directions as to manner of taking account
5. Account to be made, verified, etc
6. Erroneous account
7. Allowances
8. Delay in prosecution of accounts, etc
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1. Special case by consent
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5. Agreement as to payment of money and costs
6. Directions
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ALTERNATIVE DISPUTE RESOLUTION/ REFERENCE TO ARBITRATORS

1. Judge to encourage A.D.R

Reference to Arbitrators

2. Nomination of arbitrators and appointment
3. Court may appoint arbitrator
4. Form of order of reference
5. Umpire where necessary
6. Attendance of witnesses

7. Extension of time for making award
8. Power of Court in case of death, incapacity or refusal to act
9. Finding
10. Special case for opinion of the Court
11. Court may modify or correct award
12. Power as to costs
13. Power of Court to remit award for reconsideration
14. Filing award: effect of

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1. Attendance by proxy
2. Failure to appear by both parties
2. Default of appearance by defendant at trial
3. Default of appearance by claimant
4. Judgment by default may be set aside on terms

Proceedings at the hearing

5. Judgment to be entered at or after trial
6. Adjournment of trial
7. Order of proceeding
8. Burden of proof by party to begin
9. Documentary evidence
10. Additional witness
11. Close of case of parties
12. Exhibits during trial
13. Written address by party beginning
14. Written address by the other party
15. Written address in reply by party beginning
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17. Custody of Exhibit after trial
18. Office copy of list of exhibits
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2. Content of written address
3. Summation of address
4. Oral argument
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1. Facts: how proved
2. Particular facts
3. Limitation of medical and expert evidence
4. Limitation on use of documentary evidence
5. Revocation and variation
6. Office copies admissible in evidence
7. Examination of witnesses abroad
8. Form of order for examination of witnesses abroad: Civil Form 25
9. Order for attendance of person to produce Document
10. Disobedience to order for attendance
11. Expenses of persons ordered to attend
12. Contempt of court
13. Examination of witnesses
14. Depositions not to be given in evidence without consent or by leave of a Judge
15. Oaths
16. Attendance of witnesses under subpoena for examination or to produce documents
17. Practice as to taking of evidence at any stage of cause or matter

18. Special directions as to taking evidence
19. Evidence in proceedings subsequent to trial
20. Form of praecipe for a subpoena
21. Form of subpoena: Civil Forms 27, 28, 29
22. Subpoena for attendance of witness in chambers
23. Correction of errors in subpoena
24. Personal service of subpoena
25. Duration of subpoena
26. Action to perpetuate testimony
27. Examination of witness to perpetuate testimony
28. Such action not to be set down for trial

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1. Evidence on motion
2. Title of affidavit
3. Use of defective affidavit
4. Special time for filing affidavit
5. Affidavit in support of ex parte application
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

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1. in what cases
2. application for attachment

3. form of order
4. where defendant fails to show cause or give security
5. right of third parties not to be affected
6. removal of attachment
7. in what courts proceedings may be taken

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1. delivery of judgment 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 instalments
9. date of order: when drawn
10. what orders need not be drawn up
11. filling of orders

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1. Order transferring proceedings to High Court
2. Payment of filing fees
3. Duties of Registrar
4. Directions
5. Party failing to attend

6. Construction
7. Application for transfer to operate as stay

II. Consolidation

- 8 Consolidation of actions

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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 an early trial
6. Order for recovery of specific property other than land subject to lien, etc
7. Directions
8. Allowance of income of property pendentelite

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1. Motions Generally
1. Time to apply
2. Application by motion
3. Affidavit to support motion
4. Affidavit to be served with motion
5. Hearing of motion
6. Adjournment
2. Ex parte motion
7. When notice of motion should be given
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
- (4) Service by a Solicitor on another
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
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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 judge
29. Only legally qualified Registrars to hear applications
30. Where no legally qualified Registrar, Judge to hear applications
31. Persons dissatisfied with ruling of Registrar may apply to the Court or a Judge in Chambers

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1. Case 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. Claim 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
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1. Chief Registrar
 2. Business to be transacted by Chief Registrar
 3. Chief Registrar may refer matters to the Chief Judge
 4. Appeal from order of Chief Registrar
 5. Chief Registrar's list
 6. Legal Practitioner may represent party
1. Chief Registrar's Certificate
 7. Certificate
 8. Reference to Judgment, etc
 9. (1) Form of certificate
 - (2) Contents of certificate in cases of accounts and transcripts
 10. When certificate becomes binding
 11. Bill of costs
 12. Discharge or variation of certificate after lapse of any time

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1. Habeas corpus ad subjiciendum
2. Application for leave

3. Producing person detained in court
4. Service of order.
5. Return to the order of release.
6. Procedure at hearing
7. Order to be clear
8. Bringing up prisoner to give evidence, etc
9. Form of writ: Civil Forms 31, 32, 33

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- 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 court order
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1. Computation of time
2. No enlargement of time by consent of parties
3. Court may extend time
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5. Time for applications to set aside award
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- I. Sittings of Court and vacation

1. Days of sitting
2. Public or private sittings of court
3. Office hours
4. Days of sitting: long vacation
5. Vacation courts
6. Vacation not reckoned in time for pleading
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9. Recovery of penalties and costs
10. Notices
11. Filing
12. How process addressed
13. No fees where proceedings by Government Department
14. Regulations
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1. Defendant leaving jurisdiction or removing Property
2. Warrant of arrest
3. Bail for appearance or satisfaction
4. Deposit in lieu of bail
5. (1) Defendant may be committed to custody
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2. Who may sue or defend in forma pauperis

3. Conditions to be fulfilled
4. Fees and costs
5. Procedure to be followed
6. Revocation of order, discontinuance, etc
7. Payment to legal practitioner
8. Duty of legal practitioner
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1. Legal practitioner to conduct course or matter to final judgment
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3. Service of application by legal practitioner

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1. Security for costs by defendant
2. Manner of giving security
3. Costs in the discretion of Court
4. Powers of Court
5. Costs out of fund or property
6. Court to determine amount of costs
7. Principle to be observed in fixing costs
8. Stay of proceedings till costs paid
9. Costs against counsel
10. Taxation of costs
11. Discretion of taxing master
12. Taxation
13. Where more than one sixth of amount of bill of costs deduced on taxation
14. Costs in action which could have been taken in inferior court

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2. Procedure on application in chambers
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2. Contents, etc., of Notice of Appeal: Civil Form 35
3. Copies of proceedings
4. Appeal to Judge of High Court
5. Respondent to be supplied with copy of proceeding
6. Proceeding time
7. Where time expires
8. Constitution of Court hearing appeals
9. Time and place of hearing
10. Where appellant fails to appear
11. Where appellant appears
12. Appeal limited to grounds given on notice
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14. Counter appeal
15. Objections to form of grounds of appeal
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17. Defects in notice of appeal or recognizance
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20. Fees
21. Allowance to witness: Third schedule
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5. Contents of notice, date of hearing
6. Service on auditor other than auditor who gave the decision

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- 1 Petition to be made to Probate Registrar
2. Preservation of property
- 3 Unauthorized persons intermeddling 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. Value of property
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. (1) Marking of will or copy sworn to
- (2) Codicils
28. Viva voce examination of persons making Affidavits
29. Form of administration not with will annexed
30. Administration bond
31. Assignment of bond
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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
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1. Production of testamentary papers
2. Court may order production
3. Examination respecting papers
4. Notice to executor to come in and prove
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HIGH COURT OF DELTA STATE

(CIVIL PROCEDURE) RULES, 2009

ORDER 1

APPLICATION AND INTERPRETATION

1. Application

(1) These Rules shall apply to all proceedings commenced after the coming into effect of these Rules. All part-heard matters may continue to be heard under these Rules where they can conveniently be applied.

(2) Objective of rule Application and interpretation of these Rules shall be within the set objectives for making these Rules namely: To enable the Court with the assistance of the parties to deal with cases fairly and justly to achieve substantial justice. Dealing with cases include:

(a) Speedy trials

(b) Ensuring that litigants are on equal footing

(c) Reducing the overall cost of litigation.

(d) Dealing with cases in ways that are proportionate to the complexity of the issues and the resources of the parties.

(e) Using the Court's competence effectively.

2. Interpretation of terms

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words aforementioned or referred to shall have or include the following meanings:

"Action" means any suit filed in the registry of the court in accordance with the provisions of these rules;

"Claimant" shall include a claimant in a counter-claim as well as claimant in the main claim;

"Court" means the High Court of Delta State;

"Court Processes pr Court Process" include application, affidavit, valuation reports, sketches, litigation plans, writ of summons originating summons, originating process notice, petitions, pleadings, order, motions, summons, warrants and all documents of which service is required in the course of proceedings;

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

"Defendant" shall include a Defendant to a counter claim;

"Fundamental Rights (Enforcement procedure) Rules" means the Fundamental Rights (Enforcement procedure) Rules, 1979 as may be amended.

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

"Law" means the High Court Law, Cap 65 Laws of the defunct Bendel State of Nigeria as amended from time to time;

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

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

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

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

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

"Registry" means the Registry of the High Court of Delta State in the appropriate Judicial Division;

"Taxing Officer" means the Chief Registrar or such other officer of court as the Chief Judge may appoint to tax cost;

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

1. Suits relating to land and property distrained or seized.

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 in which the land is situated, or the distress or seizure took place.

2. Suit for recovery of penalties and forfeitures

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. Suits upon contract

All suits for specific performance, or 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. Other suits

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 arose. 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. Suits commenced in wrong Judicial Division

If any suit is commenced in the Judicial Division, it may be tried in that Division or transferred by the Judge to the proper Judicial Division on the application of any of the parties provided that an application for a different venue shall be made within thirty days after service of the originating process.

6. Suits against Government and its agencies

Any action against the State Government, its departments and agencies, State House of Assembly, Local Government Council and its agencies and state parastatals shall be commenced and heard in the Judicial Division in which the cause of action arose.

ORDER 3

FORM AND COMMENCEMENT OF ACTION

1. Mode of beginning civil proceedings

Subject to the provision of any Act or Law, civil proceedings may be begun by writ, originating summons, originating motion or petition, as hereinafter provided

2. Proceedings that must be begun by writ and mode of commencement of same

(1) Subject to the provision of any Act or Law 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 claimant for any relief or remedy for any tort or other civil wrong;
- (b) In which a claim made by a claimant is based on an allegation of fraud;
- (c) in which a claim is made by a claimant 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 for a declaration is made by an interested person.

(2) All civil proceedings commenced by writ of summons

Shall be accompanied by:

- (a) Statement of claim;
- (b) List of witnesses to be called at the trial;
- (c) Written statement on oath of the witnesses;

Provided that

- (i) The statements on oath of witnesses requiring subpoena from the Court need not be filed at the commencement of the suit,
- (ii) The witnesses who require subpoena, or summons shall at the instance of the party calling them be served with Form 1(a) before the filing of the statement of such witnesses; and

[Civil Form 1(a)]

(d) Copies of every document to be relied on at the trial provided that-

- (i) Where the document involved is such that cannot be conveniently exhibited in view of its volume or size it shall suffice to plead same in a statement of claim or statement of defence,
- (ii) In land matters, a claimant may file a motion on notice along with an originating process for leave to enter the land in dispute for purposes of making a survey plan. In such cases, the copy of the survey plan shall be filed at such time as the Court may direct in granting the application for leave to enter the land in dispute for the purpose of the survey.

3. Effect of non-compliance

Failure to comply with sub-rule (2) of rule 2 above shall be treated as an irregularity, provided that if the Registrar accepts the originating papers contrary to the aforementioned rule, the defendant may apply to court to set aside the entire proceedings.

4. Form of writ of summons

Except in cases in which any different forms are provided in these Rules, the writ of summons shall be in Form I with such modifications or variations as circumstances may require.

[Civil Form 1]

5. Form of writ for service out of Nigeria

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

[Civil Form 2]

6. Writ of summons to be issued by the Registrar

A writ of summons shall be issued by the Registrar or other officer of the Court empowered to issue summonses, on application. The application shall ordinarily be made in writing by the claimant'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.

7. Contents of writ of summons

The writ of summons shall contain the name and place of abode of the claimant and of the defendant so far as they can be ascertained; it shall state briefly and clearly the subject matter of the claim, the relief sought, the date of the writ, and place (called the return-place) of hearing.

8. Alteration of writ

(1) Any alteration of a writ of summons without leave of

High Court of Delta State (Civil Procedure) Rules, 2009

The Court shall render the writ void.

(2) Provision for framing additional forms

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. Sealing of writ

The sealing of any writ or process shall not be necessary in addition to the signature of the Registrar or officer by whom the same or process shall be signed; except in cases where sealing may be expressly directed by these Rules or any written Law or Rules of Court, or by any prescribed form.

10. Endorsement as to capacity

Before a writ is issued it shall be endorsed -

(a) Where the claimant sues in a representative capacity, with a statement of the capacity in which he sues; or

(b) Where a defendant is sued in a representative capacity, with a statement of the capacity in which he issued.

11. Probate actions

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

12. Endorsement of address by claimant or by Legal Practitioner

(1) Where a claimant sues by a legal practitioner, the writ shall be endorsed with the claimant'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.

(2) Where the claimant 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. "Issue", when effected

A writ is issued upon its being signed by the Registrar or other officer of the Court duly authorized to sign writs.

14. Duration and renewal.

(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 6 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 three 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) under this rule, here the validity of a writ is extended by order made 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.

ORIGINATING SUMMONS

15. Application

Proceedings may be begun by originating summons where-

(a) the sole or principal question at issue is or, 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) More is unlikely to be any substantial dispute of fact.

16. Discretion of the Judge

A Judge shall not be bound to determine any such question of construction, if upon objection being taken by the defendant and/or if in its opinion it ought not to be determined by originating summons, the Judge may strike out the suit or may order pleadings to be filed.

17. Forms of originating summons

(1) An originating summons shall be in Forms 3, 4, 5 or 6 to these Rules with variations as circumstances may require. It shall be prepared by the applicant or his legal Practitioner, and shall be sealed and filed in the registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:

(a) An affidavit setting out the facts relied upon;

(b) All the exhibit to be relied upon; and

(c) A written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the Documents in sub-rule (2) above for service on the defendant(s).

18. Form of originating summons for service outside Delta State

Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Delta State shall be endorsed by the claimant or legal practitioner or Registrar of Court with the following notice -

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

19. Originating process to be tested by its date

The Registrar shall indicate the date and time of presentation for filing on every originating process presented to him and shall arrange for service thereof to be affected.

20. Contents of summons

Every originating summons shall include a statement of the questions on which the claimant 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 claimant claims that relief or remedy.

21. Endorsement as to capacity

(1) Before an originating summons is issued it shall be endorsed:

(a) where the claimant sues in a representative capacity, with 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 issued.

(2) Before an originating summons is issued in an action

Brought by a claimant 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.

22. Endorsement as to Legal Practitioner and address

(1) Where a claimant sues by a legal practitioner, the originating summons shall be endorsed with the claimant'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 claimant 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 maybe delivered or sent;

(b) His occupation; and

(c) An address for service

23. "Issue", when effected

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.

24. Duration and renewal

(1) For the purpose of service, an originating summons (other than a concurrent one) is valid in the first instance for six month 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 originating 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 three 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 summons 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.

25. Proceedings to be begun by motion or petition

Proceedings may be commenced by originating motion or petition where by these Rules or under any written Law the proceedings in question are required or authorized to be so begun, but not otherwise.

ORDER 4

ORIGINATING SUMMONS PROCEEDINGS

1. Power to make declarations on summons

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. Construction of enactment

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 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. Service

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. Evidence

The application shall be supported by such evidence as the Court or a Judge in Chambers may require.

5. Discretion of court

The Court or 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. Court may make the order sought for

The Court hearing an originating summons may if the liability of the defendant to the claimant in respect of any claim made by the claimant is established, make such order in favour of the claimant 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. Application affecting party in default of appearance

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. Counter-claim by defendant

(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 claimant 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 sub-rule (3), the claim shall be made in such manner as the court may direct.

(3) If it appears on the application of the claimant 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 5

EFFECT OF NON-COMPLIANCE

1. Effect of non-compliance

(1). Where in beginning or purporting to begin any proceedings, or at any stage 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 thereia |

(2) The Court may on the ground that there has been such a failure as mentioned in sub-rule (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 amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit

2. Application to set aside for irregularity.

(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 14 days from the date of service of the originating process and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) Any application under the foregoing sub-rule 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 6

PROCEEDINGS UNDER THE LEGITIMACY LAW

1. Definition

In this Order "petitioner" means a person applying for a legitimacy declaration and "petition" has a corresponding meaning.

2. Practice and rules

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. Matters to be stated

(1) A petition shall be headed "In the matter of 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 the birth and

(ii) at the date of the marriage;

(c) Whether there are living other issues 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 legitimation of such person as aforesaid and the value so far as is known of the property (if any), thereby 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 legitimation have been taken in any court; and

(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 as 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 Ujie petition and there shall be lodged by him with the petition an undertaking to be responsible for costs.

4. Petitioner resident outside the State

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. Security for costs by petitioner resident outside the State

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 a form to be approved by the Registrar, to be responsible for the costs shall be sufficient,

6. Persons to be respondents

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 anytime, 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. Affidavit of verification

The petition shall be accompanied by an affidavit made by the petitioner 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. Copies of petition to be filed

(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. Copies of the papers to be sent to Attorney-General

(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 sixty days before the petition is presented or filed.

(2) Any document or notice addressed to the Attorney-General shall be addressed to him at the Attorney-General's Chambers, Ministry of Justice, Asaba.

10. Personal service on other respondents

(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. Filing of answers

(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 matters 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 respondents.

12. Evidence

Evidence at 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. Costs

The Court may make such orders as to costs as it shall think just.

14. Copy of order to be supplied

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 7

SERVICE OF PROCESS

(a) Service within Jurisdiction

1. By whom service is to be effected

(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:

(i) The sheriff or a deputy sheriff, bailiff, officer of the Court, courier service or by a person appointed thereof (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; or

(ii) a solicitor who gives an undertaking to a Registrar receiving the process, at the time of filing, that his chambers shall serve the process, on the other party or his solicitor, and would also file with the Registrar a proof of the service effected, signed by the other party or his solicitor,

Provided that when a party is represented by a Legal Practitioner, service of notices, pleadings, 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. Service of process: how effected

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. When process need not be served

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. Special bailiff

The Court in any civil case, for reasons which shall seem to it sufficient, direct any process to be served by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of the Court. The expenses 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. Substituted service

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; or

(c) By advertisement in the State Gazette, or in some newspaper circulating within the jurisdiction; or

(d) By e-mail or any other technological device now known or later developed as may be approved by the Chief Judge.

6. Service on employee of Government

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 a senior officer of the Ministry or non-Ministerial 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. Service on partners

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. Service on corporation or company

Where 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 writ or document to any director, secretary, or other principal officer, or by leaving it at the office, of the corporation or company.

9. Service on board ship

Where the person on whom service is to be effected is living or serving on board 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. Service on prisoners and lunatics

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. Service on infants

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. Service on local agent of principal who is out of Jurisdiction

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) General Provisions

13. Where violence threatened

Where the officer of Court or person charged with the service of any writ or document on 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 person to be served of the nature of the writ or document as near such person as practicable.

14. Affidavit of service

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.

15. Expenses of service

The costs of and incidental to, the service or execution of any process in a suit shall be paid in the first place by the party requiring such service or 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.

16. Service on Sunday or public holiday

A 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.

17. Recording of service

A book shall be kept at every Court for recording service of 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 claimant 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 serving 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 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. Cases where service of originating process, etc. are allowed out of Nigeria

A Judge may allow any originating or other process to be served outside Nigeria where:

- (a) The whole subject matter of the claim is land situate within jurisdiction; or
- (b) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within jurisdiction, is sought to be construed, rectified, set aside or enforced; or
- (c) Any relief is sought against any person domiciled or ordinarily resident within jurisdiction; or

(d) The claim is for administration of the personal estate of any deceased person, who at the time of his death was domiciled within jurisdiction or for the execution (as to property situate within jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in Delta State; or

(e) The claim is 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 contract:

(i) Made within jurisdiction; or

(ii) made by or through an agent residing or carrying on business within jurisdiction on behalf of a principal residing or carrying on business out of jurisdiction; and

(iii) which by its terms or by implication is to be governed by the applicable law in Delta State, or the parties have agreed that the court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the defendant in respect of a breach committed within jurisdiction, of a contract wherever made notwithstanding that such breach was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract which ought to have been performed within jurisdiction;

(f) The claim is founded on a tort committed within jurisdiction; or

(g) an injunction is sought as to anything to be done within jurisdiction, or any nuisance within jurisdiction is sought to be prevented or removed, whether or not damages are sought in respect thereof; or

(h) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within jurisdiction; or

(i) the claim is by a mortgagee or mortgagor in relation to a mortgage of property situate within jurisdiction and seeks relief of the nature or kind following, that is: sale, foreclosure, delivery of possession by the mortgagor; redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (e) of this Rule) any judgment or order for payment of any monies due under the mortgage; or

(j) The proceedings relate to a person under legal disability; or

(k) The proceedings relate to probate matters; or

(l) Where any proceedings under any law or rule of court has been instituted by any originating process.

2. Agreement as to service

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

3. Service abroad by Letter of Request

Where leave is granted to serve an originating process in any foreign country with which no convention in that behalf has been made, the following procedure may be adopted -

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

[Civil Form 7]

(b) a party wishing to serve a process under this rule shall file a praecipe in Form 8 with such modifications or variations as circumstances may require;

(c) a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country, to the Court, shall be deemed good and sufficient proof of service;

[Civil Form 8]

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

[Civil Form 9]

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

4. Where leave is granted or not required

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

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

[Civil Form 10]

(i) Directly through diplomatic channels; or

(ii) Through the foreign judicial authority;

(b) the request shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request, and a copy of each for every person to be served and any further copies which the Convention

may require (unless the service is required to be made on a Nigerian subject directly through diplomatic channels in which case the translation and copies thereof need not accompany the request unless the Convention expressly requires that they should do so);

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

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

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

5. Service of Foreign Processes

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

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

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

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

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

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

6. Inapplicability of Rule 4

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

7. Service on behalf of foreign tribunals

Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has been made, request for service of any process or document on any person within the

jurisdiction is received by the Chief Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the Convention, be adopted -

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

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

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

8. Substituted service of foreign process

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

ORDER 9

APPEARANCE

1. Mode of entry of appearance

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

[Civil Form 11]

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

2. Defendant appearing in person or represented by Legal Practitioner

(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within the Judicial Division.

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

3. Defendants appearing through same Legal Practitioner

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

4. Late appearance

If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court a penalty in the sum of N100.00 (One Hundred Naira) and to the claimant and each set of claimants a penalty in the sum of N100.00 (One Hundred Naira) each for each day of the default as cost.

5. Intervener in probate matters

In probate matters any person not named in the originating process may intervene and appear in the matter on filing an affidavit showing his interest in the estate of the deceased

6. Recovery of land

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

7. Landlord appearing

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

8. Person under legal disability appearing

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

9. Tenant

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

ORDER 10

DEFAULT OF APPEARANCE

1. Default of appearance by person under legal disability

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

2. Default of appearance generally

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

3. Liquidated demand

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

4. Liquidated demand: several defendants

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

5. Judgment in default of appearance

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

6. Several defendants

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

7. Detention of goods, damages and liquidated demand

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

8. judgment for costs: upon payments, satisfaction, etc.

In any case to which rules 3-7 of this Order do not apply and the defendant or all of several defendants fail to appear, but by reason of payment, satisfaction abatement of nuisance, or any other reason, it is unnecessary for a claimant to proceed, he may apply to a judge for judgment for costs:

Provided that such application shall be filed and served in the manner in which service of the originating process was effected or in such manner as a judge shall direct.

9. Setting aside judgment

Where judgment is entered pursuant to any of the preceding rules of this Order, a Judge may set aside or vary such judgment on such terms upon an application made within 6 days by the defendant. The application shall disclose a good defence to the claim and a just cause for the default.

10. Default of appearance in actions not specifically provided for

In all claims not specifically provided for under this Order, where the party served with the originating process does not appear within the time prescribed in the originating process, a claimant may proceed as if appearance had been entered.

11. Leave in actions by moneylender

In an action brought by a moneylender or an assignee for the recovery of money lent by a moneylender or the enforcement of any agreement or security relating to any such money, an application for leave to enter judgment in default of appearance shall be made by notice returnable not less than four clear days after service of the notice.

12. Compulsory service

Notice of any application under this order shall be served on the other party.

ORDER 11

SUMMARY JUDGMENT

1. Where claimant believes there is no defence

Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof.

2. Delivery of extra copies

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

3. Service

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

4. Where defendant intends to defend

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

- (a) His statement of defence,
- (b) Depositions of his witnesses,
- (c) Exhibits to be used in his defence; and
- (d) A written brief in reply to the application for summary judgment

5. Where defendant has good defence or has no good defence or has good defence to part of the claim

- (1) Where it appears to a Judge that a defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend.
- (2) Where it appears to a Judge that the defendant has no good defence the Judge may thereupon enter judgment for the claimant

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

6. Where there are several defendants

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

7. Oral submission on written brief

Where provision is made for written briefs under these Rules, each party shall be at liberty to advance before a Judge oral submission to expatiate his written brief.

ORDER 12

REFERENCE TO REFEREES

1. Instructions to referees

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 may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.

2. Interim inquiries or accounts

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. General Powers of the referee

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. Evidence

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 by the Court; and every such inquiry shall be conducted in the same manner as nearly as circumstances will admit in trials before a Judge or the Court, but not so as to make the tribunal of the referee a public court of justice.

5. Referee's authority in the inquiry

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. Limitation in certain particulars

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. Reports made in pursuance of reference

(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) Referee may report questions of facts specially

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.

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court or the further consideration of the cause or matter, after giving not less than four days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference under this Order the Court or a Judge in chambers orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the foregoing provisions of this rule shall have effect subject to any such directions.

II. Receivers

8. Application for receiver and injunction

(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 the 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 sub-rule (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.

9. Giving of security by receiver

(1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where, by virtue of sub-rule (1), or any judgment 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.

10. Remuneration of a receiver

A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

11. Receiver's account

(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 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 claimant or party having the conduct of the cause or matter shall thereupon obtain an appointment for the purpose of passing the account.

(3) The passing of a receiver's account shall be certified by the Registrar.

12. Payment of balance, etc., by receiver

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.

13. Default by receiver

(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 sub-rule (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 a remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at the rate often per centum per annum on that sum while in his possession as a receiver.

ORDER 13

PARTIES

A. General

1. Persons claiming jointly, severally, or In the alternative may be claimants

All persons may be joined in one action as claimants 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 action, any common question of law or fact would arise; and judgment may be given for such one or more of the claimants as may be entitled to, without any amendment.

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

2. Action in the name of wrong claimant

Where an action has been commenced in the name of the wrong person as claimant, or where it is doubtful whether it has been commenced in the name of the right claimant, the 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 claimant upon such terms as may be just.

3. All persons may be joined as defendants

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. 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. Counter-claim: Misjoinder

Where in an action any person has been improperly or unnecessarily joined as a co-claimant, and a defendant has set up a counter-claim or set-off, such defendant may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-claimant so joined, notwithstanding the misjoinder of such claimant or any proceeding consequent thereon.

5. Defendant need not be interested in all the reliefs sought

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

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

6. Non-joinder

(1) If it appears 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 claimants 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 appears 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) Misjoinder of parties

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 claimant or defendants, improperly joined, be struck out.

7. Joint and several demand

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; he may proceed against any one or more of the persons severally or jointly and severally liable.

8. Proceedings not defeated by misjoinder or non-joinder

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

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

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

9. Guardian

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

10. Partners

Any two or more persons claiming or alleged to be liable as partners may sue or be in the name of the firm in which they were partners when the cause of action arose; and 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.

11. Infants as parties

Infants may sue as claimants by their next friends and may defend by guardians appointed for that purpose.

12. Lunatics, etc.

Lunatics and persons of unsound mind may respectively sue as claimants by their committees or guardians appointed for that purpose.

13. Appearance by infant

An infant shall not enter an appearance except by his guardian and item

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 12 in the Appendix with such variations as circumstances may require.

[Civil Form 12]

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

14. Numerous persons

(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.

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

15. Next friend

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

16. Representation of persons or classes of persons in certain proceedings

(1) Where in any proceedings concerning-

(a) The administration of an estate; or

(b) Property subject to a trust; or

(c) Land held under customary law as family or community property; or

(d) The construction of any written instrument, including a statute, a Judge is satisfied that:

(i) The person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained; or

(ii) the person, the class or some members of the class interested, if ascertained, cannot be found, and it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

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

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

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

17. Power to approve compromise

Where in any proceedings mentioned in sub-rule (1) of rule 16 of this Order, a compromise is proposed and some of the absent persons who are interested in or may be affected by the compromise are not parties to the proceedings (including unborn or unascertained persons) but:

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

(ii) the absent persons are represented by a person under rule 16 of this Order who so assents, a Judge if satisfied that the compromise will be for the benefit of the absent persons, and that it is expedient to exercise this power, may approve the compromise and order that such compromise shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

18. Where there is no personal representative

(1) If in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for the purpose of the proceeding, on such notice to such persons (if any) as the Judge shall deem fit, either

specifically or generally by public advertisement, and the order so made and any order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the proceedings.

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

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

19. Trustees, executors, etc. may be sued as representing the estate

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.

20. Application to add or strike out party

Any application to add, strike out or substitute a claimant 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.

21. Third Party Notice

(1) Where in any action a defendant claims as against any person not already a party to the action (in this section called 'the 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 claimant; 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 claimant and the defendant and should properly be determined not only as between the claimant 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) How leave obtained

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 directs a summons to the claimant 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 these Rules.

22. Form and issue of notice

(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 13 or Form 14 with such variations as circumstances may require, and shall be served on the third party in the same manner as a writ of summons is sealed and served.

[Civil Forms 13 and 14]

(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 counter-claim, 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.

23. Effect of notice

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.

24. Appearance

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.

25. Default by third party

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 of 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.

26. Procedure after default

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 in Chambers 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.

27. Third party directions

(1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the claimant, the third party and on any other defendant, apply to the Court or a Judge in Chambers for 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 favour of the defendant giving the notice; or

(b) if satisfied that there is a question or issue properly to be tried as between the claimant and the defendant and the third party or between any or either of them as to the liability of the defendant to the claimant 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 the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the claimant and the defendant but as between the claimant, the defendant and the third party or any or either of them, order such question or issues 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 claimant 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 a Judge in Chambers.

28. Leave to defend

The Court or a Judge in Chambers upon the hearing of the application for directions may, if it shall appear desirable to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon such terms as may be 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 for 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 judgment in the action.

29. Judgment at trial or after

(1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for or against the defendant giving the notice or against or for 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:

Provided that execution shall not be issued without leave of the Court or of a Judge in Chambers until after satisfaction by the defendant of the judgment against him.

(2) Where no trial

Where the action is decided otherwise than by trial, the Court or a Judge in Chambers may, on application by motion or summons, make such order as the nature of the case may require, and where the claimant has recovered judgment, may cause such judgment as may be just to be entered for or against the defendant giving notice or against or for the third party.

30. Persons trading as firms

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

31. Claimant to assign place for service

Where a claimant, 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 notice or other processes issuing from the Court may be served on him,

32. Act may be done by Legal Practitioner or Agent

Where by these Rules, any act may be done by any party in an 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

33. Where change of interest, court may make order enabling suit to proceed

(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 suit 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) But any person 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.

34. When suit does not abate

The death of a claimant or defendant shall not cause the suit to abate if the cause of action survives.

35. When cause of action survives

If there be two or more claimants or defendants and one of them dies, and if the cause of action survives the surviving claimant or claimants alone, or against the surviving defendant or defendants

alone, the suit shall proceed at the instance of the surviving claimant or claimants, and against the surviving defendant or defendants.

36. When cause of action accrues to survivors

If there be two or more claimants and one of them dies, and if the cause of action shall not survive to the surviving claimant or claimants alone, but shall survive to them and the legal representative of the deceased claimant jointly, the Court may, on the application of the legal representative of the deceased claimant, enter the name of such representative in the place of such deceased claimant, and the suit shall proceed at the instance of the surviving claimant or claimants and such legal representative of the deceased claimant. If no application shall be made to the Court by any person claiming to be the legal representative of the deceased claimant, the suit shall proceed at the instance of the surviving claimant or claimants; and the legal representative of the deceased claimant shall, after notice to appear has been served on him be presumed to be interested in, and shall be bound by the judgment given in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving claimant or claimants, unless the Court shall see cause to direct otherwise.

37. Death of sole or surviving claimant

In case of the death of a sole claimant, or sole surviving claimant, the Court may, on the application of the legal representative of such claimant, enter the name of such representative in the place of such Claimant 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 legal representative of the deceased sole claimant or sole surviving claimant, 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 claimant or surviving claimant; 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 claimant or surviving claimant, and for proceeding with the suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

38. Dispute as to legal representative

If any dispute arises as to who is the legal representative of a deceased claimant, it shall be competent for 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.

39. Death of one of several defendants or of a sole or surviving defendant.

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 claimant may an application to the Court, specifying the name, description and place of abode of any person who the claimant 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. there upon 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.

40. Bankruptcy of claimant

The bankruptcy of the claimant, 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 claimant as a reason for abating the suit.

41. Legal practitioner of claimant to give notice of abatement

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 claimant 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 Book opposite the name of such cause or matter.

42. Abated cause, etc., to be struck out

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 14

JOINDER OF CAUSES OF ACTION

1. All causes of action may be joined

Subject to rule 3, a claimant may in one action claim relief against the same defendant in respect of two or more causes of action-

(a) if the claimant 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 claimant 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 Court.

2. Counter-claim against claimant

(1) Subject to sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the claimant 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 I 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 claimant 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 claimant in his action, or that the action is stayed, discontinued or dismissed.

3. Court may order separate trials, etc.

(1) If claims in respect of two or more causes of action are included by a claimant in the same action or by a defendant in a counter-claim or if two or more claimants 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 an action or counter-claim is made, that the subject matter of the action or 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 as may be expedient.

4. Recovery of land

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

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

5. Executor and Administrator

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

6. Claims by joint claimants.

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

ORDER 15

PLEADINGS

1. Filing of pleadings

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

(2) A defendant shall file his statement of defence, set off or counter-claim, if any, not later than 30 days after service on him of the claimant's originating process and accompanying documents. A counter-claim

shall have the same effects as a cross action, so as to enable the court pronounce a final judgment in the same proceedings. A set-off must be specifically pleaded.

(3) A claimant shall within 14 days of service of the statement of defence and counterclaim if any, file his reply, if any, to such defence or counter-claim:

Provided that where a defendant sets up a counter-claim, if a claimant or any other person named as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent proceeding, a Judge may at any time order that such counter-claim be excluded.

2. Pleadings to state material facts and not evidence

(1) Subject to the provisions of these Rules as to front loading of evidence, 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.

(2) Dates, sums and numbers shall be expressed in figures but may also be expressed in words.

(3) Pleadings shall be signed by a Legal Practitioner, or by the party if he sues or defends in person.

(4) How facts to be stated

The facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement

3. Particulars to be given where necessary

(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 claimant alleges that the words or matter complained of were used in a 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.

4. Matters that must be specifically pleaded

(1) A party shall plead specifically any matter (for example, performance, release, any relevant statute of limitation, fraud or any 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 claimant 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 claimant or the defendant shall be implied in his pleading.

(3) Without prejudice to sub-rule (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.

5. Further and better statement or particulars

(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) Letter for particulars

Before applying for particulars by summons or notice, a party may apply for them by letter.

(3) The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation.

(4) 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.

(5) Particulars before defence

Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Judge in Chambers is 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.

6. Order for particulars not a stay

(1) 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.

(2) Except as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time.

7. Specific denial

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.

8. Denial by joinder of issues

(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to sub-rule (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 excluded 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.

9. Pleadings to be consistent

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.

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

(1) Where the claimant 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 distinctly.

(2) The same rule shall apply where the defendant relies on several distinct grounds of set-off or counter-claim founded upon separate and distinct facts.

(3) The relief claimed to be stated

Every statement of claim shall state specifically the relief which the claimant claims, either simply or in the alternative, and may also ask for general relief; and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence.

11. Allegations shall not be made generally but specifically

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 may be) stating that he does not know whether any given allegation is true or otherwise.

12. Denial of fact must answer point of substance

When a party denies an allegation of fact he shall not do so evasively, but shall answer the point of substance. 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.

13. Admissions

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.

14. Set-off or counter-claim to be pleaded

Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim shall be given.

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

The defence of a defendant shall not debar him at the hearing from disproving any allegation of the claimant not admitted by the defence, or from giving evidence in support of a defence not expressly set up by 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 statement thereof, or is, in the opinion of the

Court, likely to take the claimant by surprise or to raise new issues not fairly arising out of the pleadings, as they stand, and such as the claimant Ought not to be then called to meet.

16. Further pleadings

The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the real 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.

17. Costs in certain cases

Where the Court is of opinion that any allegations of fact, 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.

18. Striking out pleadings

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 defence to the action, as the case may be, or on the ground that it is embarrassing, or scandalous, Of 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 judgment for the claimant or the defendant, as the case may be, or may make such other order, and upon such terms and condition as may seem just.

19. Denial of contract

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.

20. Effect of documents to be stated

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

21. Malice, knowledge, or other condition of mind

(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 sub-rule (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 claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

(3) Where in an action for libel or slander, the defendant alleges that, in so far as the words complained of consist of 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.

22. Notice

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

23. Implied contract or relation

(1) 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.

(2) 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 alternative.

24. Presumptions of law

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 claimant sues only on the bill, and not for the consideration as a substantive ground of claim).

25. Pleadings: Probate actions

(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 it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial, and, except by leave of 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.

26. Technical objection

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

27. Application

(1) 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.

(2) In such cases, the former High Court Rules shall be applied as if they were still in force.

28. Claim beyond endorsement

Whenever a statement of claim is filed, the claimant may therein 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 claimant may not completely change the cause of action endorsed on the writ without amending the writ.

29. Stated or settled account

In every case in which the cause of action is a stated or settled account, it 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, it needs not be alleged in the pleadings.

30. Defence of tender

Where in any action a defence of tender before action is pleaded, the defendant shall pay into court in accordance with rule of Order 21 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.

31. Defence of set-off

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the claimant, it may be included in the defence and set-off against the claimant's claim, whether or not it is also added as a counter-claim.

32. Judgment for balance

(1) Where in any action a set-off or counter-claim is established as a defence against the claimant's claim, the Court may, if the balance is in favour of the defendant, give judgment 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) Sub-rule (1) shall apply mutatis mutandis -where the balance is in favour of the claimant

33. Close of pleadings

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

(2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file the same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the pleadings shall be deemed closed Provided that this rule shall not apply to a defence to counter-claim and unless the claimant files a defence to counter-claim, the statements of fact contained in such counter-claim shall at the expiration of 14 days from the service thereof or of such time (if any) as may by order be allowed for filing of a defence thereto be deemed to be admitted, but the Judge may at any subsequent time give leave to the claimant to file a defence to counter-claim.

STATEMENT OF CLAIM

1. Statement of claim

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

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

2. Claim beyond endorsement

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

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

ORDER 17

DEFENCE AND COUNTER-CLAIM

1. Statement of defence

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

2. Evasive denial

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

3. Denials generally

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

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

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

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

4. Persons in representative capacity

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

5. Pleadings to damages

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

6. Set-off and counter-claim

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

7. Title of counter-claim

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

8. Claim against persons not party

Where any such person as in rule 7 of this Order is not a party to the action he shall be summoned to appear by being served with a copy of the defence and counter-claim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter-claim so served shall be indorsed in Form 15 with such modifications or variations as" circumstances may require.

[Civil Form 15]

9. Appearance by added parties

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

10. Reply to counter-claim

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

11. Discontinuance of the claimant's claim

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

12. Judgment for balance

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

13. Grounds of defence after action brought

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

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

14. Further defence or reply

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

15. Concession to defence

Whenever any defendant in his defence or in any further defence pursuant to rule 14 of this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 16 with such modification as circumstances may require) and may thereupon obtain judgment up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders..

[Civil Form 16]

16. Defence to originating summons

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

ORDER 18

REPLY

1. Filing of reply

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

2. Reply to counter-claim

Where a counter-claim is pleaded, a reply thereto is called a defence to counter-claim and shall be subject to the rules applicable to defence.

ORDER 19

ADMISSIONS

1. Notice of admission of facts

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

2. Notice to admit documents

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

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

(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum of five thousand naira, shall be paid by the party who has challenged it, unless at the trial or hearing the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document

3. Notice to admit facts

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

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

4. Judgment or Order upon admission of facts

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

5. Cost of notice where documents unnecessary

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

6. Judgment on admissions of facts

(1) 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 judgment 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 judgment, or make such order, on the application as it thinks just.

(2) An application for an order under this rule may be made by motion or summons.

ORDER 20

DEFAULT OF PLEADINGS

1. Claim for debt or liquidated demand

(1) If the claimant's claim be only for 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 claimant may, at the expiration of such time, apply for final judgment 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, judgment shall not be entered in default of defence except in accordance with the provisions of Order 10 rule 11.

2. Several defendants: one-default

When in any action for a debt or liquidated demand there are several defendants, if one of them makes default as mentioned in rule 1 (1) the claimant may, apply to have final judgment entered against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

3. Default of defence: claim for unliquidated damages

Where the claimant's claim against a defendant is for unliquidated damages only, then, if that defendant makes default in pleading, the claimant may, after the expiration of the period fixed as aforesaid, for service of defence, have judgment 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.

4. Default of defence: claim in detinue

Where the claimant's claim against the defendant relates to the detention of goods only, then, if the defendant makes default in pleading, the claimant may, after the expiration of the period fixed as aforesaid for service of the defence, have entered either-

(a) Judgment against that defendant for the delivery of the goods or their value to be assessed by the Court and costs; or

(b) Judgment 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 defendant, if any.

5. Default of defence: claim for possession of land

(1) Where the claimant's claim against a defendant is for the possession of land only, then, if that defendant makes default in pleading, the claimant 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 judgment 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, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for the possession of the land has been entered against all the defendants.

6. Default of defence: mixed claims

Where the claimant makes against a defendant two or more of the claims mentioned in rules 1 to 5, and no other claim, then, if that defendant fails to serve a defence on the claimant, the claimant may, after the expiration of the period fixed as aforesaid for service of the defence, have entered against that defendant such judgment 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 defendant, if any.

7. Default of defence: other claims

(1) Where the claimant makes against a defendant or defendants a claim of a description not mentioned in rules 1 to 5, then if the defendant or all the defendants (where there are more than one) fails or fail to serve a defence on the claimant, the claimant may, after the expiration of the period fixed as aforesaid for service of the defence apply to the Court for judgment and on the hearing of the application, the Court shall give such judgment as the claimant appears entitled to on his statement of claim.

(2) Where the claimant makes such a claim as is mentioned in sub-rule (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that sub-rule, the claimant if his claim against the defendant in default is severable from his claim against the other defendants, may-

(a) Apply under that sub-rule for judgment against that defendant, and proceed with the action against the other defendants; or

(b) Set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment against the other defendants.

(3) An application under sub-rule (1) shall be by summons or motion on notice.

8. Default of defence to counter-claim

A defendant who counter-claims against a claimant shall be treated for the purpose of rules 1 to 7 as if he were a claimant who had made against a defendant the claim made in the counter-claim and accordingly, where the claimant 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 claimants 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.

9. Setting aside judgment

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

10. Interpretation

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 21

PAYMENT INTO AND OUT OF COURT

1. Payment into Court

(1) (a) A claimant may make an offer at any time in relation to money claims. The defendant may make an offer prior to the commencement of proceedings.

(b) An offer made prior to the commencement of proceedings must be supported by a payment into court within 14 days of the commencement of proceedings.

(2) 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 claimant 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.

(3) 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 17 to the claimant and every other defendant (if any); and within 7 days after receiving the notice the claimant shall send the defendant a written acknowledgement of its receipt.

[Civil Form 17]

2. Extent of admission of claim

(1) Payment into Court, whether made in satisfaction of the claimant's claim generally or in satisfaction of some specific part thereof, operates, unless the defendant in his defence 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 provisions of rule 5.

3. Acceptance of sum paid

Where the defendant pays money into Court, 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 claimant shall be at liberty to accept the same in full satisfaction and discharge of the cause of action in respect of which it is paid in, and in that case the claimant 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 costs and other matters as seems just.

4. Non-acceptance of sum paid

If the claimant does not so 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.

Provided that if the claimant obtains judgment in his favour for the exact sum originally deposited by the defendant, the claimant shall pay 10% of the deposited sum to the defendant; and if the claimant loses the action the defendant shall in addition to recovery of the sum paid in, together with interest, be entitled to the payment by the claimant of 10% of the amount originally deposited by the defendant.

5. Payment into Court with denial of liability

When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which payment into Court has been made, is denied in the pleading, the following rules apply-

(a) the claimant may accept, in satisfaction of the claim or cause of action in satisfaction of which payment into Court has been made, the sum so paid in, (whereupon all further proceedings in respect of such claim or cause of action except as to costs, shall be stayed), or the claimant 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 claimant accepts the money so paid in, he shall be entitled, with leave of Court, to have the money paid out to him;

(c) if the claimant 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; .

(d) if the claimant 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, so far as is necessary, in satisfaction of the claimant's claim, and the balance (if any) shall; under Court order, be repaid to the defendant;

(e) 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. Custody of money: payment into bank

(1) Where any money is required to be paid into or deposited in Court, same shall be interpreted to mean payment or deposit into a savings account at a reputable commercial bank.

(2) 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; and the Registrar shall specify to the bank that the release or withdrawal of same shall be upon presentation of a High Court order to that effect.

7. Payment by claimant

A claimant 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. No payment out without order

Money paid into Court pursuant to the provisions of this Order or under an order of Court or a Judge shall not be paid out except in pursuance of an order of the Court or a Judge.

9. Payment out: small intestate estate

(1) 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 hundred 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 widower, 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

(2) "Fund in Court" in this rule means money tendered to the Registrar and paid into a bank account under the foregoing rules.

10. Tender before action

Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.

11. Tender by one or several defendants

The claimant after receiving the money paid in by the Defendant may continue with the action against any other defendant but the sum paid into Court shall be set-off against any damages awarded to the claimant against the defendant or defendants against whom the action is continued.

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12. Persons under legal disability

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

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

13. Steps to be taken after payment

Where payment into Court has been offered or made by a defendant:

- (a) A party receiving an offer or notice of payment in may seek clarification of it;
- (b) An offer can be withdrawn without the Court's permission but that permission is required if the payment in is to be withdrawn;
- (c) If at the trial the claimant fails to obtain judgment for a sum above a sum earlier paid into Court by the defendant, the claimant will be liable for costs from the period of payment in of the said sum.
- (d) If the claimant obtains judgment for a sum above a sum paid in, he may be awarded additional costs and interest.

14. Acceptance in satisfaction

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

ORDER 22

PROCEEDINGS IN LIEU OF DEMURRER

1. Demurrer abolished

No demurrer shall be allowed

2. Points of law may be raised by pleading

Any party shall be entitled to raise by his pleading any point 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, it may be set down for hearing and disposed of at any time before the trial.

3. Dismissal of action

If, in the opinion of the court or a Judge the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, 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. Striking out pleading where no reasonable cause of action disclosed.

The court or a Judge may order 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 judgment to be entered accordingly, as may be just.

Provided that the party so contending must also first file its own pleading in response.

5. Declaratory judgment

No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

ORDER 23

WITHDRAWAL AND DISCONTINUANCE

1. Withdrawal of appearance

A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court

2. Discontinuance of action without leave

(1) The claimant 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 claimant or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the claimant 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, sub-rule (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) Sub-rule (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 claimant and to sub-rule (1), of references to a defence to counter-claim, to the defendant and to sub-rule (2) respectively.

(5) If all 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. Discontinuance of action, etc. with leave

(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. Effect of discontinuance

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. Stay of subsequent action until costs paid

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. Withdrawal of summons

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.

ORDER 24

AMENDMENT

1. Amendment of originating process and pleadings

A party may amend his originating process and pleadings at any time before the close of pre trial conference and not more than twice during the trial but before the close of the case

2. Application

Application to amend may be made to a Judge. Such application shall be supported by an exhibit of the proposed amendment (with proposed amendments marked in red ink) and may be allowed upon such terms as to costs or otherwise as may be just.

3. Amendment of originating process

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

4. Failure to amend after order

If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee to the Court in the sum of N100.00 (One Hundred Naira Only) for each day of default and another sum not exceeding N50 (Fifty Naira) for each day as may be awarded by the court in favour of the other party, unless extended by the judge.

5. Filing and service of amended process

Whenever any originating process or pleading is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.

6. Date of order and amendment to be displayed

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

"Amended..... day of ,.....

pursuant to Order of (name of Judge) dated

the..... day of..... "

7. Clerical mistakes and accidental omissions

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

8. General power to amend

Subject to the provision of rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings.

ORDER 25

PRE-TRIAL CONFERENCE AND SCHEDULING

1. Pre-trial conference notice

(1) Within 14 days after close of pleadings, the claimant shall apply for the issuance of a pre-trial conference notice as in Form 18.

[Civil Form 18]

(2) Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their Legal Practitioners (if any) a pre-trial conference notice as in Form 18 accompanied by a pre-trial information sheet as in Form 19 for the purposes set out hereunder-

[Civil Forms 18, 19]

(a) disposal of matters which must or can be dealt with on interlocutory application;

(b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal;

(c) Promoting amicable settlement of the case or adoption of alternative dispute resolution.

(3) if the claimant does not make the application in accordance with sub-rule 1 of this rule, the defendants) may do so or apply for an order to dismiss the action.

(4) Court may convey Pre-trial conference

Where neither the claimant nor defendant applies for the convening of (he pre-trial conference within the period allowed by this rule, the Judge shall 30 days after the expiration of the period convene the pre-trial conference and make such orders as may be necessary including the striking out or dismissal of the suit Provided that hearing notices are issued by the Court so convening and duly served on the parties.

(5) The claimant and defendant counsel may agree on pre-trial and scheduling issues before the date of compulsory pre-trial conference which shall be reduced into writing and filed in Court before that date, in which case the Court or Judge shall as much as possible make the scheduling order consistent with the agreement of the parties.

2. Scheduling and planning

At the pre-trial conference, the Judge shall enter a scheduling order for-

- (a) Joining other parties;
- (b) Amending pleadings or any other processes;
- (c) Filing motions;
- (d) Further pre-trial conferences;
- (e) Any other matters appropriate in the circumstances of the case.

3. Agenda

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

- (a) Formulation and settlement of issues;
- (b) Amendments and further and better particulars;
- (c) The admissions of facts, and other evidence by consent of the parties;
- (d) Control and scheduling of discovery, inspection and production of documents;
- (e) Narrowing the field of dispute between expert witnesses, by their participation at pre-trial conference or in any other manner,
- (f) Hearing and determination of objections on point of law;
- (g) Giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third party claim or of any particular issue in the case;
- (h) Settlement of issues, inquiries and accounts under Order 27;
- (i) Securing statement of special case of law or facts under Order 28;

(j) Determining the form and substance of the pre-trial order;

(k) Such other matters as may facilitate the just and speedy disposal of the action.

4. Timetable

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

5. Report

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

6. Sanctions

If a party or his legal practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is substantially unprepared to participate in the conference or fails to participate in good faith the Judge shall -

(a) In the case of the claimant dismiss the claim;

(b) In the case of the defendant enter final judgment against him.

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

7. Management

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

8. Processes filed after pre-trial

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

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

ORDER 26

DISCOVERY AND INSPECTION

1. Discovery by interrogatories

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

2. Form of interrogatories

Interrogatories shall be in Form 20 with such modifications or variations as circumstances may require.

[Civil Form 20]

3. Corporation or companies

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

4. Objection to interrogatories by answer

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

5. Affidavit in answer: filing of

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

6. Form of affidavit in answer

An affidavit in answer to interrogatories shall be in Form 21 with such modifications or variation as circumstances may require.

[Civil Form 21]

7. Order to answer or answer further

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

8. Application for discovery of documents

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

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

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 22 with such modifications or variations as circumstances may require.

[Civil Form 22]

9. Verification of business books

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

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

(3) The Judge may upon application whether or not an affidavit of document has been ordered or filed, make an order requiring any party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it

10. Attachment of party after service on Legal Practitioner

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

11. Attachment of Legal Practitioner

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 attachment.

12. Using answers to interrogatories at trial

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

13. Discovery against Sheriff

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

14. Order to apply to person under legal disability

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

ORDER 27

ISSUES, ACCOUNTS AND INQUIRIES

1. Issues of facts

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

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

2. Summary order for account

(1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the claimant 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 there 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 be paid to him within a time specified in the order.

3. Court may direct taking of accounts, etc.

(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 judgment or order, so that, as far as may be, each distinct account and inquiry may be designated by a number.

4. Directions as to manner of taking account

(1) Where the Court orders 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 sub-rule (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.

5. Account to be made, verified, etc.

(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 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.

6. Erroneous account

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 to back as the case may be, the grounds for alleging that the item is erroneous.

7. Allowance

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

8. Delay in prosecution of accounts, etc.

(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment 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 costs as the circumstances require.

(2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of Legal Practitioner's costs.

9. Distribution of fund before all persons entitled are ascertained

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may by order allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

ORDER 28

SPECIAL CASE

1. Special case by consent

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

2. Special case by order before trial

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

3. Special case to be signed

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

4. Application to set down where a person under disability is a party

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

5. Agreement as to payment of money and costs

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

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

6. Directions

A Judge may give direction as he may deem fit on any issue arising from the pre-trial conference or special case upon the application of the parties or suo motu.

7. Application of order

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

ORDER 29

ALTERNATIVE DISPUTE RESOLUTION

1. Judge to encourage ADR

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

(a) Arbitration;

(b) Conciliation;

(c) Mediation; or

(d) Any other lawfully recognized method of dispute resolution.

Provided that the Court or Judge shall not personally conduct such settlement which it shall instead refer to appropriate person or institution for amicable resolution within a timeframe specified by the Court or Judge failing which the proceedings shall resume before the Court or Judge.

Reference to Arbitrators

2. Nomination of Arbitrators and appointment

In any case in which a matter is referred to one or more arbitrators under the provisions of the High Court Law, the arbitrators shall be nominated by the parties in such manner as may be agreed upon between them.

3. Court may appoint Arbitrator

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.

4. Form of order of reference

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, and shall fix a time for the delivery of the award, and the time so fixed shall be stated in the order.

5. Umpire where necessary

If the reference be to 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 if they cannot agree, as the Court may determine.

6. Attendance of witnesses

When a reference to arbitration 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.

7. Extension of time for making award

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 thinks 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

have allowed their time or their extended time, to expire without making an award or 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 has been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

8. Power of court in case of death, incapacity or refusal to act

If, in any case of reference to arbitration by an order of Court, the arbitrators or umpire dies, 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, of 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 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 had been inserted in the original order of reference.

9. Finding

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.

10. Special case for opinion of the Court

It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they 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.

11. Court may modify or correct award

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 that 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 the decision.

12. Power as to costs

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 of their amount, and the award contains no sufficient provision concerning them.

13. Power of court to remit award for reconsideration

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.

14. Filing award: effect of

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 judgment of Court.

ORDER 30

TRIAL PROCEEDINGS IN GENERAL

Attendance of Parties at Hearing

1. Attendance by proxy

(1) In every cause or matter pending before the Court, in case it appears 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 claimant or defendant, or officer of the claimant or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.

(2) Failure to appear by both parties

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. Default of appearance by defendant at trial

If, when a trial is called on the claimant appears, and the defendant does not appear, then the claimant may prove his claim, so far as the burden of proof lies upon him.

3. Default of appearance by claimant

If, when a trial is called on the defendant appears, and the claimant does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment 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 judgment as if the claimant had appeared

4. Judgment by default may be set aside on terms

Any judgment 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.

Proceedings at the Hearing

5. Judgment to be entered at or after trial

The trial Judge shall, at or after trial, direct judgment to be entered as he thinks right, and no motion for judgment shall be necessary in order to obtain such judgment.

6. Adjournment of trial

The Judge may, if he thinks it expedient for the interests of justice, postpone or adjourn a trial for such time, and upon such terms, if any, as he may think fit, provided that such adjournments shall be subject to the following guidelines:

(a) An adjournment shall not be granted more than five (5) times at the instance of a party to the action from the date of filing to the conclusion of the case.

(b) An adjournment shall not exceed 30 days at one instance. •.

7. Order of proceeding

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

8. Burden of proof by party to begin

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

9. Documentary evidence

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

10. Additional witness

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

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

11. Close of case of parties

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

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

12. Exhibits during trial

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

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

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

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

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

13. Written address by party beginning

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

14. Written address by the other party

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

15. Written address in reply by party beginning

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

16. Right of reply

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.

17. Custody of Exhibit after trial

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

(a) That the exhibit will be kept duly marked and labelled and will be produced, if required, at the hearing of an appeal (if any such appeal is lodged); or

(b) That the release of the exhibit will not in any way prejudice any other party.

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

18. Office copy of list of exhibits

(1) Any party may apply for and on payment of the prescribed fee, obtain an office copy of the list of and certified true copies of exhibits.

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

19. Indolent prosecution

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

ORDER 31

FILING OF WRITTEN ADDRESS

1. Application

This order shall apply to all applications and final addresses.

2. Content of written address

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 attached to the application or tendered at the trial;

(iii) The issues arising from the evidence;

(iv) A succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each such authority.

3. Summation of address

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.

4. Oral argument

Oral argument of not more than 20 minutes shall be allowed for each party.

5. Copies of written address

Each party shall file two copies of his written address in court and serve a copy thereof on every party.

ORDER 32

PROCEDURE RELATING TO EVIDENCE

1. Facts: how proved

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

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

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

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

2. Particular facts

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

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

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

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

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

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

3. Limitation of medical and expert evidence

A Judge 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 be limited as specified by the order or direction.

4. Limitation on use of documentary evidence

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

5. Revocation and variation

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

6. Office copies admissible in evidence

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

7. Examination of witnesses abroad

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 -

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

[Civil Form 23]

(b) such undertaking shall be accompanied by -

(i) a request in Form 24, with such modifications or variations as may be directed in the order for its issue, together with a translation in the language of the country in which it is to be executed (if not English);

[Civil Form 24]

(ii) A copy of the interrogatories (if any) to accompany the requests, with a translation if necessary;

(iii) A copy of the cross-interrogatories (if any) with a translation if necessary.

8. Form of order for examination of witnesses abroad

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 made, the order shall be in Form 25, which Form may be modified or varied as may be necessary to meet the circumstances of the particular case in which it is used.

[Civil Form 25]

9. Order for attendance of person to produce document

The Judge may at any stage of any proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order:

Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

10. Disobedience to order for attendance

Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be in contempt of court, and may be dealt with accordingly.

11. Expenses of persons ordered to attend

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

12. Contempt of court

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 he shall be in contempt of court and may be dealt with accordingly by the Judge.

13. Examination of witnesses

When the examination of any witness before any Examiner under rule 7 above shall have been conducted, the original depositions authenticated by the signature of the examiner, shall be transmitted by him to the Registrar and filed.

14. Depositions not to be given in evidence without consent or by leave of a Judge

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

15. Oaths

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 thereafter be made with any foreign country, may administer oaths.

16. Attendance of witness under subpoena for examination or to produce documents

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

17. Practice as to taking of evidence at any stage of cause or matter

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

18. Special directions as to taking evidence

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

19. Evidence in proceedings subsequent to trial

Subject to the provisions of Section 34 of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

20. Form of praecipe for subpoena

Where it is intended to issue out a subpoena praecipe for that purpose in Form 26 containing the name or firm and the place of business or residence of the Legal Practitioner intending to issue out the same,

and where such Legal Practitioner is agent only, then also the name or firm and place of business or residence of the principal Legal Practitioner, shall in all cases be delivered and filed at the Registry. No subpoena shall be issued unless all court fees have been paid (including fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.

[Civil Form 26]

21. Form of subpoena

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

[Civil Forms 27,28, 29]

22. Subpoena for attendance of witness in Chambers

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

23. Correction of errors in subpoena

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

24. Personal service of subpoena

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

25. Duration of subpoena

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

26. Action to perpetuate testimony

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

27. Examination of witnesses to perpetuate testimony

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

28. Such action not to be set down for trial

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

ORDER 33

AFFIDAVITS

1. Evidence on motion

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. Title of affidavit

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

3. Use of defective affidavit

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. Special time for filing affidavit

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

5. Affidavit in support of *ex parte* application

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 making the motion.

6. Notice of intention to use affidavit in Chambers

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. Use in Chambers of affidavits used in Court

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. Alterations in accounts to be initialled

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. Exhibits

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

10. Certificate on exhibits

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. Application of Evidence Act

The provisions of the Evidence Act which set out provisions governing affidavits, shall apply as if they were part of these Rules.

12. Affidavit taken in Commonwealth country admissible without proof of seal, etc.

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 34

INTERIM ATTACHMENT OF PROPERTY

1. in what cases

Where-

(a) 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 claimant may apply, to the Court either at the time of the institution of the suit or at any time thereafter until final judgment to call upon the defendant to furnish sufficient security to fulfill 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 moveable or immovable belonging to the defendant shall be attached until the further order of the Court.

2. Application for attachment

The application shall contain a specification of the property required to be attached, and the estimated value thereof so far as the claimant can reasonably ascertain the same, and the claimant 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. Form of order

If the Court after making such investigation as it may consider necessary, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the 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 or 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 fulfill the decree, or to 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. Where defendant fails to show cause or give security

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 fulfill 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, has been attached, the Court shall order the attachment to be withdrawn.

5. Right of third parties not to be affected

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 judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

6. Removal of attachment

In all cases of attachment before judgment, 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. In what courts proceedings may be taken

The application may be made to the Court in the Judicial Division where the defendant resides or in case of urgency, where the property proposed to be attached is situate and such Court may make such order as shall seem just. In case an order for the attachment of property is 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 inquire into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

JUDGMENTS AND ORDERS

1. Delivery of judgment in open court

The decision or judgment in any suit shall be delivered in open Court, but where the printed copy of such decision, or judgment is available for collection by the parties on the date of the delivery, the Court may deliver only a summary of the said decision or judgment and thereafter, hand over the copies of the judgment to the parties.

2. Notice when judgment reserved

If the Court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the Court at the hearing states the day on which judgment will be delivered, in which case there shall be no further notice.

3. When parties deemed to have had notice

All parties shall be deemed to have notice of the decision or judgment if pronounced at the hearing, and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

4. Minute of judgment: its effect

(1) A minute of every judgment, 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.

(2) A formal decree or order may be drawn up on the application of either party.

5. Where set-off allowed

(i) If the defendant shall have been allowed to set-off any demand or counter-claim against the claim of the claimant, the judgment shall state what amount is due to the claimant 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.

(2) The judgment 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 claimant.

6. Decree to be obeyed without demand

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. Court may direct time for payment or performance and interest

The Court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment

or order, or from some other point of time, as the Court thinks fit, and may order interest at a rate not exceeding 20% per annum to be paid upon any judgment, commencing from the date thereof or afterwards, as the case may be.

8. Payment by instalments

(1) When any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest.

(2) Such order may be made at the time of giving judgment, or at any time afterwards, and may be rescinded upon sufficient cause at any time.

9. Date of order: when drawn

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. What orders need not be drawn up

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

(a) For the issue of any writ other than a writ of attachment;

(b) For the amendment of any writ or 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.

(2) 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 rule.

11. Filing of orders

(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.

(3) In the case of procedure orders drawn up in Chambers, no entry thereof shall be necessary before an attachment can be issued for disobedience thereof.

ORDER 36

COMMITTAL FOR CONTEMPT OF COURT

The power of the Court to punish for contempt of Court may be exercised by an order of committal in accordance with the Sheriffs and Civil Process Law or Act as the case may be.

ORDER 37

TRANSFERS AND CONSOLIDATION

I. Transfers

1. Order transferring proceedings to High Court

Where a Judge in exercise of any powers conferred on him by any relevant law, orders the transfer of any action or matter from a lower court to the High Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the lower court and the latter shall immediately transmit to the High Court the documents referred to in the relevant Law and other necessary documents and processes.

2. Payment of filing fees

(1) On receipt by the court of the relevant documents and processes, the Registrar shall notify the party who applied for the transfer, or where the transfer was not made on the application of any party, the Claimant to attend at the Registry and pay the fees for filing the documents, if any and such payment shall be without prejudice to the question of how the costs shall ultimately be borne.

(2) Such notification shall be effected by serving a notice personally on the party concerned, or, at an address for service given by such party in his application or at the lower court.

3. Duties Registrar

(1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days:

(a) File the documents received from the Lower Court;

(b) Make an entry of the filing in the Cause Book; and

(c) Transmit the documents to the Chief Judge or to the Administrative Judge or any other Judge appointed by the Chief Judge.

(2) The Registrar shall then give notice to the parties to attend in person or by Counsel before a named Judge on the day and at the time specified in the notice. The fees for the service of this notice shall be come in the first instance by the party who has paid the fees for filing as provided by Rule 2 of this order.

4. Directions

(1) The Judge shall not later than 14 days after receiving the documents referred to in Rule 3 of this Order -

(a) Hear the parties or their Legal Practitioners;

(b) Take cognizance of the documents; and thereafter;

(c) Give directions for the trial or hearing of the action or matter.

(2) Directions given under this rule may include directions for the filing and service of pleadings.

5. Party failing to attend

(1) If the claimant fails to attend in compliance with a notice given under sub-rule (2) of rule 3 of this Order, the Judge shall record his default and may, suo motu or on an oral application, dismiss the action or matter. Upon an application by a defendant to dismiss the action or matter, the Judge may either dismiss the action or matter upon such terms as may be just or make such other order on such terms as he deems just.

(2) If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of rule 3, the claimant may have judgment entered for him with costs or obtain the order prayed for in the transferred proceedings by an application in open court.

6. Construction

In the preceding rule of this order, the references to the claimant and the defendant shall, in relation to proceedings commenced otherwise than by writ of summons, be construed as references to the applicant and the respondent.

7. Application for transfer to operate as stay

An application for the transfer or consolidation of a suit shall operate as a stay of proceedings in that suit.

II. Consolidation

8. Consolidation of actions

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

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

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

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

(4) Where an order for consolidation has been made, 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) Applications for consolidation may be made by motion on notice or by oral application in open court in the presence of both parties.

INTERLOCUTORY INJUNCTIONS AND INTERIM

PRESERVATION OF PROPERTY

1. Application for injunction

(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 claimant and the case is one of urgency, such application for the grant of an injunction may be made ex-parte on affidavit but, except as aforesaid, such application shall be made by motion on notice or summons.

(3) The claimant may not make such an application for the grant of an injunction 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 applied for may be granted on terms provided for the issue of the process and such other terms, if any as the Court thinks fit.

(4) An application for injunction made ex-parte shall be considered and determined not later than seven days from the date of filing while one made on notice shall be considered and determined not later than 30 days from the date of filing.

2. Detention, preservation, etc, of subject-matter of action

(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 sub-rule (1) to be carried out, the Court may by the order authorize 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. Power to order samples to be taken

(1) Where the Court considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, it may, on the application of a party and on such terms, if any, as it thinks just, by order authorize 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 sub-rule (1) to be carried out, the Court may by the order authorize any person to enter any land or building in the possession of any party

(3) Sub-rules (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. Sale of perishable property, etc

(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) Sub-rules (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. Order for an early trial

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 rules 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.

6. Order for recovery of specific property other land subject to lien, etc

Where an action or counter-claim is filed to recover specific property and the party from whom such recovery is sought does not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Judge may at the pre-trial conference order that the party claiming to recover property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed and such further sum, if any, for interests and costs as the Judge may direct and that upon such payment into Court being made, the property claimed to be given up to the party claiming it.

7. Directions

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. Allowance of income of property pendente lite

Where any real or personal property forms 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 provision 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.

INTERLOCUTORY APPLICATIONS

1- Motions Generally

1. Time to apply

Interlocutory applications may be made at any stage of an action.

2. Application by motion

(1) Whereby 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 which may be supported by affidavit and shall state under what Rule of Court or Law the application is brought. Every motion shall be served within 5 days of filing by counsel to counsel where parties are represented by Legal Practitioners.

(2) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file a counter affidavit if necessary.

3. Affidavit to support motion

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. Affidavit to be served with motion

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. Hearing of motion

A motion may be heard at any time while the Court is sitting. Before the hearing of a motion by the trial Judge, the party moving shall file a written address in support of the application within 5 days after the service on him of the counter affidavit together with further affidavit if necessary. The Respondent shall upon receipt of the written address, file and serve an address within seven days. At the hearing of the application both parties shall adopt their written addresses and may be allowed a maximum time of twenty minutes to make oral argument in amplification of their written addresses.

6. Adjournment

The hearing of any motion may from time to time be adjourned upon such terms as the Court may think fit.

2-Ex-parte motion

7. When notice of motion should be given

(1) Except where an application ex-parte is required or permitted under any law or rules, every motion shall be on notice to the other party.

(2) No application for an injunction shall be made ex parte unless the applicant files with it a motion on notice in respect of the application.

(3) An order of injunction made upon an application ex parte shall abate after 7 days.

(4) A Judge may upon application extend the effective period of an order made ex parte if he is satisfied that the motion on notice have been served and that such extension is necessary in the interest of justice or to prevent an irreparable or serious mischief. The application for such an extension shall be made before abatement of the order and the extension shall not be for a period exceeding 7 days from the day the extension is granted.

8. Affidavit in support of exparte motion

(1) A motion exparte shall be supported by affidavit, which shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

(2) 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 or it is impossible to serve the parties affected within seven days may hear an application ex parte and make an order accordingly upon such terms as to cost or otherwise and subject to such reasonable undertakings, as the justice of case demands.

9. Arguments on motion

Any party moving the Court exparte may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceedings, although present, other than the party moving, shall be entitled to be then heard.

10. Orders on exparte motions

Where a motion is made exparte, 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.

11. Court may vary or discharge order

(1) 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 time 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 with or without imposing terms as to costs or security, or otherwise, as seems just.

(2) The hearing and determination of either the motion to vary or discharge or the motion on notice must be within a maximum period of sixty days.

(3) Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of any affidavit including counter affidavit or a notice of a motion and the day fixed for hearing of the motion.

(4) Service by a Solicitor on another

Notice of motion may, without leave of the Court, be served by a Solicitor on the opposing Solicitor and such service shall be good service. Where the above procedure is used an affidavit of service sworn to by the person who effected the service exhibiting the endorsement of the service copy shall be sufficient proof of service.

3 - Orders to show Cause

12. Return-day to be specified

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 not be less than three days after service.

13. Counter-evidence

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. Further service in certain cases

On the return-day, if the person served does not appear and it appears to the Court that the service 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. Appearance or proof of service

If the person served appears, or the Court is satisfied that service has been duly effected, the Court may proceed with the matter.

16. General Powers as to orders

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. Service of notice

Unless the Court gives special leave to the contrary, there shall be at least two clear days between the sendee of a notice of motion and the day named in the notice for hearing the motion.

18. Serving of motion

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. Service on solicitor

Where a party acts by a solicitor, service of notice of motion on the solicitor shall be deemed good service on that party.

20. Copy of affidavit to be served with notice

Along with the notice of motion there shall be served a copy of any affidavit on which the party moving intends to rely at the hearing of the motion.

21. Order for service

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 the notice, the Court may either dismiss the motion, or adjourn the hearing thereof in order that the notice may be given, upon such terms as the Court may seem fit.

22. Service with writ of summons

The claimant 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

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. Evidence in addition to or in lieu of affidavits

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. Notice to parties and interested persons

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. Evidence: how taken

The evidence of a witness on any such examination shall be taken in like manner as nearly as may be as at the hearing of a suit.

27. Affidavit not filed with motion paper

Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may think fit, allow any additional affidavit to be used, after such affidavit has been duly filed and served on the opposite side.

28. Registrar to have powers of a Judge

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. Only legally qualified Registrar to hear application

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. Where no legally qualified Registrar, Judge to hear application

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. Persons dissatisfied with ruling of Registrar may apply to the court or a Judge in Chambers

(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 circumstances -

(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 paragraph (a) or (b) of sub-rule (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 40

APPLICATION FOR JUDICIAL REVIEW

1. Cases appropriate for application for Judicial Review

(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 (b) of sub-rule (1)) 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. Joinder of claims for relief

On an application for Judicial Review any relief mentioned in rule (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. Grant of leave to apply for Judicial Review

(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 by:

(a) a statement, setting out the name and description of the applicant, the relief sought and the grounds * on which it is sought; and

(b) an affidavit, to be filed with the application, verifying the facts relied on.

(3) The applicant shall file the application not later 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 judgment, 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 sub-rule (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;

(b) If any 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. Delay in applying for relief

(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 sub-rule (2) 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 judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub- rule (1) is three months after the date of the proceeding.

(3) Sub-rule (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. Mode of applying for Judicial Review

(1) Subject to sub-rule (2), when leave has been granted to make an application for Judicial Review, the application shall be made by originating motion, except in 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 8 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. Statement and affidavits

(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 sub-rule (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 of 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. Claim for damages

On an application for Judicial Review the Court may, subject to sub-rule (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. Application for discovery, interrogatories, cross-examination, etc.

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. Hearing of application for Judicial Review

(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 appear 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 sub-rule (2), the order shall, subject to sub-rule (4), 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 proceeding & to continue as if they had been begun by writ.

10. Saving for person acting in obedience to mandamus

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. Consolidation of applications

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 41

JURISDICTION OF CHIEF REGISTRAR

1. Chief Registrar

In this Order, any reference to the Chief Registrar means the Chief Registrar of the High Court and includes the Deputy Chief Registrar.

2. Business to be transacted by Chief Registrar

The Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters:

(a) Applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers;

(b) The taking of an account in any case where a Judge has ordered that the account be taken by the Chief Registrar;

(c) The taxation of bills of costs;

(d) Applications leading to the issue of the grant of probate of the wills or letters of administration of the estates of deceased persons in non-contentious or common form probate business.

3. Chief Registrar may refer matters to the Chief Judge

If any matter appears to the Chief Registrar proper for the decision of a Judge, he may refer same to the Chief Judge or the Judge who referred the matter to the Chief Registrar. The Chief Judge or the Judge may either dispose of the matter or refer the same back to the Chief Registrar with such directions as he may deem fit.

4. Appeal from order of Chief Registrar

Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal there from to a Judge. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

5. Chief Registrar's lists

Lists of matters to be heard by the Chief Registrar shall be made out and published by being posted on the Courts' notice boards.

6. Legal Practitioner may represent party

In any proceedings before the Chief Registrar under the jurisdiction vested in him by this Order, a Legal Practitioner may represent any party.

1 - Chief Registrar's Certificate

7. Certificate

Except as otherwise provided for in these Rules, the directions to be given for or concerning any proceedings before the Chief Registrar shall require no particular form, but the result of such proceedings shall be stated in a concise certificate

8. Reference to judgment, etc.

The certificate of the Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons but shall refer to the judgment or order, documents and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

9. Form of certificate

(1) In case of accounts and inquiries the certificate of the Chief Registrar shall be in Form 30 with such variations as the circumstances may require.

[Civil Form 30]

(2) Contents of certificate in cases of accounts and transcripts

The certificate shall slate the result of the account and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied and shall state what additions (if any) have been made by way of surcharge or otherwise and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account! so altered, such transcript may be required to be made by the party prosecuting the judgment or order and shall then be referred to by the certificate. The accounts and transcripts (if any) referred to by certificates shall be filed therewith.

10. When certificate becomes binding

Every certificate with the accounts (if any) to be filed therewith shall be transmitted by the Chief Registrar to the Registry for filing and shall thenceforth be binding on all parties to the proceedings unless discharged or varied upon an application made to a Judge before the expiration of 8 clear days after the filing of the certificate.

11. Bill of costs

When taxing a bill of costs the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered by him, the substance of the modification made by him and at the bottom of the bill of costs he shall certify the net result of the taxation. The bill of costs shall then be transmitted by the Chief Registrar to the Registry for filing and the provisions of rule 10 of this Order shall apply in respect of such certificate.

12. Discharge or variation of certificate after lapse of anytime

The Judge may, if the special circumstances of the case require, upon an application direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

ORDER 42

HABEAS CORPUS PROCEEDINGS

1. Habeas corpus ad subjiciendum

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.

2. Application for leave

(1) No application under rule 1 shall be made unless leave therefore 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 name 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 on.

(3) The affidavit verifying the facts relied on 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 to the like effect made by some other person, which shall also state 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 the day preceding the date of 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 or Judge may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.

(6) The Court or Judge may-

(a) Make' an order forthwith for the release of the person being detained, the provisions of sub-rule 1 notwithstanding;

(b) direct that an originating summons be issued in Form 2 of the Fundamental Rights (Enforcement Procedure) Rules, or that the application be made by notice of motion in Form 3 of the Fundamental Rights (Enforcement Procedure) Rules; or

(c) Adjourn the 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 notice of motion 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 or Judge may direct, and, unless the Court or Judge otherwise directs, there shall be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.

(8) Every party to an application under rule 1 shall supply to every other party copies of the affidavits, which he proposes to use at the hearing of the application.

3. Producing person detained in Court

(1) Without prejudice to rule 2 (6), the Court or Judge hearing the application may, in its or his discretion, order that the person detained be produced in Court.

(2) An order under paragraph (1) of this rule shall be a 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 responsible for his detention, for the production in Court of the person detained.

(3) Where an order is made for the production of a person detained, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the order is returnable.

4. Service of order

(1) Subject to sub-rules (2) and (3), an order for 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 officials, it shall be served by leaving it with any other person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.

(3) If the order is made against more than one person, the order shall be served in the manner provided by the rule on the person first named in the order and copies shall be served on each of the other persons in the same manner.

(4) There shall be served with order (in Form 4 in the Fundamental Rights (Enforcement Procedure) Rules) for the production of the person detained a notice (in Form 5 in the Fundamental Rights (Enforcement Procedure) Rules) stating the Court or Judge before whom, and the date on which, the person detained is to be brought.

5. Return to the order for release

(1) The return to an order for the release of a person detained shall be endorsed on or annexed to the other and shall state all the causes or justification of the detainer of the person detained.

(2) The return may be amended, or another return substituted therefore, by leave of the Court or Judge before whom the order is returnable.

6. Procedure at hearing

(1) When a return to the order has been made, the return shall first be read in open Court and an oral application then made for discharging or remanding the person detained or amending or quashing the return, and where that person is brought up in court in accordance with the order, his legal representative shall be heard first, then the legal representative for the State or for any other official or person detaining him.

(2) The legal representative for the person detained will then be heard in reply.

7. Order to be clear

An order for the release of a person detained shall be made in clear and simple terms having regard to all the circumstances.

8. Bringing up prisoner to give evidence, etc

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad 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 or Tribunal, shall be made on affidavit.

9. Form of writ

A writ of habeas corpus shall be in Forms 31,32, or 33 in the appendix, whichever is appropriate.

[Civil Forms 31,32,33.]

ORDER 43

INTERPLEADER

1. Entitlement to relief by way of interpleader

(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;

(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 issued, the person under liability as mentioned in paragraph (a) or, as the case may be, the Sheriff, may apply to the Court for relief by way of interpleader.

(2) Reference 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. Claim to goods, etc, taken in execution

(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) 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.

(3) 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. '

(4) Where-

(a) The Sheriff receives a notice from an execution creditor under sub-rule (2) disputing a claim, or the execution creditor fails, within the period mentioned in that sub-rule to give the required notice; and the claim under this rule is not withdrawn, to the Court under this Order.

(b) the Sheriff may apply

(5) A Sheriff who receives a notice from an execution creditor under sub-rule (2) admitting a claim made, under this provision shall withdraw from possession of the money, goods or chattel 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. Mode of application

(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 sub-rule (5) of rule 2, the summons shall be served on any person who made a claim under sub-rule (1) of rule 2 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. Matters to be proved

The applicant shall satisfy the Court or a Judge in Chambers by affidavit or otherwise that-

- (a) the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and
- (b) the applicant does not collude with any of the claimants; and
- (c) 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. When application to be made by defendant

Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

6. Stay of action

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. Order upon summons

If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers may order that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be claimant, and which the defendant.

8. Failure of claimant to appear; or neglect to obey summons

If a claimant, having been served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the 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. Costs etc.

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 44

COMPUTATION OF TIME

1. Computation of time

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 shall not include the day or the date of or the happening of the event, but commences 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 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 proceedings 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. No enlargement of time by consent of parties

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. Court may extend time

(1) The Judge may, as often as he deems fit and either before or after the expiration of the time appointed by these Rules or by any judgment or order of the Court, extend or adjourn the time for doing any act or taking any proceedings:

Provided that any party who defaults in performing an act within the time authorized by the Judge or under these Rules, shall pay to the Court an additional fee of N100.00 (One hundred Naira) and also cost in the sum of M 100.00 (One hundred Naira) to the opposing party or each of the opposing parties for each day of such default at the time of compliance.

(2) The Court may extend any such period as is referred to in sub-rule (1) although the application for extension is not made until after the expiration of that period.

4. Notice of intention to proceed after a year's delay

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. Time for applications to set aside award

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.

6. Time of service

No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6.00 a.m. or after 6.00 p.m. Service effected after 6.00 p.m. shall be deemed to have been effected the following day, provided that service effected after 6.00 p.m. on Saturday shall be deemed to have been effected on the following Monday.

ORDER 45

MISCELLANEOUS PROVISIONS

I. Sittings of the Court and Vacation

1. Days of sittings

Subject to the provisions of the High Court Law, the Court may at its discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.

2. Public or private sittings of Court

The sittings of the Court for the hearing and determination of the rights and obligations of the parties shall be public:

Provided that, 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 Court.

3. Office hours

The several offices of the Court shall be open at such times as the Chief Judge shall direct.

4. Days of sittings and long vacation

(1) Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matters shall be held on every weekday except:

(a) on any public holiday;

(b) during the week beginning with Easter Monday;

(c) during the period beginning on Christmas Eve and ending on 2nd January next following.

(2) There shall be an annual vacation 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. Vacation Courts

(1) Notwithstanding the provisions of rule 4, any action may be heard by a Judge in Court during any of the periods mentioned in paragraphs (b) or (c) of sub-rule (1) or rule 4 (except on a Sunday or public holiday) or sub-rule (2) where such action is urgent or a Judge, at the request of all the parties concerned, agrees to hear the action.

(2) An application for an urgent hearing shall be made by summons in chambers, and the decision of the Judge on such an application shall be final.

6. Vacation not reckoned in time for pleading

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.

7. Chambers

No business shall be transacted in chambers on Sundays and public holidays.

II. General

8. What orders to be made

Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary to do substantial justice.

9. Recovery of penalties and costs

All fines, forfeiture, pecuniary penalties, and costs ordered to be paid may be levied by distress, seizure, and sale of the movable property of the person making default in payment.

10. Notices

In all cases in which the 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

11. Filing

A document shall not be filed unless it has endorsed on it the name and number of the case, the date of filing and whether filed by claimant or defendant, and on being filed such endorsement shall be initialed by the Registrar.

12. How process addressed

All warrants and order of whatever description shall be sufficiently addressed for execution by being directed to the Sheriff; but this provision shall not prevent any order or warrant from being addressed to a person by name or to a person named or to officers of Court generally or to a Local Government authority.

13. No fees where proceedings by Government Department

No fees are to be taken in respect of any proceedings where such fees would be payable by any Government Department.

14. Regulations

The Regulations regarding fees shall govern the payment and disposal of fees and the duties of Court officers in regard thereto.

15. Saving

Where no provision is made by these Rules or by any other written Law, the Court shall adopt such procedure, as will in its view do substantial justice between the parties concerned.

ORDER 46

ARREST OF ABSCONDING DEFENDANT

1. Defendant leaving jurisdiction or removing property

If in any suit for an amount or value of one million 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 claimant may either at the institution of the suit or at any time thereafter until final judgment, make an application to the Court that security be taken for the

appearance of the defendant to answer and satisfy any judgment that may be passed against him in the suit.

2. Warrant of arrest

If the Court after making investigation as it may consider necessary, is of the opinion that there is probable 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 as in Form 34 to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his

3. Bail for appearance or satisfaction

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 judgment that may be passed against him in the suit, or to give bail for the satisfaction of such judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit, with costs.

4. Deposit in lieu of bail

(1) 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.

(2) The defendant shall be brought to court within 2 days of the execution of the warrant.

5. Defendant may be committed to custody

(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 judgment 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) In what Division proceedings may be taken

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 requestor 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 of Court, and the Court in which the suit is pending shall thereupon inquire into and proceed in the application in accordance with the foregoing provisions, in such manner as shall seem just.

6. Cost of subsistence of persons arrested

The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the claimant in the action in advance, and the amount so disbursed may be recovered by the claimant in the suit, unless the Court shall otherwise order. The Court may release the person so imprisoned on failure by the claimant to pay the subsistence money, or in case of serious illness order his removal to hospital.

ORDER 47

PROCEEDINGS IN FORMA PAUPERIS

1. Duration of provisions

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. Who may sue or defend in forma pauperis

The Court or a Judge in Chambers may admit a person to sue or defend 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 defending as the case may be.

3. Conditions to be fulfilled

(1) A person seeking relief under this Order shall write an application to the Chief Judge accompanied by an affidavit, signed and sworn to by the applicant himself, stating that by reason of poverty he is unable to afford the services of a Legal Practitioner.

(2) If in the opinion of the Chief Judge the application is worthy of consideration, the Chief Judge shall appoint a Legal Practitioner to act for the applicant.

(3) Where a Legal Practitioner is so appointed the applicant shall not discharge the Legal Practitioner except with the leave of the Chief Judge.

4. Fees and costs

Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as 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. Procedure to be followed

(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 there under.

(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 there under, 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.

6. Revocation of order: discontinuance, etc.

(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 of a Judge in Chambers.

7. Payment to Legal Practitioner

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.

8. Duty of Legal Practitioner

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.

9. Appeals

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 48

CHANGE OF LEGAL PRACTITIONER

1. Legal Practitioner to conduct cause or matter to final judgment

Every Legal Practitioner who shall be engaged in any cause or matter shall be bound to conduct same on behalf of the claimant or defendant as the case may be, by or for whom he shall have been so engaged until final judgment, unless allowed for any special reason to cease acting therein.

2. Application for change of Legal Practitioner or withdrawal

An application for a change of Legal Practitioner or withdrawal may be made by the claimant or defendant or the Legal Practitioner as the case may be, not less than 3 clear days before the date fixed for hearing.

3. Service of application by Legal Practitioner

Where the application is made by a Legal Practitioner, it shall be served on all parties to the cause or matter and where applicable also, on the outgoing Legal Practitioner if he is not the applicant.

ORDER 49

COSTS

1. Security for costs by defendant.

(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 claimant is ordinarily resident out of jurisdiction; or

(b) that the claimant (not being a claimant who is suing in a representative capacity) is a nominal claimant 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) subject to sub-rule (2), that the claimant's address is not stated in the writ or other originating process or is incorrectly stated therein; or

(d) that the claimant has changed his address during the course of 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 claimant 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 claimant to give security by reason only of paragraph (c) of sub-rule (1) 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 claimant and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of claimant or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.

2. Manner of giving security

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. Costs in discretion of Court

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. Powers of Court

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 (he suit, to pay the costs of any particular proceeding therein.

5. Costs out of funds or property

The Court may order any costs to be paid out of any fund or property to which a suit or proceedings relates.

6. Court to determine amount of costs

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. Principle to be observed in fixing costs

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 claim, defence, or counter-claim, but the Court may take into account all the circumstances of the case.

8. Stay of proceedings till costs paid

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. Cost against counsel

(1) Where a cause or matter is delayed due to the fault of a counsel, the Court shall award costs as it may deem fit and any costs so awarded shall be paid by the counsel.

(2) A Court may order payment to be made to a counsel, assigned out of any money recovered by the applicant, or may charge in favour of the counsel, assigned on any property recovered by the applicant, such sum as circumstances may require.

10. Taxation of costs

When the Court deems it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon by 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.

11. Discretion of taxing master

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.

12. Taxation

In taxation of costs between party and party, nothing shall be allowed in respect of fees paid to the Court beyond what was necessary having regard to the amount recovered on judgment.

13. Where more than one-sixth of amount of bill of costs deduced on taxation

If upon the taxation of any bill of costs more than one-sixth is deduced from the amount claimed, the Court may either make no 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.

14. Costs in action which could have been taken in inferior court

Where a claimant 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 claimant 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.

ORDER 50

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. Business to be disposed of in Chambers

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 for substituted service of a writ or other process;
- (b) Applications to have cases heard during vacations;
- (c) Applications for enlargement of time;
- (d) Applications for a writ of attachment or for a garnishee order;
- (e) 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 judgment or order declaring the right or where the title depends only upon proof of the identity of the birth, marriage or death of any person;
- (f) Applications as to the guardianship and maintenance or advancement of infants;
- (g) Any matter relating to the adoption of children;
- (h) Applications connected with the management of property;
- (i) Such other matters of an interlocutory nature as the Judge may think fit to dispose of in Chambers.

2. Procedure on application in Chambers

The provisions of Order 39 with regard to interlocutory applications by way of motion in Court shall apply mutatis mutandis to applications to a Judge in Chambers.

3. Effect of order in Chambers

Subject to the provisions of Section 42 of the 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 51

APPEAL FROM MAGISTRATE'S COURT, ETC.

1. Notice of appeal

Every appeal shall be brought by notice of appeal which shall 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. Contents, etc., of notice of appeal

(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 full.

(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 Form 35 in the Appendix and may be varied to suit the circumstances of the case but no variation of substance shall be made.

[Civil Form 35]

3. Copies of proceedings

(1) 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 of the appeal as there are parties on record.

Provided that where the Registrar fails to compile the record of appeal within the time stipulated above the appellant shall within 60 days thereafter compile the record, for certification by the Registrar.

(2) 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.

Appeal to Judge of High Court

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.

4. Appeal to judge of High Court

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. Respondent to be supplied with copy of proceedings

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. Proceedings time

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 time expires

Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out, or enlarge time for sufficient reason shown.

8. Constitution of Court hearing appeals

All civil appeals from lower courts shall be heard by one Judge of the Court.

9. Time and place for hearing

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; after either party must have filed and exchanged within 30 days each, their respective briefs of argument.

10. Where appellant fails to appear

(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 judgment 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. Where appellant appears

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 judgment according to the merits of the case without regarding and imperfection or defect of form:

Provided that 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 the appeal against the appellant.

12. Appeal limited to grounds given in notice

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: Provided that where, in the opinion of the court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given, or 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. Request to confirm judgment on other grounds.

(1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower court on grounds other than those stated by that 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 judgment 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. Counter appeal

(1) The respondent may file grounds for appeal against any part of the judgment 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 of appeal, and shall be served on the appellant or his Legal Practitioner before the hearing.

15. Objections to form of grounds of appeal

(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. Defects in proceedings under appeal

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:

Provided, however, that 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 have 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. Defects in notice of appeal or recognizance

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 thereby 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 the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may deem just.

18. Additional evidence

The Court may, in any case where it may consider it necessary that evidence should be adduced, either:

- (a) Order such evidence to be adduced, before the Court on some day to be fixed in that behalf; 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 afresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct it, 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. Mode of taking evidence

- (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 when the additional evidence is taken.
- (3) Evidence taken in pursuance of rule 18 shall be taken as if it were evidence taken at the trial before the lower court.
- (4) When forwarding to the Court any additional evidence taken by a lower court in pursuance of rule 18, 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. Fees

The fees in the Second Schedule shall be chargeable in civil appeals save 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.

[2nd Schedule]

21. Allowances to witnesses

Allowances may be made to witnesses in accordance with the provisions of the Third Schedule.

[3rd Schedule]

22. Stay of execution

- (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 not exceeding the amount of money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;

(b) That the appellant shall deposit a sum equal to the amount or the costs allowed against him or give security to the satisfaction of the Court for the said sum;

(c) That the appellant shall, where the decision or judgment appealed from relates to possession of land or houses, give! Security to the satisfaction of the court for the performance¹ of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or 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 thirty 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 lodgment of the notice of appear and shall in the first instance be made to the lower court:

Provided that where execution has been ordered by the Court the application shall not be made to the lower Court but to the Court.

(4) The application may be made ex-pane but the Court may direct notice thereof to be given to the other party to the appeal; and where an order is made ex-pane the Registrar of the Court shall notify the other party of the order made.

(5) 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).

(6) Any party dissatisfied with an order made by the lower court may apply to the Court by motion (original or interlocutory, as the may required) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment 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. Costs

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. Security for costs

(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 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 see 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 (30 days) 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 sub-rule (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

25. Orders of High Court to be certified to Magistrate's Court

(1) When a case is decided on appeal the Court shall certify its judgment or order to the lower court in which the decision appealed against was pronounced.

(2) The lower court to which the Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

26. Enforcing of Judgment

After the pronouncement of the judgment of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce; and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.

27. Enforcement of orders

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. High Court may enlarge time

The Court may, if it deems fit, enlarge any period of time prescribed by this Order.

29. Interpretation

In this Order-

"The lower court" means the court whose judgment is appealed against, and includes a Magistrate's Court but does not include an Arbitrator a Referee or an Auditor,

"Judgment" includes an order or a ruling.

ORDER 52

APPEALS TO THE HIGH COURT FROM

DECISIONS OF AUDITORS

1. Application

This Order shall apply to any appeal to the Court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

2. Method of appeal

An appeal to the Court from a decision of an auditor shall be by notice of motion

3. Evidence

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. Service

The notice of motion shall be served, before the expiration of six weeks after the date of the decision of which it relates, upon the auditor in charge of the audit in respect of which the decision has been made and also upon the local government or other body in relation to whose accounts or be the accounts of whose officer the decision was given, if that local government or other body is not the appellant.

5. Contents of notice, date of hearing

The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the hearing of the appeal shall not be less than twenty-eight days after the service of the notice.

6. Reasons for appeal to be filed

(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 or affidavits setting out the, reasons 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 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 costs of the application.

7. Copy of affidavits to be served on the parties

The appellant 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. Service on Auditor other than the Auditor who gave the decision

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 opposition thereto in all respects as if he were the auditor by whom the decision was given, and these provisions shall apply accordingly.

ORDER 53

STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

2. Court may grant or refuse order for stay

(1) An Order for stay may be made subject to such conditions as shall appear just, including the deposit in court of any money adjudged due to any party in the judgment appealed from.

(2) Where a Judge has struck out an application for stay, no further application for stay of execution shall be made in the same matter.

(3) Where parties in an application referred to in rule 1 above have exchanged written briefs and the Judge has set the application down for hearing, no request for adjournment by any of the parties shall be entertained. When the application is called and the parties have been duly served with the notice of hearing, but if any party or any Legal Practitioner appearing for him does not appear to present oral argument even though briefs have been filed by all the parties concerned in the application, the application will be treated as having been duly argued.

3. Compilation of record

An applicant the records of appeal for stay of execution of a judgment shall compile within 60 days from the date of filing a notice of appeal and where the records is not so compiled, the respondent may apply to strike out the application or discharge the order if already granted.

4. Formal order to be drawn up

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 54

PROBATE AND ADMINISTRATION

Grant of Probate or Administration in General

1. Petition to be made to Probate Registrar

(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 Asaba.

(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 purpose 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.

2. Preservation of property

The Court shall when the circumstances of the case appear so, require, forthwith on the death of a deceased person, or so soon after may appoint and authorize an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal, and so keep it until it can be dealt with according to law.

3. Unauthorized persons intermeddling with property

If any person other than the person named executor or administrator, or an officer of the Court or person authorized by the Court, takes possession of and administer or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to such fine not exceeding Fifty Thousand naira as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

4. Production of testamentary papers

(1) Any person having in his possession or under his control any paper or writing of any person deceased, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court.

(2) 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 fifty thousand 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.

5. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, 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.

6. Examination respecting papers

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 probate or administration is pending or not, order that he may be examined respecting the same in Court, or on interrogatories, and that he do attend for that purpose, and after examination that he do produce the paper and bring it into Court.

7. Notice to executor to come in and prove

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.

8. Liability of executor neglecting to apply for probate

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 fifty thousand naira, as the Court thinks fit to impose.

9. Identity

The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court necessary or desirable, in regard to the identity of the deceased or of the applicant or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant, or in regard to any other matter which may be considered by the Court relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court.

10. Court may refuse grant until all persons interested are given due notice

Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in regard to the application:

Provided that the Court may in its discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right

11. Value of property

Every applicant for in the Court a true declaration of all the personal property of the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;

(b) Any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

12. Answers required before grant

(1) 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.

(2) 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. Notice to prohibit grant

A notice to prohibit a grant of administration may be filed in the Court.

14. Effect of notice

(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.

(2) The notice shall not affect a grant made on the day on which the notice is filed.

(3) The person filing the notice shall be warned in writing delivered at the place mentioned in the notice as his address.

(4) Notices in the nature of citation shall be given in such manner as the Court directs.

15. Form of suits

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. Testator may deposit will

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

17. Custody of wills of which probate granted

(1) 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.

(2) 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. Will not given out without order of court

(1) No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is filed.

(2) 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. Examination of will as to its execution

(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. Proof of execution where attestation clause is defective

(1) 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.

(2) 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. Where will not executed according to law

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. Evidence on failure of attesting witnesses

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 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.

23. Will of blind or illiterate testator

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. Interlineations, erasures, obliterations

(1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alternations, or erasures, or obliterations appearing in accounted for. It and requiring to be

(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 invalid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where obliterations appear interlineations, alterations, erasures, or 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. Documents referred to in a will: or annexed or attached

(1) Where a will contains a reference to any document of such a nature as to raise the questions 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 it is not produced, a satisfactory account of its non-production shall be proved.

(2) A document cannot form part of a will unless it was in existence at the time when the will was executed.

(3) If there are vestiges of sealing wax or wafers, or other marks on the will, leading to the inference that some documents have been at sometime annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

26. Executor dying without proving or not appearing

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 execute or ship 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. Marking of will or copy sworn to

(1) Every will or copy of a will to which 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) Codicils

The provisions respecting wills apply equally to codicils.

28. Viva voce examination of persons making affidavits

(1) 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.

(2) The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

Administration (not with will)

29. Form of administration with will annexed

(1) The Court 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. Administration bond

(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. Assignment of bond

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. Administration summons

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. Order for administration

(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. Orders relating to property

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 safe keeping and disposal of the property or any part thereof.

35. Administration may be granted to officer

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. Officer to act under direction of court

(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. Court may appoint persons to be administrator

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 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. Remuneration of administrator

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 fifty thousand 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 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 extraordinary 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 Citizen

39. Securing and collection of estate

(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 by consular officer or person authorized by him to administer estate

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, and vary and so often as is expedient. such order when

Administration Generally

41. Accounts to be filed

(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 thousand 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 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 shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The 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 open free of charge to the inspection of all person 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. Duties and powers to be performed and exercised by Probate Registrar

The duties imposed and powers conferred upon the Court by rules 5,6,7,9, 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 on the premises as the Court may seem just.

43. Court may refuse application

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. Grant to be signed by Probate Registrar

The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court

ORDER 55

PROBATE (NON-CONTENTIOUS) PROCEDURE

1. Production of testamentary papers

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 fifty thousand 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. Court may order production

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. Examination respecting papers

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 do attend for that purpose, and after examination that he do produce the paper and bring it into Court.

4. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any 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 one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.

5. Liability of executor to come in and prove

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 fifty thousand naira, as the Court thinks fit to impose.

6. Petition to be made to Probate Registrar

(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 Asaba.

(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. Application for grants through Legal Practitioners

- (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. Personal applications

- (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 approve.
- (6) A personal applicant shall supply all information enable the papers leading to the grant to be prepared in may himself prepare such papers and lodge them
- (7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorized officer.

9. Duty of Registrar on receiving application for grant

- (1) The Registrar shall not allow any grant to issue until all inquiries which he may see 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. Oath in support of grant

- (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. Grant in additional name

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. Marking of wills

Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicants 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. Engrossment for purposes of record

(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 sub-rule (2) of this rule applies, it shall be made book wise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red those portions which appear in pencil in the original.

14. Evidence as to due execution of will

(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 handwriting of the deceased, or of any other matter which may raise 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. Execution of will of blind or illiterate testator

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. Evidence as to terms, conditions and date of execution of will

(1) Where there appears in a will any obliteration, interlineations, 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 sub-rule 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. Attempted revocation of will

Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

18. Affidavit as to due execution, terms, etc. of will

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. Wills of persons on military service and seamen

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. Evidence of foreign law

Where evidence as to 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. Order of priority for grant where deceased left a will

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 person;
- (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 legacy or devise 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 sub-rule (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. Grants to attesting witnesses, etc.

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. Value of property

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 the personal property of the deceased and the value thereof

Provided that for the purpose of the fees-payable on probate on the value of the property in respect 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 a Statutory Corporation;

(b) Any sum of money payable to an estate from a provident fund established under the provisions of any written law.

24. Answers required before grant

In no case shall the Court issue probate or letters of administration with the will attached until all inquiries, which the Court deems 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. Notice to prohibit grant

A notice to prohibit a grant of probate or administration with the will attached may be filed in the Court.

26. Effect of notice

(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 affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned in writing delivered at the place mentioned in the notice as his address.

(2) Citations

Notices in the nature of citations shall be given in such manner as the Court directs.

27. Form of suits

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. Testator may deposit will

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

29. Custody of wills of which probate granted

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. Will not given out without order of Court

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.

31. Probate or Administration with will annexed

(1) On receiving an application for probate or for administration with will annexed, the Court shall inspect the will, and see whether it person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactment 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. Proof of execution where attestation clause is defective

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. Where will not executed according to Law

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. Evidence on failure of attesting witnesses

If both 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 from 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. Will of blind or illiterate testator

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 or that he had at over to the deceased before its execution, that time knowledge of its contents.

36. Interlineations, erasures, obliterations

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. 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. Where interlineations,

alterations, erasures or obliterations appears in the will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit proof of their having existed in the will before its execution shall be filed. 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. Where any words have been erased which might have been of importance, an affidavit shall be required.

37. Documents referred to in a will

(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 not produced 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. Executor dying without proving or not appearing

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 executorships wholly ceases, and, without further renunciation the representation to the testator and the administration of his property may go on and be committed as if that person had not been appointed executor.

39. Marking of will or copy sworn to

(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) Codicils

The provisions respecting wills apply equally to codicils.

40. Viva voce examination of persons making affidavits

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. Right of assignee to a grant

(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 first 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. Joinder of administrator

In the absence of a proving executor:

(a) 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;

(b) an application to join with a person entitled to a grant of administration with the will attached by a person having the 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:

(i) on the renunciation of all other persons entitled to join in grant, any kind 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. Additional personal representatives

(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. Grants where two or more persons entitled in same degree

(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 fully 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. Exceptions to rules as to priority

(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 sub-rule shall not apply where the deceased died domiciled outside the state, except in a case to which the proviso to rule 47 applies.

46. Grants to person having spes successions

When the beneficial interest in the whole estate of the deceased is vested absolutely of administration in a person who has renounced his right to a grant with the will attached and has consented to such administration being granted to the person or persons who would be entitled to his estate may be granted to such persons if he himself had died intestate, administration such person or one or more (not exceeding four) of person in entitled to the Provided that a surviving spouse shall not be regarded as a whom the estate has vested absolutely unless he would be whole of the estate, whatever its value may be.

47. Where the deceased died domiciled outside the State

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

(1) To the person entrusted with the administrator. of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(2) To the law of the place where person entitled to administer the estate by the deceased died domiciled;

(3) If there is no such person as is mentioned in sub-rule (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 sub-rule (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. Grants to attorneys

(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. Grants on behalf of infants

(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 age of eighteen years shall, subject to sub-rules (3) and (5) of this rule, be granted-

(a) to both parents of the infant 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 paragraph (b) of the last foregoing sub-rule 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 person as is mentioned in sub-rule (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the 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 sub-rule (3) of this rule authorized to renounce by the Registrar.

50. Grants where infant co-executor

(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 therefor.

(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. Grants in case of mental or physical incapacity

(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 authorized by the Court to apply for the grant; or

(b) Where there is no person so authorized, or in the case of physical incapacity-

(i) If the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate,

(ii) 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

52. Renunciation of probate and administration.

(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to grant of administration in some other capacity unless he expressly renounces such right

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

53. Notice to State of intended application for grant

In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General, and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

54. Guarantee

(1) The Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it-

(a) by virtue of sub-rule (5) of rule 21 to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(b) under rule 46 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(c) Under rule 48 to the attorney of a person entitled to a grant;

(d) Under rule 49 for the use and benefit of a minor,

(e) Under rule 51 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(i) To an applicant who appears to the Registrar to be resident elsewhere than in the State; or

(g) Except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator General or a trust corporation.

(3) Every guarantee entered into by a surety for the JS of this Order shall be in Form

[Civil Form 36]

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorized officer, commissioner for oaths or other person authorized by law to administer an oath

(5) Unless the Registrar otherwise directs-

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed fifty thousand naira or a corporation is a proposed surety, and in those cases one will suffice;

(b) No person shall be accepted as a surety unless he is resident in the State;

(c) No officer of the judiciary shall become a surety;

(d) The limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the grant;

(e) Every surety, other than a corporation, shall justify his status by an affidavit of means.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

55. Resealing

(1) An application for the resealing of probate or administration with the will attached granted by the Court of a place not within the State shall be made by the person to whom the grant was made or by any person authorized in writing to apply on his behalf.

(2) On any such applications'

(a) An Inland Revenue affidavit shall be lodged as if the application were one for a grant in the State;

(b) The application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On an application for the resealing of such a grant:

(a) the Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraphs (a) to (d) of sub-rule (1) of rule 54 or except where he considers that there are special circumstances making it desirable to require sureties;

(b) Sub-rule (4) of rule 8 and sub-rules (2), (4), (5) and (6) of rule 54 shall apply with any necessary modifications; and in Form

(c) A guarantee entered into by a surety shall be 37.

[Civil Form 37]

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub-rule (1) or (2) of rule 47 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed

56. Amendment and revocation of grant

If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

57. Caveats

(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(2) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 38 in the appropriate book at the Registry and obtaining an acknowledgment of entry from the proper officer, or by sending through the post at his own risk a notice in Form 38 to the Registry in which he wishes the caveat to be entered.

(3) Where the caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form 38.

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect without prejudice to the entry of a further caveat.

(5) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant in the Registry he shall cause the index to be searched and shall notify the applicant in the event of a caveat having been entered against the sealing of a grant for which application has been made.

(6) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveator may be warned by the issue from the Registry of a warning in Form 39 at the instance of any person interested (in this rule called "the person warning") which shall state his interest and, if he claims under a will the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall thereupon cease to have effect and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(9) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule (11) of this rule, enter an appearance in the Registry by filing Form 40 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of Form 40 sealed with the seal of the Registry.

(10) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule (11) of this rule issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(12) Upon the commencement of a probate action the Probate Registrar shall, in respect of each caveat then in force (other than a caveat entered by the claimant), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(13) Unless the Registrar otherwise directs-

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action or by a caveator who was given notice under sub-rule (12) of this rule, shall cease to have effect.

(14) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under sub-rule (11) or (13) of this rule.

58. Citations

(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation, and such other information as the Registrar may require shall be verified by an affidavit sworn by the person issuing the citation (in this Order called "the citor") or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's legal practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under sub-rule (5) of rule 59 or sub-rule (2) of rule 60, enter an appearance in the Registry by filing Form 40 and making an entry in the appropriate book, and shall forthwith there alter serve on the citor a copy of Form 40 sealed with the seal of the Registry.

[Civil Form 40] .

59. Citation to accept or refuse to take a grant

(1) A Citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a Tarn to an executor ""as been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex pane to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may-

(a) in the case of a citation under sub-rule (1) of this rule apply to the Registrar for an order for a grant to himself,

(b) in the case of a citation under sub-rule (2) of this rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under sub-rule (3) of this rule, apply to the Registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing sub-rule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may-

(a) in the case of a citation under sub-rule (1) of this rule, apply by summons to the Registrar for an order for a grant to himself.

(b) in the case of a citation under sub-rule (2) of this rule, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of this rule.

(c) in the case of a citation under sub-rule (3) of this rule, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons and the summons shall be served on the person cited in each case.

60. Citation to propound a will

(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may-

(a) in the case where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the will were invalid;

(b) in the case of a citation under sub-rule (2) of rule 59, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule (5) of rule 59;

(c) in the case of a citation under sub-rule (3) of rule 59, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the persons cited in each case.

61. Address for service

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

62. Application for order to bring in a will or to attend for examination

(1) An application for an order requiring a person to bring in a will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with the subpoena denies that the will is in his possession or control he may file an affidavit to that effect.

63. Limited grants

An application for an order for a grant limited to part of an estate may be made to the Registrar and shall be supported by an affidavit stating -

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off

64. Grants of administration ad colligenda bona

An application for an order for grant of administration ad colligenda bona may be made to the Registrar, and shall be supported by an affidavit setting out the grounds of the application.

65. Application for leave to swear to death

An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

66. Grants in respect of codicils and copies of wills

(1) An application for an order admitting to proof a codicil, or a will contained in a copy, a completed draft, reconstruction or other evidence of its contents where the original will is not available, may be made to the Registrar:

Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to-

(a) the due execution of the will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the will;

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

67. Grants durante absentia

An application for an order for a grant of special administration where a personal representative is residing outside the State shall be made to the Court on motion.

68. Notice of election by surviving spouse to redeem life interest

(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 41 in the Registry.

[Civil Form 41]

(2) A notice filed under this rule shall be noted on the grant and the record and shall be open to inspection.

69. Issue of copies of original wills and other documents

(1) Where copies are required of original wills or other documents deposited under the provisions of any written law, such copies may be photostat copies sealed with the seal of the Registry and issued as office copies and, where such office copies are available copies certified under the hand of a registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photostat copies, of original wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

70. Taxation of costs

(1) Every bill of costs (other than a bill delivered by a legal practitioner to his client which falls to be taxed under the Legal Practitioners' Act) shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

(2) The party applying for taxation shall file the bill and give notice to all other parties entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

71. Power to require application to be made by summons or motion

The Registrar may require any application to be made by motion or by summons.

72. Exercise of powers of a Judge

All powers exercisable under this Order by a Judge in Chambers may be exercised by the Registrar.

73. Appeals from Registrars

(1) Any person aggrieved by a decision or requirement of the Registrar may appeal by summons to a Judge.

(2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant appeared or was represented before the Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person concerned.

74. Service of notice of motion and summons

(1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Whereby the provisions of this Order or by any direction given under the last foregoing sub-rule a notice of motion or summons is required to be served on any person, it shall be served not less than five days before the hearing of the motion or summons.

75. Notices, etc.

Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by prepaid registered post to, that person's address for service or, if he has no address for service, his last known address.

76. Affidavits

Every affidavit used in non-contentious probate business shall satisfy the requirements of the Evidence Act on affidavits.

77. Time

The provisions of Order 44 shall apply to the computation, enlargement and abridgement of time under this Order.

78. Application to pending proceedings

Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

79. Contentious probate: form of suit

Suits respecting probate shall be instituted and earned on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of ordinary civil claims.

80. Interpretation

(1) The Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires-

"authorized officer" means any officer of a registry who is for the time being authorized by law to administer any oath or to take any affidavit required 1 "or any purpose connected with his duties;

"gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty:

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other, than a trust corporation who seeks to obtain a grant without employing a legal practitioner and "personal application" has a corresponding meaning:

"Registrar**" means the Probate Registrar, being the Chief Registrar of the High Court of the State:

"Registry or "Probate Registry" means the Probate Registry at Asaba;

"Will includes a codicil and any testamentary document or copy or reconstruction thereof.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be constructed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

Proceedings Generally

81. Probate actions

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

82. Service of Writ of Summons

In probate actions service of a writ of summons may by leave of a Judge be allowed out of Nigeria.

83. Pleadings and further actions

In probate actions the party shall state with regard to every defence which is pleaded, what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial and, except by leave of a Judge no evidence, shall be given of any other instances at the trial.

84. Where claimant disputes defendant's interest

In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

85. Notice of opposition to Will

In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to

cross-examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

86. Inquiry as to outstanding personal estate

Every Judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

87. Discretion to order costs

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders be entitled to the costs of such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be, and the Judge may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

88. Originating summons relating to deceased person

The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next-of-kin, heir-at-law of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters-

- (a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of-kin, or heir-at-law or cestui que trust',
- (b) the ascertainment of any class of creditors, beneficiary, next-of-kin, or others;
- (c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching, when necessary, of such accounts;
- (d) The payment into Court of any money in the hands of the executors or administrators or trustees;
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) The approval of any sale, purchase, compromise, or other transaction;
- (g) The determination of any question arising in the administration of the estate or trust.

89. Order for administration of estate of deceased and of trust

Any of the persons named in rule 90 of this Order may in like manner apply for and obtain an order for:

(a) the administration of the personal or real estate of the deceased;

(b) the administration of the trust:

(c) any act to be done or step to be taken which the judge could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

90. Persons to be served

The persons to be served with the summons under rules 88 and 89 of this Order in the first instance, shall-

(a) where the summons is taken out by an executor or administrator or trustee-

(i) for the determination of any question under paragraph (a), (c), (f) or (g) of rule 88 of this Order the person or one of the persons whose lights or interests are sought to be affected:

(ii) for the determination of any question, under paragraph (b) of rule 88 of this Order any member or alleged member of the class;

(iii) for the determination of any question under paragraph (c) of rule 88 of this Order, any person interested in taking such accounts;

(iv) for the determination of any question under paragraph (d) of rule 88 of this Order, any person interested in taking such money;

(v) for relief under paragraph (b) of rule 89 this Order, the residuary legatees, or next-of-kin or some of them or the residuary devisees or heirs or some of them, as the case may be;

(vi) for relief under paragraph (b) of Rule 89 of this Order, the cestui que trust or some of them;

(vii) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;

(b) where the summons is taken out by any person other than the executors, administrators or trustees the executors, administrators or trustees, or some of them must be served.

91. Judge not bound to order administration

It shall not be obligatory on the judge to pronounce or make judgment or order, whether on summons or otherwise for the administration of any trust or of the estate of any deceased person if the questions between the parties can be properly determined without such judgment or order.

92. Order which may be made on application for

administration or execution of trusts, where no account or insufficient accounts have been rendered Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers already existing-

(a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall render to the applicant proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings.

(b) when necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

93. Interference with discretion of trustee

The issue of a summons under rule 88 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator or trustees except so far as such interference or control may necessarily be involved in the particular relief sought.

94. Application by summons

Any of the following applications may be made by summons-

(a) Appointment of new trustees and vesting order

An application for the appointment of a new trustee with or without a vesting or other consequential order;

(b) An application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by a Judge;

(c) Vesting order on sale, etc.

An application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock or the suing for or recovering any chose in action;

(d) Payment out of Court

An application relating to a fund paid into Court in any case coming within the provisions of this Order.

ORDER 56

FEES AND ALLOWANCES

1. Fees

(1) Subject to the provision of any written law and of the foregoing Orders-

(a) The fees set out in the Second, Third and Fourth

Schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules;

[2nd, 3rd and 4th Schedules]

(b) Allowances

The allowances set out in Part II of the Second Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.

[Part II of 2nd Schedule]

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

2. Regulations

The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, and or collection of fees payable, under the provisions of the foregoing Orders.

[4th Schedule]

APPENDIX

LIST OF FORMS

Form No. Title

1. General Form of Writ of Summons, etc
 - 1 A. Civil Summons to witness requiring subpoena
2. Writ for service out of Nigeria
3. General Form of Originating Summons
4. Originating Summons not inter parties
5. Originating Summons
6. Form of ex parte Originating Summons
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 (Civil Aviation Act)
11. Memorandum of Appearance
12. Affidavit for Entry of Appearance as Guardian
13. Third Party Notice Claiming Indemnity or Contribution or other Relief or Remedy
14. Third Party Notice when questions or issues to be determined

15. Notice of Counter-claim
16. Concession to Defence
17. Notice of Payment into Court
18. Hearing Notice for Pre-trial Conference
19. Pre-trial information Sheet
20. Interrogatories
21. Answer to interrogatories
22. Affidavit as to Document
23. Legal Practitioner's undertaking as to expenses
24. Letter of Request to take evidence abroad (Convention Country)
25. Order for appointment of the Nigerian Diplomatic Agent as Special Examiner (in Convention Country)
26. Forms of praecipe
27. Subpoena ad testificandum
28. Habeas Corpus ad testificandum
29. Subpoena duces tecum
30. Certificate of the Chief Register
31. Writ of Habeas Corpus ad subjucendum
32. Notice to be served with Writ of Habeas Corpus ad subjucendum
33. Writ of Habeas Corpus ad testificandum
34. Warrant to arrest absconding Defendant (for use in High Court)
35. Notice of Appeal (Civil)
36. Sureties Guarantee
37. Sureties Guarantee on application for Resealing
38. Caveat
39. Warning of Caveator
40. Appearance to Warning or Citation
41. Notice of Election to Redeem Life Interest.