THE HIGH COURT (CIVIL PROCEDURE) RULES, 2009

ABIA STATE HIGH COURT (CIVIL PROCEDURE) RULES 2009

Arrangement of Orders

ORDER 9

9) Service of Process

ORDER 10

10) Computation of Time

ORDER 11

11) Discontinuance

ORDER 12

12) Payment into and out of Court

ORDER 13

13)Transfers and Consolidation

ORDER 14

14) Pre-Trial sessions and scheduling

ORDER 15

15) Proceedings Relating to Evidence

ORDER 16

16) Proceedings at Trial

ORDER 17

17) Judgment and Orders

ORDER 18

18) Committal for contempt of Court

ORDER 19

19) Appeals from Magistrates Court

ORDER 20

20) Appeals to the Court from Decisions of Auditors

ORDER 21

21) Arrest of Absconding Defendant

ORDER 22

22) Miscellaneous Provisions

ORDER 23

23) Sittings of the Court and Vacation

ORDER 24

24) Probate and Administration

ORDER 25

25) Probate (Non-Contentious) Procedure

ORDER 26

26) Proceedings in Forma Pauperis

ORDER 27

27) Security for Costs

ORDER 28

28) Fees and Allowances

ORDER 29

29) Pleadings Generally

ORDER 30

30) Statement of Claim

ORDER 31

31) Defence and counter-claim

ORDER 32

32) Reply

ORDER 33

33) Pleadings Subsequent to Reply

ORDER 34

34) Admissions

ORDER 35

35) Default of Pleadings

ORDER 36

36) Amendment

ORDER 37

37) Interrogatories, Discovery, Inspection and Notice to Produce

ORDER 38

38) Issues, Inquiries, Accounts, Reference to Referees

ORDER 39

39) Special Case

ORDER 40

40) Non  Suit

ORDER 41

41) Filing of final written Addresses

ORDER 42

42) Alternative Dispute Resolution (A.D.R.)

ORDER 1

APPLICATION AND INTERPRETATION

1. These Rules may be cited as the Abia State High Court (Civil Procedure) Rules 2009 and shall come into force on the 1st day of July 2009.

2. The Abia State High Court (Civil Procedure) Rules 2001 are hereby repealed.

3. (1) These Rules shall apply to all civil proceedings in this court including all Part Heard Causes and Matters.

(2) In respect of causes and matters already pending, the Rules shall apply to every further step to be taken in respect of such causes and matters.

(3) Application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of Justice.

(4) The Forms set out in appendix I in the Schedule to these Rules or Forms as near thereto as circumstances permit shall be used in all cases in which such Forms are applicable.

4. In the construction of these Rules, unless there is anything in the subject matter or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings, as the case may be:

Alternative Dispute Resolution (ADR) includes Arbitration, Mediation and Conciliation.

Claim includes the process for instituting actions in this court as provided in Form 1 with necessary modifications;

Claimant shall include a claimant in a counter-claim;

Court means the High Court of Abia State;

Court Process or Process includes a claim;

Defendant shall include a defendant in a counterclaim;

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

Law means the High Court Law cap. 48 Volume 1 1991 - 2000, Laws of Abia State of Nigeria;

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;

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

Pleadings subsequent to reply include rejoinder, surrejoinder, rebutter and surrebutter.

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, Senior Registrar, Higher Registrar or any other officer acting or performing the functions of a Registrar;

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

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

ORDER 2

FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of these Rules or any applicable written law requiring any proceedings to be begun otherwise than by claim, a claim as in Form 1 shall be the Form of commencing all civil proceedings to wit:

a) Where a claimant claims:

i. any relief or remedy for any civil wrong or

ii. damages for breach of duty, whether contractual, statutory or otherwise or

iii. damages for personal injuries to wrongful death or injury to any person, or property.

b) Where the claim is based on or includes any allegation of fraud or

c) Where an interested person claims a declaration, or

d) Where a claimant seeks the construction of a will, deed, enactment or other written instrument, or

e) Where the claim is for an order of mandamus, prohibition, certiorari, or an injunction restraining a person from acting in any office in which he is not entitled to act or any other form of judicial review.

2. Every claim as in Form 1 shall be signed by the claimant or his legal practitioner.

3. Upon filing the claim, the Registrar shall endorse same to Defendant as in Form 1

4. (1) All civil proceedings commenced by claim shall be accompanied by :-

a) Statement of claim:

b) List of witnesses to be called at the trial;

c) Written statements on oath of the witnesses;

provided that statement on oath of witnesses requiring subpoena from the court need not be filed at the commencement of the suit but shall be filed within the time to be ordered by the court.

d) Copies of every document to be relied upon at the trial.

(2) In the case of any claim under Rule 1(d) or Rule 1(e) of this Order, the claim shall be accompanied only by:

i. Affidavit in support of the claim including annexure;

ii. The reliefs sought and the grounds on which they are sought;

iii. Written submission of the claimant.

5. (1) Where the claim is for an order of certiorari to remove for the purpose of it being quashed, any judgment, order, conviction or other proceedings, the claim shall in addition to the requirements of Rule 4 (2) of this order be accompanied with a certified true copy of the judgment, order, conviction or other proceedings sought to be quashed or where not so accompanied, the claimant shall account for his failure to do so to the satisfaction of the court hearing the suit.

(2) The relevant period for bringing any claim under Rule 1.(e) of this order for the purpose of quashing any judgment, order, conviction or other proceedings, shall be 30 (thirty) days reckoning from the date the judgment, order, conviction or other proceedings sought to be quashed was made.

6. Where a claimant fails to comply with Rule 4 (1) or 4 (2) of this order as the case may be, his claim shall not be accepted for filing by the Registry.

7. (1) Upon the service of the claim and other necessary documents on the Defendant as required by Rule 4 (2) of this order, the defendant shall within 14 (fourteen) days file in court:

a) his counter affidavit (if any)

b) his written submission in response to the claim

(2). Where the defendant fails to comply with Rule 7 (1) of this Order, the claimant shall within 7 (Seven) days of such non-compliance by the defendant, apply for the claim to be set down for hearing.

(3) Upon the service of the Defendants written submission on the claimant, the claimant shall within 7 (Seven) days file his written reply on points of law where necessary.

(4) The claimant shall within 7 (Seven) days after the expiration of the time to file his reply on points of law, apply for the suit to be set down for hearing.

(5) Where the claimant fails to comply with sub-rule (4) above, the defendant shall within 7 (Seven) days apply for the suit to be set down for hearing.

(6) Where the suit is set down for hearing, parties shall adopt their written submissions and may amplify orally.

(7) Where none of the parties applies for the suit to be set down for hearing, the Registrar shall within 10 (ten) days after the expiration of the period for parties to apply for the suit to be set down for hearing, bring the suit to the attention of the court to have same dismissed as abandoned.

(8) The claimant may at any time before or after the suit is set down for hearing, apply to the court by Motion on Notice for an order to stay further proceedings in the matter to which the claim for judicial review relates until the determination of the suit by the court.

8. (1) The defendant shall within 21 (twenty-one) days of the service on him of the Claim and other documents as required under rule 4 (1) of this Order file:

a) his statement of Defence/counter claim.

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

c) written statements on oath of the witnesses:

Provided that the statements on oath of witnesses requiring subpoena from the court need not be filed along with the statement of defence/counterclaim but shall be filed within the time to be ordered by the court.

d) copies of every document to be relied upon at the trial.

Provided that in a land case the defendant shall comply with paragraphs (a),(b),(c) and (d) above within 42 (forty- two) days.

(2) The Claimant shall within 14 (fourteen) days of the service of the statement of defence and other documents on him, file his reply and defence to counter claim if necessary.

(3) Pleadings subsequent to reply shall be filed only in accordance with the provisions of Order 33 of these Rules.

ORDER 3

EFFECT OF NON-COMPLIANCE

1.(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 therein.

(2) The Court may on the ground that there has been such a failure as mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings, or any document, judgment or order therein, or it may exercise its powers under these rules to allow such amendments (if any) dealing with the proceedings generally as it thinks fit.

2.(1) An application to set aside for irregularity any proceedings and step taken in any proceedings, or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

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

ORDER 4

CAUSES OF ACTION

1.(1) Subject to rule 3, a claimant may in one action claim reliefs 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 others.

2. (1) 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 claim were a claimant and the person against whom it is made were 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. (1) If claims in respect of two or more causes 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 any of the parties or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counter claim is made that the subject matter of the counter claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient.

ORDER 5

INTERLOCUTORY APPLICATIONS

1. (1) All interlocutory applications shall come up at the pre-trial sessions

(2) Any interlocutory application filed after the pre-trial sessions shall be with the leave of court except where the application is on jurisdiction or is extremely urgent.

2.(1) Where by these Rules any interlocutory application is authorized to be made, such application whether on notice or ex-parte may be supported by an affidavit on which the party moving intends to rely.

(2) Such affidavit in support of the application shall be accompanied with a recent passport photograph of the deponent.

3. Every interlocutory application shall be accompanied by a written address and if on notice shall be served on all necessary parties to the suit.

4. Where the Respondent intends to oppose the application, he shall, within ten (10) days of the service on him of such application, file his written address and may accompany same with his counter affidavit.

5. Where the applicant intends to reply on points of Law, he shall within seven (7) days of being served with the respondents written address file his reply on such points of Law. Where a counter affidavit is served on the applicant he may file a further affidavit with his said reply.

6. On hearing the application parties or counsel on their behalf shall adopt their written addresses and may amplify orally.

7. The application may without leave of the Court, be served by any person, notwithstanding that such a person is not an officer of the court provided that there is affidavit of service.

8. Where a party acts by a solicitor, service of the application and or other processes relevant to it on such a solicitor, shall be deemed good service on such party.

ORDER 6

PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. All suits relating to land, or any mortgage or charge thereon, or any other interest therein, or for any injuries thereto, and also all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situate, or the distress or seizure took place.

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

3. All suits for specific performance, 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. (1) All other suits shall be commenced an determined in the Judicial Division in which the defendant resides or carries on business or in which the cause of action arose.

(2) 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 the suit.

5. In case any suit shall be commenced in any other Judicial Division than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall have been so commenced, unless the court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction during session.

ORDER 7

PARTIES

A. GENERAL

1. 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 transactions) is alleged to exist whether jointly, severally, or in the alternative,- where, if such persons brought separate actions, any common question of law or fact would arise, and judgment may be given for such one or more of the claimants, as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment:

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

2. Where an action has been commenced in the name of the wrong person as claimant, or where it is doubtful whether it has been commenced in the name of the right claimant, the Judge at the pre-trial sessions may, if satisfied that it has been so commenced through a bonafide 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 for or added as claimant upon such terms as may be just.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative; and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

4. Where in an action any person has been improperly or unnecessarily joined as a co-claimant, the 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 (1) If it shall appear to the Judge, at the pre-trial sessions, that all persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may likely to be affected by

the result, have not been made parties, the Judge may direct that such persons shall be made either claimants or defendants in the suit, as the case may be.

(2) The Judge may, at the pre-trial sessions of the proceedings, and on such terms as appear to be just, order that the name or names of any party or parties, whether as claimants or defendants, improperly joined, be struck out.

6. Where a person has a joint and several demands against more persons than one, either as principals or sureties, it shall not be necessary for him to bring before the court as parties to a suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of the persons severally or jointly.

7. If the claimant sues, or any defendant counter-claims, in any representative capacity, it shall so be expressed on the claim. The Judge may on the application of any of the parties at the pre-trial sessions order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties.

8. Where more persons than one have the same interest in one suit, one or more of such persons may, with the approval of the Judge on their application at the pre-trial sessions be authorized by the other persons interested to sue or to defend in such suit for the benefit of or on behalf of all parties so interested.

9. Where in any action a defendant claims as against any person not already a party to the action (in this order 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 relief or remedy by 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 between the claimant and the defendant and the third party or between any or either of them, the Judge on the application of the defendant during pre-trial sessions may grant leave to the defendant to issue and serve a third party notice.

10. (1) The notice shall state the nature and grounds of the claims or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed, and shall be in accordance with Form 2 or Form 3 with such variations as circumstance may require; and shall be sealed and served on the third party in the same such manner as a claim is sealed and served.

(2) The notice shall unless otherwise ordered by the Judge at the pre-trial sessions, 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 claim and of any pleadings filed in the action.

11. 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.

12. 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 jurisdiction where notices or other papers issuing from the court may be served on him.

B. ALTERATION OF PARTIES

13. (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 persons served with such an order may within such time as the court in the order directs, apply to the court to discharge or vary the order.

14. 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 a claimant, enter the name of such representative in the place of such a claimant in the suit, and the suit shall thereupon proceed. If no such application is made to the court within what it may consider reasonable time by any person claiming to be the 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 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 in order to reach such a final determination of the matters in dispute, as may appear just and proper in the circumstance of the case.

15. 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 the suit.

16. 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 surviving defendant, where the action survives, the claimant may make an application to the court, specifying the name, description and place of abode of any person whom the claimant alleges to be the legal representative of such a 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 a defendant and shall issue an order to him to appear on a day to be therein mentioned to defend the suit and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit.

17. 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 a suit, unless the assignee or trustee shall decline to continue the suit, or shall neglect or refuse to continue the suit and give such security within the time limited by the order. The defendant may, within 7 (Seven) days after such neglect or refusal plead the bankruptcy of the claimant as a reason for abating the suit.

ORDER 8

INTERIM ATTACHMENT OF PROPERTY

1. (i) Where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the jurisdiction: or

(ii) Where, in any suit founded on contract or for retinue or trove in which the cause of action arose within the jurisdiction:

a) the defendant is absent from the jurisdiction, or there is probable cause to believe that he is concealing himself to evade service; and

b)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 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 movable or immovable belonging to the defendant be attached until the further order of the Court.

2. The application shall contain a specification of the property required to be attached, and the estimated value thereof so far as the 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. (1) If the Court, after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of 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 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 the security.

(2) Pending the defendants compliance with the 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. (1) 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, be attached until further order.

(2) If the defendant shows such cause, or furnishes the required security, and the property specified in the application or any portion of it shall have been attached, the court shall order the attachment to be withdrawn.

5. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being proffered 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. 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. (1) The application may be made to the court in the Judicial Division where the defendant resides or in the case of urgency, where the property proposed to be attached may be situate and such court may make such order as shall seem just.

(2) Where an order for the attachment of property shall be issued by a court different from that in which the suit is pending, such court shall, on the request of either of the parties transmit the application and evidence therein to the court in which the suit is so pending, retaining the property in the meantime under attachment or taking sufficient security for its value; and the court in which the suit is pending shall thereupon examine and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

ORDER 9

SERVICE OF PROCESS

A. SERVICE WITHIN JURISDICTION

1. Service of all Court processes or written communications of which service is required, shall be made by the Sheriff or Deputy Sheriff, bailiff or any other officer of the Court, or by a person appointed thereof (either specially or generally) by the Court or a Judge in Chambers, unless other modes of service are prescribed by these Rules, or the Court or a Judge in Chambers otherwise directs:

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

2. Save as otherwise prescribed by any of these Rules, an originating process shall be served personally by delivering to the person to be served a copy of the documents, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original thereof.

3. (1) The Court may in any civil case, for reasons which shall seem to it sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court.

(2) The expenses of such a 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.

4. 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 notice put up at the principal court house of, or some other place or public resort in the Judicial Division wherein the proceedings in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

5. When a party to be served is in the service of any Ministry or Non Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service is the party to be served and such officer, of Local Government shall cause the same to be served on the proper party accordingly.

6. Where partners are sued in the name of their firm, the claim 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.

7. When the suit is against a corporation or company that can sue or be sued in its name or in the name of an officer or trustee, the claim or other document may be served subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving the same to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.

8. Where the person on whom service is to be effected is living or serving on board of any ship, it shall be sufficient to deliver the claim or other document to the person on board who is at the time of such service apparently in charge of such a ship.

9. 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 claim or other document at the prison or asylum to the superintendent or person appearing to be Head officer in charge.

10. 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.

11. 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 authorized agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the claim or other document may be served by giving it to such agent, and such service shall be equivalent to personal service.

B. SERVICE OUT OF JURISDICTION.

12. Service out of jurisdiction of a claim may be allowed by the court at the pre-trial session whenever-

(1) The whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or

(2) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside or enforced in the action; or

(3) Any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or

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

(5) The action is one brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of a breach of a contract-

a) made within the jurisdiction, or

b) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of jurisdiction, or

c) which by its terms or by implication is to be governed by the law in force in the jurisdiction, or is brought against the defendant in respect of a breach committed within the jurisdiction of a contract wherever made, even though such breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction; or

(6) The action is founded on a tort or other civil wrong Committed within the jurisdiction; or

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

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

(9)The action is by a mortgagee or mortgagor in relation to a mortgagee of property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, fore-closure, delivery of possession by the mortgagor, redemption, re-conveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (5) of this Rule) any personal judgment or order for payment of any moneys due under the mortgage; or

(10) The action is one brought under the Civil Aviation Act or any regulations made in pursuance of such Act or any law relating to carriage by air.

13. Out of jurisdiction in this order means outside Abia State of Nigeria.

14. Every application for leave to serve such claim or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that, in the belief of the deponent, the claimant has a good cause of action, and showing in what place or country such a defendant is or probably may be found, and whether such defendant is a Commonwealth citizen or not, and the grounds upon which the application is made and no such leave shall be granted unless it shall be made sufficiently to appear to the Court at pre-trial session that the case is a proper one for service out of the jurisdiction under these Rules.

15. Where leave is given to serve claim in any foreign country other than a country with which a convention in that behalf has been made, the following procedure may be adopted-

a) The document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the Solicitor-General of the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for transmission to the Ministry responsible for External Affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given. Such request shall be in Form 4 in the Appendix with such variations as circumstance may require;

b) The party bespeaking a copy of a document for service under this section shall, at the time of bespeaking the same, file a praecipe in Form 5 of the Appendix;

c) An official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served upon the defendant in accordance with the law of such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.;

d) Where an official certificate or declaration, transmitted to the Court in manner provided in the last preceding paragraph certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon the ex-parte application of the claimant, order substituted service of such document, and the document and copy of the same, and the order shall be sealed and transmitted to the Solicitor - General of the Ministry of Justice in the manner aforesaid together with a request in Form 6 of the Appendix, with such variations as circumstance may require. Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, chooses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction over 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.

16. (1) Where, for the purpose of an action under the Civil Aviation Act and the convention therein set out, leave is given to serve a claim upon a high contracting party to the convention other than Nigeria, the provisions of this Rule shall apply.

(2) The claim shall be sealed with the seal of the Court for service out of the jurisdiction, and shall be transmitted to the Ministry of Justice, together with a copy of the claim thereof translated into the language of the country of the defendant, and with request for transmission to the Minister responsible for External Affairs for further transmission of the same to the Government of that country.

(3) The request shall be in Form 7 in the Appendix, with such variations as circumstances may require.

(4) The party bespeaking a copy of a document for service under this Rule shall, at the time of bespeaking the same, file a praecipe in Form 6 in the Appendix.

(5) An official certificate from the Minister responsible for External Affairs transmitted by the Ministry of Justice or otherwise to the Court certifying that the claim was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed and of recorded as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(6) After the period for filing of defence has expired and if no defence is filed, the action may proceed to judgment in all respects as if the defendant had for the purpose of the action waived all privileges and submitted to the jurisdiction of the Court.

17. Where leave is given in a civil cause or matter or where such leave is not required, and it is desired to serve any claim, or other documents in any foreign Country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in the convention, be adopted-

a) The party bespeaking such service shall file in the registry a request in Form 5 or Form 8 in the Appendix which Form may be varied as may be necessary to meet the circumstances of the particular case in which it is used. Such request shall state the medium through which it is desired that the service shall be effected, i.e., whether-

i. directly through the diplomatic channels, or

ii. through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be 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 the Diplomatic Channels in which case the translation and copies thereof need not accompany the request unless the convention expressly requires that they should do so);

b) The document to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Permanent Secretary for External Affairs for transmission to the foreign country;

c) An official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a Nigeria Diplomatic Agent to the Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed or recorded as, and be equivalent to, an affidavit of service within the requirement of these Rules in that behalf.

18. Rule 17 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the convention made with such foreign country.

19. The Court or Judge, in giving leave to serve a document out of the jurisdiction under these Rules, may in appropriate cases direct that registered airmail or courier service shall be used by the party effecting service.

20. Where in any civil cause or matter pending before a Court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made, a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted-

a)The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request and the copy of the translation, to the party or person to be served in person by an officer of the Court, unless the Court or a Judge in Chambers thinks fit otherwise to direct;

b)No Court fees shall be charged in respect of the service; but the particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect thereof;

c)The Chief Judge shall transmit to the consular or other authority making the request a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has been impossible to effect it, and at the same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b) hereof.

21. Upon the application of the Attorney-General, the Court or a Judge in Chambers may make all such order for substituted service or otherwise as may be necessary under these Rules.

C. GENERAL PROVISION

22. Where the officer of court or person charged with the service of any claim 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 claim or documents, it shall be sufficient to inform the person to be served of the nature of the claim or document as near such person as practicable.

23.In all cases where service of any claim 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.

24. The costs of and incidentals to the execution of any process in a suit shall be paid in the first place by the party requiring such execution, and the Sheriff shall not (except by order of the Court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.

25. Service shall not be made on a Sunday or public holidays, unless the Court directs otherwise by order endorsed on the document to be served.

26. 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 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 10

COMPUTATION OF TIME

1. Where by any written Law or any special order made by the Court in the course of any proceedings, any time limited from or after which any date or event appointed or allowed for the doing of any act or the taking of any proceedings, and such time is not limited by hours, the following rules shall apply-

a)The time limited does not include the day of the date or of 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 the latest on the last day of the time limited.

c)Where the time limited is less than five days, no public holiday, Saturday, or Sunday shall be reckoned as part of the time.

d)When the time expires on a Public Holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being a Public Holiday, Saturday or Sunday.

2. The parties may not by consent enlarge or abridge any of the times fixed by the provisions of these rules for taking any step, filing any document, or giving any notice.

3. (1) The Court may, on such terms as it thinks just, by order, extend or abridge the period within which a person is required or authorized by these provisions, or by any judgment, order or direction, to do any act in any proceedings, provided that the number of such applications shall not exceed two on each side.

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

ORDER 11

DISCONTINUANCE

1.(1)(a)The claimant (or defendant in a counter-claim) may at any time before receipt of the defence or after the receipt thereof, during or before pre - trial sessions by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant cost of the action or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn as may be determined by the Registrar in charge of the Registry of the Court.

PROVIDED that the cost shall be assessed based on the value of the relevant processes filed in court by the defendant.

(b).Where any of the parties is dissatisfied with the cost so assessed, he may within 14 (fourteen) days of such assessment apply to the Chief Registrar of the Court for a review.

(2) The costs so determined by the Registrar shall be enforced as if it is costs imposed by a Judge. A discontinuance shall not be a defence to any subsequent claim.

(3) Where an action has been discontinued in accordance with the above sub rules (1) and (2), no subsequent claim shall be filed by the party who so discontinued the action on the same or substantially the same facts until the terms imposed on him by the Registrar have been fully complied with.

2. After the pre-trial sessions an action may be withdrawn by the claimant (by the defendant in a counter-claim) upon producing to the Registrar a written document signed by the parties evidencing such withdrawal and thereupon a Judge shall after causing the parties to be issued with a hearing notice strike out the matter without the necessity of attendance of the parties or their Legal practitioners.

ORDER 12

PAYMENT INTO AND OUT OF COURT

1. (1) Where after service in any proceeding for debt or damages, a defendant evinces an intention to pay money into court in respect of the proceeding, he shall notify the chief Registrar who will thereupon direct him to pay the money into an interest yielding account in a commercial bank and he shall file the teller for such payment with the Chief Registrar.

(2) Where a teller for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the claimant who may apply to a Judge for an order to withdraw the amount so paid.

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

(4) The defendant may without leave give a written notice to the Chief Registrar of an intention to increase the amount of any sum paid into court.

(5) Where money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of each cause of action unless a Judge otherwise directs.

(6). The notice shall be in Form 9 with such modifications or variations as circumstances may require. The claimant shall acknowledge the receipt of the notice in writing within 3 (three) days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

(7). Where money is paid into Court with denial of liability, the claimant may proceed with the action in respect of the claim and if he succeeds, the amount paid shall be applied, so far as is necessary in satisfaction of the claim, and the balance, if any, shall on the order of a Judge, be repaid to the defendant. Where defendant succeeds in respect of such claim, the whole amount paid into court shall be repaid to him on the order of a Judge.

2. (1).Where money is paid into Court, under rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court or where more than one payment into Court has made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the defendant in Form 10 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

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

(3) If the claimant accepts money paid into court in satisfaction of his claim, or if he accepts a sum or sums paid in respect of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may after 7 days from payment and unless a Judge otherwise orders, tax his costs incurred to the time of payment into court, and 48 hours after taxation may sign for his taxed costs.

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

(2) If the claimant elects within 14 days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 11 with such modifications or variations as circumstances may require, to each defendant, and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

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

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into court, the claimant may within 14 days elect to accept the sum paid into court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 10 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with rule 2 (3) of this Order and the action shall abate against that defendant.

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

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

5. (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, on 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 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 claimants Legal Practitioner unless a Judge shall so direct.

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

6. Every application or notice for payment into or transfer out of Court shall be made on notice to the other side.

ORDER 13

TRANSFERS AND CONSOLIDATION

A. TRANSFERS

1. Where a Judge has, in exercise of the power conferred by any relevant law, ordered the transfer of any action from the Magistrates Court to the High Court or to another Magistrates Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the Magistrates Court who shall transmit to the Court or the Magistrates Court, as the case may be, the process and proceedings in every such action, and an attested copy of all entries in the books of that Court relating thereto and thenceforth all proceedings in the action shall be taken in the Court to which the transfer is made as if the action had been commenced therein.

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

(2) Such notification shall be effected by serving a notice personally on the party concerned; or where an address for service has been given by such a party in the Magistrates Court, service may be effected by leaving the notice with an adult person resident or employed at the address for service given in the Magistrates Court.

(3) The Registrar shall, on payment of the prescribed fees, if any, file the document received from the Magistrates Court and make an entry of such filing in the Cause Book.

(4) The Registrar shall then serve notice on the parties to attend in person or by their legal practitioner before the Court on the day and at the time specified in the notice.

(5) The fees for the service of this notice shall be defrayed in the first instance by the party who has paid the fees for filing as provided by Rule 2 (1) above.

3. (1) If the claimant fails to attend in compliance with the notice given under Rule 2 (4), the Court shall record his default and the defendant may apply by summons for an order dismissing the action. The provisions of paragraph (2) of Rule 2 of this Order shall apply to the service of such summon on the claimant.

(2) Upon an application by a defendant to dismiss the action, the Court may either dismiss the action upon such term as may be just or make such other order on such terms it shall think just.

(3) If the defendant fails, or all the defendants if more than one fail to attend in compliance with a notice given under Rule 2 (4) the claimant, after having caused an address for service to be entered in the Cause Book may, by leave of the Court to be obtained on summons, have judgment entered for him with costs or obtain the order prayed for in the transferred proceedings.

(4) The provisions of paragraph (2) of Rule 2 shall apply to the service of such summons on the defendant or the defendants.

ORDER 14

PRE-TRIAL SESSIONS AND SCHEDULING

1. (1) Within 14 days after close of pleadings the claimant shall apply to the Registrar for the issuance of pre-trial sessions notice as in Civil Form 12 in the Appendix.

(2) Upon application by a claimant under sub-rule 1 above, the Registrar shall cause to be issued to the parties or their Legal Practitioners (if any) pre-trial sessions notice as in Civil Form 12 in Appendix accompanied by a pre-trial information sheet as in Form 13 for the purpose set out hereunder.

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

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.

d)giving directions that will enable parties call necessary witnesses and tender relevant documents having regard to the need for quick and speedy disposal of the suit: and

e)fixing clear dates for the hearing of the suit.

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

(4) Where none of the parties applies for the issuance of pre-trial sessions notice or dismissal of the suit, the court shall suo motu strike out the suit and no application for extension of time to take that step shall be entertained without the leave of court.

2. At the pre-trial sessions, the Judge shall enter a scheduling order for:

a) joining other parties,

b) amending pleadings or any other processes;

c) filing and adoption of written Addresses on all interlocutory applications;

d) further pre-trial proceedings;

e) order of witnesses and tendering of document that parties consider necessary and relevant to their case,

f) any other matters appropriate in the circumstance of the case.

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

a) formulation and settlement of issues;

b) amendment and further and better particulars;

c) admission of facts and other evidence by consent of the parties;

d) control and scheduling of interrogatories, discovery, inspection and production of documents;

e) narrowing the field of dispute between expert witnesses, by their participation at pre-trial sessions or in any other manner;

f) hearing and determination of objections on points of law;

g) giving orders or directions for consolidation, separate trial of claims, counterclaim, set-off, cross-claim or third party claim or of any particular issue in the case;

h) reference to referees, reference to arbitrators, inquiries and accounts, appointment of receivers, settlement of matters by ADR options in accordance with the provision of Order 42 of these Rules;

i) determining the form and substance of the pre-trial order;

j) determining the time limit for filing and service of any notice to produce not contained in the pleadings;

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

4. The pre-trial sessions with respect to any case shall be completed within 30 (thirty) days of their commencement unless extended by the Judge, and the parties and their Legal Practitioners shall co-operate with the Judge in working within this time table. As far as practicable, pre-trial sessions shall be held from day to day or adjourned only for purpose of compliance with pre-trial sessions orders.

5. At the pre-hearing sessions, the Judge shall ensure that hearing is not delayed by the number of witnesses and objections to documents to be tendered and shall, pursuant to sub-rule (2) (b), (2) (d) of Rule 1 and Rule 3 (c) and (d) of this order:

a) allow parties to admit or exclude documents by consent;

b) direct parties to streamline the number of witnesses to those whose testimonies are relevant and indispensable.

6. After pre-trial sessions the Judge shall issue a Report. This report shall guide the subsequent course of the proceedings unless modified at the trial by the Judge hearing the case.

7. If a party or his Legal Practitioner fails to attend the pre-trial sessions or obey a scheduling or pre-trial order or is substantially unprepared to participate in the proceedings or fails to participate, the Judge in good faith shall;

a) in the case of the claimant, dismiss the claim;

b) in the case of a defendant, enter judgment against him. Any decision made under this rule may be set aside upon an application made within 7 days of the decision or such other period as the Judge may allow, not exceeding the pre-trial sessions period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial sessions.

8. The Judge shall direct the pre-trial sessions 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 pre-trial sessions agenda.

ORDER 15

PROCEEDINGS RELATING TO EVIDENCE

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

(2) Undisputed documents and objects may 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 objects referred to in the deposition. The witness shall then became available for cross-examination.

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

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

a) by statement on oath of information or belief;

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

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

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

3. A Judge may, at or before the trial of an action order or direct that the number of witnesses who may be called at the trial be limited as specified by the order or direction.

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

ORDER 16

PROCEEDINGS AT TRIAL

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

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

3. When a cause is called for hearing, if 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.

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

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

(3) An application to re-list a cause struck out or to set aside a judgment shall be made within 14 days after the order or judgment or such other longer period as the Judge may allow.

5. The Registrar or other proper officer present at any trial or hearing shall make a note of the times at which the trial or hearing commences and terminates respectively and the time it actually occupies on each day it goes on.

6. (1) A party shall close his case when he has concluded his evidence.

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

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

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

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

(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.

8. At the close of evidence, the defendant shall within 14 (fourteen) days file his written Address. Upon being served, the claimant shall within 14 days file his written address.

9. The defendant shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the claimants address. Thereafter parties shall adopt their written addresses and may amplify orally. The oral amplification shall not take more than 10 (ten) minutes on each side unless the Judge otherwise directs.

10. (1) No exhibit shall 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 exhibits on being satisfied:

a)that the exhibit will be kept duly marked and labeled 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.

ORDER 17

A. JUDGMENT AND ORDERS

1. The Judge shall at the pre-trial sessions, if appropriate, or after trial deliver judgment.

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

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

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

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

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

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

B.DRAWING UP OF ORDERS

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

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

a) the issuance of a writ of attachment;

b) the amendment of any writ or pleading;

c) the filing of any document; or

d) any act to be done by any officer of the Court other than a legal practitioner. It shall not be necessary to draw up such order unless the Judge otherwise, directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act. A direction that the costs of such orders shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this rule.

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

ORDER 18

COMMITTAL FOR CONTEMPT OF COURT

1. (1) The procedure in an application for committal for contempt of court allegedly committed ex-facie in cases to which this rule applies, shall be the same as for applications for an order for judicial review.

(2) The originating process shall be personally served unless the Judge dispenses with such service.

(3) This rule applies to cases where the contempt is committed:

a) in connection with proceedings to which this Order relates;

b) in connection with civil proceedings;

c) subject to the provisions of the Sheriffs and Civil Process Act, any proceedings in the High Court or where the contempt consists of disobedience to an Order of the Court;

d) in connection with the proceedings in an inferior Court.

Provided that this rule shall not apply where the contempt is committed in facie curiae.

2. When an order enforceable by committal has been made against a judgment debtor, the Registrar shall, when the order is drawn up, immediately endorse it as follows:

Notice of Consequence of Disobedience to Court Order

To.

Of:

TAKE NOTICE that unless you obey the direction (s) contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Date this: ……..day of…….20……..

Registrar

3. Upon service of the application for committal all issued in a case to which this order applies, the Respondent shall before the return date stated in the application file a statement stating the reasons why an order for committal should not be issued. The statement shall be verified by an affidavit deposed to by the respondent.

4. Except with the leave of the Court hearing the suit for committal for contempt, no grounds shall be relied upon at the hearing except the grounds relied upon as per order 2 Rule 4 (2).

5. (1) The Court, by whom an order of committal is made, may by an order direct that the execution of the order of committal be suspended for such period or such terms or conditions as it may specify.

(2) Where the execution of an order of committal is suspended by an order under sub rule (1) above, the claimant for the order of committal shall unless the court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order as made under sub-rule (1) above.

6 (1) The Court may, on the application of any person committed to prison for contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has been issued to enforce that judgment or order then, if the thing is in the custody or power of a person committed, the Sheriff may take possession of it as if it were the property of that person and without prejudice to the generality of sub rule (1) above, the court may discharge the person committed and may give such directions for dealing with the thing taken by the Sheriff as it thinks fit.

7. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of court, to pay a fine or to give security for his good behaviour, and those provisions so far as applicable and with necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

8. The foregoing provisions are without prejudice to the power of the court to commit for contempt committed in the face of the court.

9. Every order of committal issued in a case to which this Order applies shall be made returnable before the Judge. If a return of non est investus (not found) is made, a subsequent order or orders may be issued on the return of the previous order.

ORDER 19

APPEALS FROM MAGISTRATES' COURT

1. (1) Appeal shall only lie on the final decision of the lower Court.

(2) Every Appeal shall be brought by notice of appeal which shall be lodged in the lower Court within 30 (thirty) days of the decision appealed from and served on all other parties affected by the appeal.

2.(1) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of such decision and the grounds for appeal in 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 14 in the Appendix and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.

3. (1) The Registrar of the lower Court shall within 30 (thirty) days after the filing of the notice of appeal prepare as many certified copies of the proceedings required for the consideration of the appeal as there are parties on record.

(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.

(3) In pursuit of sub-rule (1) above, the Registrar of the lower court shall within a reasonable time summon the parties before him to settle the documents to be included in the record of appeal.

(4) The said Registrar shall, whether any of the parties attend or not, provided the notice has been duly served on the parties to the appeal, proceed to settle and determine those matters in accordance with the provisions of sub-rules (2) and (3) above.

4.(1) The Registrar of the lower Court shall within seven 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.

(2) Where at the expiration of 45 (forty five) days after the filing of the notice of appeal the Registrar has failed and or neglected to compile and transmit the records of appeal in accordance with the provisions of Rules 3 and 4 (1) of this Order, it shall become mandatory for the appellant to compile the records of all documents and exhibits necessary for his appeal and transmit same to the court within 30 (thirty) days after the Registrars failure or neglect.

5. When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy of the proceedings.

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

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

8. (1) The appeal shall come up for hearing at such time and at such place as the Registrar of the court shall notify the parties.

(2) The Court may, on hearing the appeal order written submissions from parties or their counsel.

9. (1) If, on the day of hearing or at any adjournment of the case, the appellant if not represented by counsel 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.

10. 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 any 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.

11. 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 and grounds of appeal:

Provided that where, in the opinion of the Court, other grounds of appeal than those set forth in the memorandum of grounds of appeal should have been given, or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

12. (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 fourteen days of service of the respondent of the notice and grounds of appeal, and shall be served on the appellant or his legal practitioner.

13. (1) The respondent may file grounds of appeal against any part of the judgment of the lower court.

(2) Such grounds shall be filed by the respondent within 14 (fourteen) days of service on him of the appellants notice and grounds of appeal, and shall be served on the appellant or his legal practitioner before the hearing.

14. (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, unless the court is of the opinion that the grounds of appeal are 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 the 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.

15. On any appeal from a decision of a lower court, no objection shall be taken or allowed to any proceedings in such court for any defect or error which might have been amended by that court, or to any claim, summons, warrant, or other processes to or of such court for any alleged defect therein in substance or in form, or for any variance between any claim, summons or other processes 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 has been thereby deceived or misled, it shall be lawful for the court either to refer the case back to the lower court with directions to Re-hear and

determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

16. 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 such that the respondent on appeal has been thereby deceived or misled, it shall be lawful for the court to allow amendment of the same; and if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournments, if any, being made on such terms as the court may deem just.

17. 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.

18.(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 there upon 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 17 above 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 17, 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.

19. The fees in the First Schedule shall be chargeable in civil appeals except 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.

20. Allowances may be paid to witnesses in accordance with the provisions of the First Schedule.

21.(1) On application being made for a 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 the 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 of the costs allowed against him or give security to the satisfaction of the court for the said sum;

c. that the appellant shall, where the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the court for the performance of the decision or judgment in the event of the appeal being dismissed;

d. that the appellants 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 appellants property shall be seized, and attached and sold and the net proceeds deposited in court pending the 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 condition 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 appeal and shall in the first instance be made to the lower court. Such application shall inter-alia be supported by an affidavit deposed to by the applicant.

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) 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).

(5) Any party dissatisfied with an order made by the lower court may apply to the court by motion (originating or interlocutory, as the case may require) with notice to the other party for a review of the order as shall be just.

(6) An appeal shall not operate as a stay of execution of 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.

22. 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 an order may be made also in any case where an appeal has not been entered into or prosecuted.

23. (1) The court may, in special circumstances upon application on notice by motion (originating or interlocutory as the case may require), supported by affidavit, order the appellant to deposit a sum or security as may seem fit for the respondents 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 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 cost may be stated in the order in anticipation or may be assessed at any time by the court of its own motion or on application made ex-parte or on notice, as the court may deem fit

(4) Where an appeal so stands dismissed, the appellant shall take no further step or proceeding therein save by leave of the court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the court to grant costs where it seems proper on an application made under paragraph (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellants goods are insufficient to satisfy the amount payable under the judgment or decision appealed from.

24. (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 certified its judgment or order shall thereupon make such orders as are conformable to the judgment, or order of the court, and, if necessary, the record shall be amended in accordance there with.

25. 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 has been pronounced by itself.

26. Any order given or made by the Court may be enforced by the court or by the lower court as may be most expedient.

27. The court may, if it deems fit, enlarge any period of time prescribed by this order.

28. In this Order

The lower court means the magistrates court whose judgment is appealed against, but does not include an Arbitrator, a Referee or an Auditor;

Judgment includes an order or a ruling.

ORDER 20

APPEALS TO THE COURT FROM DECISIONS OF AUDITORS

1. 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. An appeal to the Court from a decision of an auditor shall be in accordance in the provisions of Order 2 Rule 4 (2) of the Rules.

3. The notice of motion shall be served, before the expiration of 42 (forty two) days after the date of the decision to 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 to the accounts of whose officer the decision was given, if that Local Government or other body is not the appellant.

4. Where, under Rule 2 above, a 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 respect as if he were the Auditor by whom the decision was given, and these provisions shall apply accordingly.

ORDER 21

ARREST OF ABSCONDING DEFENDANT

1. If in any claim the defendant is about to leave the country, or has disposed of or removed from the country his property or any part thereof, or is about to do so, the claimant may make application to the court that security be taken for the appearance of the defendant to answer to satisfy any judgment that may be passed against him in the claim.

2. (1) If the Judge after making such investigation as he may consider necessary shall be of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria or has disposed of or removed or is about to remove his property or any part thereof out of the country while the claim is pending and that by reason thereof the execution of any judgment which may be made against him is likely to be obstructed or delayed, the Judge shall issue a warrant to bring the defendant before him, that he may show cause why he should not give good and sufficient recognizance for his appearance.

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

3.If the defendant fails to show cause, the Judge shall order him to give recognizance 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 claim or to give recognizance 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.(1) Where a defendant offers to deposit a sum of money in lieu of recognizance for his appearance, sufficient to answer the claim against him, with costs of the suit, the Judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank.

(2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer to the claim against him, the Judge may accept such security and make such order as he may deem fit in the circumstance.

5. (1) If the defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him into custody until the decision of the claim, or, if judgment has been given against the defendant, until the execution of the judgment.

(2) Committal to custody under this rule shall not exceed a period of 6 months at a time.

(3) The Judge may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.

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

ORDER 22

MISCELLANEOUS PROVISIONS

1.Subject to particular rules, the court may in all causes and matters make any order which it considers necessary for doing justice, whether such an order has been expressly asked for by the person entitled to the benefit of the order or not.

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

3. In all cases in which 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.

4. 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.

5. The fees set out in the Second Schedule may be charged in respect of the duties of a Notary Public or of a notarial act.

6. A documents shall not be filed in the court unless it has endorsed on it the E-mail and/or phone number(s) of the legal practitioner filing same and a copy of the current practicing license of the legal practitioner attached to it.

ORDER 23

SITTINGS OF THE COURT AND VACATION

1.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 circumstance requires.

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

4. (1) Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matters shall be held on every week-day 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 8th January next following or the immediate next working day.

(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.(1) Notwithstanding the provisions of Rule 4, any action may be heard by a Judge in Court during any of the periods mentioned in paragraph (1) (b) or (c) of Rule 4 (except on a Sunday or public holiday) or paragraph (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.The time for filing claims and other processes shall not run during the annual vacation unless otherwise directed by the Court.

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

ORDER 24

PROBATE AND ADMINISTRATION

A.GRANT OF PROBATE OR ADMINISTRATION IN GENERAL

(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 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 Umuahia.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division 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 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. The Court shall, when the circumstance of the case appears so to require, forthwith on the death of a deceased person, or as soon after as may be, 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 the law.

3.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 administers 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 less than N50,000.00 (fifty thousand Naira) as the Court, having regard to the condition of the persons so interfering with the property and the other circumstances of the case, may think fit to impose.

4. (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 forth-with deliver the original to the Probate Registrar of the Court.

(2) If any person fails to do so for fourteen days after having knowledge of the death of the deceased, he shall be liable to such fine not exceeding N5,000.00 (five 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. 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. 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 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.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. 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 contempt of court, and shall be liable to such fine, not exceeding N5,000.00 (five thousand Naira) as the Court thinks fit to impose.

9. 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 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 with 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. 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. Every applicant for a grant of letters of administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include-

12. (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 to regard to the prevention of error and fraud.

13. A notice to prohibit a grant of administration may be filed in the Court.

14.(1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time but the notice shall not affect a grant made on the day on which the notice is filed.

(2) The person filing the notice shall be warned by a warning in writing delivered at the lace mentioned in the notice as his address.

(3) Notices in the nature of citations shall be given in such manner as the Court directs.

15.Suits respecting administration shall be instituted and carried on as nearly as may be in the same manner and subject to the same rules of procedure as suits in respect of ordinary claims.

B. CUSTODY OF WILLS

16. Any person may, in his lifetime, deposit for safe custody, in the Probate Registry at Umuahia, his own will, sealed up under his own seal and the seal of the Court.

17. (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 book kept for the purpose in the Registry.

18.(1) No original will shall be delivered 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.

C. PROBATE OR ADMINISTRATION WITH WILL ANNEXED

19. (1)On receiving an application for administration with will annexed, the Court shall inspect the will, and see whether it appears to be signed by the testator, or by some other person in his presence , and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the will does not appear to be so signed and subscribed.

20. (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.

21. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

22. If both 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. Where the testator was blind or illiterate, the Court shall not grant administration with the will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

24. (1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it and requiring to be accounted for;

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the will at the time of its execution unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the will (unless duly executed or recited in or otherwise identified by the attestation clause) an affidavit in proof of their having existed in the will before its execution, shall be filed.

(4) If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliteration are not entirely effaced, and can, on inspection of the will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

25. (1) (a) Where a will contains a reference to any document of such a nature as to raise the question whether it ought or not to form a constituent part of the will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non- production shall be proved.

(b) A document cannot form part of a will unless it was in existence at the time when the will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if is not produced, a satisfactory account of its non-production shall be proved.

26. Where a person appointed executor in a will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate does not appear, his right in respect of the executorship wholly ceases; and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor

27.(1) Every will or copy of a will to which an administrator with the will annexed is sworn shall be marked by the administrator and by the person before whom he is sworn.

(2) The provisions respecting Wills apply equally to codicils.

28. In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined

viva voce respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the court thinks fit.

D. ADMINISTRATION (NOT WITH WILL)

29.(1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased's death, and the value of the property, to be covered by the administration.

30. (1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in, and administering the personal property of the deceased; such sureties to be to the satisfaction of the Probate Registrar

(2) The Court may, if it thinks fit, take one surety only.

(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court in any case thinks it expedient to reduce the amount.

(4) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

31. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same to some person, and that person may thereupon sue on the bond in his own name, as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

E. ADMINISTRATION OF PROPERTY

32.Any person claiming to be a creditor or legatee, or the next-of-kin, or one of the next-of-kin, of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court and show cause why an Order for the administration of the property of the deceased should not be made.

33. (1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may, if it thinks fit, make an order for the administration of the property of the deceased.

(2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of application 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 claimant or classes of claimants, as the Court thinks fit.

34. On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order which shall be requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

35.In case of intestacy, where the special circumstance of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased, or of its own motion, grant letters of administration to an officer of the Court, to a Consular Officer, or to a person in the service of the Government.

36.(1) The Officer or person so appointed shall act under the direction of the Court, and shall be indemnified thereby

(2) The Court shall require and compel him to file in the Court his account of his administration at intervals not exceeding three months.

37. Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall, at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be the administrator of the personal estate of the deceased, or of any part thereof, the Court may appoint such person as it shall think fit to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administration may be limited as the Court shall think fit.

38.The Court may direct that any administrator (with or without the will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court shall think fit, not exceeding 10% on the amount of the realized property, or, when not converted into money, on the value of the property duly administered and accounted for by him:

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

39.Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next of kin, the Probate Registrar shall collect and secure all moneys

and other property belonging to the deceased, and shall then inform the nearest consular officer of the such country of the death, and transmit to him a list of the money and property of the deceased.

40. Application may be made to the Court by any such consular officer, or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, and vary such order when and so often as is expedient.

F. ADMINISTRATION GENERALLY

41.(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Court so to do, file in court the account 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 Five 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 three months.

(3) When an account is filed in Court under this Rule, the Court shall scrutinize such account; and if it appears to the Court that, by reason of improper, unvouched or unjustifiable entries or otherwise, such account is not a full and proper account, the Court may give written notice to the person filing the account to remedy such defects as there may be within such time as to the Court may seem reasonable for the purpose; and on failure to remedy such defects, within such reasonable 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 that 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 persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this Rule the word account includes an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

42.The duties imposed and power conferred upon the Court by Rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40, and 41, (1), (3), (5), (7), and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar.

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

43.The Court may refuse to entertain any application under last preceding Rule if it considers that there has been unreasonable delay by the applicant in making his application.

44.The grant of letters of administration under this order shall be signed by the Probate Registrar on behalf of the court.

(2) After a notice of appeal has been filed, no exhibit tendered at the trial shall be released by the Court, unless leave to release such exhibit is granted by the Court of Appeal.

11. (1) Any party may apply for and on payment of the prescribed fee, obtain a copy of the list of exhibits.

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

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

13. The Claimant (or defendant in a counter-claim), may at any time during trial, but with the leave of the court, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall there upon pay such defendant cost of the action or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn as may be determined by the Court.

ORDER 25

PROBATE (NON-CONTENTIOUS) PROCEDURE

1.Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the court. If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding N5000.00 (five thousand Naira) as the Court, having regard to the condition of such persons so in default and the other circumstances of the case thinks fit to impose.

2. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under the control, of any person, the court may in a summary way, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into court.

3. Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be examined respecting the same in court, or on interrogatories and that he do attend for that purpose, and after examination that he do produce the paper and bring it into court.

4. The court may, of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the will, or to renounce probate, and they, or some or one of them shall, within fourteen days after notice, come in and prove or renounce accordingly.

5. If any person named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death or after the termination of any suit or dispute respecting probate or administration, he may independently of any other liability, be deemed guilty of contempt of court, and shall be liable to such fine, not exceeding five thousand Naira, as the court thinks fit to impose.

6. (1) When any person subject to the jurisdiction of the court dies, all petitions for the grant of probate of his will and all applications on other matters connected with it shall be made to the Probate Registrar of the court at Umuahia.

(2) In regard to any such application, the Chief Judge shall have power to request the court of any Judicial Division Division, for the discovery or presentation of the Will of the deceased or for any other

purposes connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge.

7. (1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.

(2) Every legal practitioner through whom an application for a grant is made shall give the address of his place of business within jurisdiction.

8. (1) A personal applicant may apply for a grant otherwise than by post at the Probate Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid and, may not be attended by any person acting or appearing to act as his adviser.

(3). No personal application shall be received or proceeded with if

a) it becomes necessary to bring the matter before the court on motion or by action;

b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn.

c) the Registrar otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5). A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may approve.

(6). A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the Registry, or may himself prepare such papers and lodge them unsworn.

(7). Unless the Registrar otherwise directs, every oath, affidavit or guarantee required on a personal applicant shall be sworn or executed by all the deponents or sureties before an authorized officer.

9. (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. (1) Every application for a grant shall be supported by oath in the form applicable to the circumstances of the case, which shall be contain in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased died domiciled.

11. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

12. Every Will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this order as to the validity, terms, condition or date of execution of the Will.

Provided that where the Registrar is satisfied that compliance with this Rule might result in the loss of the Will, he may allow a Photostat copy thereof to be marked or exhibited in lieu of the original document.

13. (1) Where the Registrar considers that in any particular case a Photostat copy of the original Will would not be satisfactory for purposes of record he may require an engrossment suitable for Photostat reproduction to be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which paragraph (2) of this Rule applies, it shall be made bookwise on durable paper following continuously page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions, which appear in pencil in the original.

14. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof require an affidavit as to due execution from one or more of the attesting witness;

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. Before admitting to proof a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the Will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

16. (1) Where there appear in a Will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by law or by the re-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this paragraph shall not apply to any alteration, which appears to the Registrar to be of no practical importance.

(2) If from any mark on the Will it appears to the Registrar that some other document has been attached to the Will, or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Registrar may require the document to be produced and may call for such evidence with regards to attaching or incorporating the document as he may think fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

17. Any appearance of attempted revocation of a Will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrars satisfaction.

18. The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in Rules 15, 16 and 17, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

19. If it appears to the Registrar that there is prima facie evidence that a Will is one to which section 9 of the Wills Act 1837, or any provision of the equivalent enactment in force in the state, applies, the Will

may be admitted to proof if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment, as the case may be.

20. Where evidence as to the law of any country or territory outside the State is required on any application for a grant, the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards suitably qualified to give expert evidence of the law in question.

21. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with Will annexed shall be determined in accordance with the following order of priority

i.the executor;

ii.any residuary legatee or devisee holding in trust for any other person;

iii.any residuary legatee or devisee for life;

iv.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 representation 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.

v. any specific legatee or devisee or any creditor or, subject to paragraph (3) of Rule 44, the personal representative of any such person, or, where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto.

vi. 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 interstate.

22. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right to a grant in any other capacity.

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

Provided that for the purpose of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include -

i. any gratuity payable by the Government of the Federation of Nigeria, or the Government of the State, to the estate of any person formerly employed by either of such Governments or by statutory Corporation;

ii. any sum of money payable to an estate from a Provident Fund established under the provision of any written law.

24. In no case shall the Court issue probate or letters of administration with Will attached until all inquiries which the Court sees fit to institute have been answered to its satisfaction. The Court shall, however, afford as great a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.

25. A notice to prohibit a grant of probate or administration with Will attached may be filed in the Court.

26. (1) (a) 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.

(b) The person filing the notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.

(2) Notices in the nature of citations shall be given in such manner as the Court directs. Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

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

29. Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of the same. A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the Registry.

30. No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed. A certified transcript, under the seal of the Court of the Probate or Administration with the Will annexed may be obtained from the Court.

Probate or Administration with Will annexed

31. (1) On receiving an application for probate or for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the 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. If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

33. If on perusal of the affidavit it appears that the Will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

34. If both the subscribing witnesses are dead, or if from other circumstances such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had to other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

35. Where the testator was blind or illiterate, the Court shall not grant probate of the Will, or administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution, or that he had at that time knowledge of its contents..

36. (1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations, or alterations, or erasures, or obliterations appearing in it, and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time of its execution or unless, if made afterwards, they have been executed and attested to in the mode required by the said enactments, or unless they have been made valid by the re-execution of the Will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the Will (unless duly executed or recited in or other wise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution shall be filed.

(4) If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

37. 1. (i) Where a Will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document with a view to ascertaining whether or not it is entitled to probate, and, if it is not produced, a satisfactory account of its non-production shall be proved.

(ii) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

2. If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required and, if not produced, a satisfactory account of its non-production shall be proved.

38. Where a person appointed an executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate does not appear, his right in respect of the executorship wholly ceases, and, without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed an executor.

39. (1) Every Will or copy of a Will to which an executor or an administrator with the Will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) The provisions respecting Wills apply equally to codicils.

40. (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 it proper.

41. (1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority of a grant of probate, the assignor or, if there are two or more assignors, the assignors with the highest priority, in the absence of a proven executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

42. In the absence of a proven 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, a person having no right thereto, shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative, and such other evidence as the Registrar may require:

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

a) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate;

b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;

C. A Trust Corporation.

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

(2) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

44. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.

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

(4) Unless the Registrar otherwise directs, probate or administration with the will attached shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree; and to a person not under disability in preference to an infant entitled in the same degree.

45. (1) Nothing in Rules 21, 42 or 44 shall operate to prevent a grant being made to any person to whom a grant may, or may require to be, made under any enactment.

(2) The Rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the state, except in a case to which the provisions of Rule 47 apply.

46. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

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

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

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction over the place where the deceased died domiciled;

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(3) if there is no such person as is mentioned in paragraph (1) or (2) of this Rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;

(4) if a grant is required to be made, or if the Registrar in his discretion considers that a grant should be made, to not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (1) or (2) of this Rule or with any other person:

Provided that without any such Order as aforesaid

(a) probate of any Will which is admissible to proof may be granted

i. if the will is in English or in the local vernacular to the executor named therein

ii. if the Will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person;

(b) Where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law, which would have been applicable if the deceased had died domiciled in the State.

48. (1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawfully constituted attorney for this use and benefit, until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant

be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

49. (1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall, subject to paragraphs (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 sub-paragraph (b) of the last foregoing paragraph may represent any other infant whose next-of-kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this Rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by order of the Court in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this Rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take 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.

50. (1) Where on of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under Rule 49 if and only if the executors who are not under disability renounce, or on being cited to accept or refuse a grant, fail to make an effective application therefore.

(2) An infant executors right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs, a grant for his use and benefit, 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 his guardian.

52. (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 a 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. 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. (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 Rule 21(5) to a creditor or the personal representative of a creditor or to a person who has 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;

f) 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 purposes of this Order shall be in Form15

(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 one 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 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.

(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.

ORDER 26

PROCEEDINGS IN FORMA PAUPERIS

1. This order shall apply to proceedings in respect of which there is no statutory provision for Legal Aid.

2. A Judge may admit a person to sue or defend in forma pauperis if satisfied that his means do not permit him to employ legal representation in the prosecution of his case and that he has reasonable grounds for suing or defending as the case may be.

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

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

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

4. Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as a Judge may deem fit; and a person so admitted to sue or defend shall not, unless the Judge otherwise orders, be liable to pay or be entitled to receive any costs.

5. (1) The Legal Practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant for the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whatsoever either in connection with his application or the action taken or defended thereunder, the order appointing the Legal Practitioner shall be revoked.

(3) If the Legal Practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Chief Judge.

6. (1) The Chief Judge may at time revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of his order in any proceedings to which the application relates unless otherwise ordered.

(2) Neither the applicant nor the Legal Practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

7. The Chief Judge may order payment to be made to the Legal Practitioner out of any money recovered by the applicant, or may charge in favour of the Legal Practitioner, upon ,any property recovered by the applicant such sum as in all the circumstances may deem fit.

8. Every notice or application on behalf of the applicant, except an application for the discharge of his Legal Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or notice is made or given without reasonable cause.

ORDER 27

SECURITY FOR COSTS

1. (1) Where, on the application of the defendant to an action or other proceeding in the Court it appears to the Court

a) that the 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 persons 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 paragraph (2), that the claimants address is not stated in the claim 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 defendants costs of the action or other proceedings as it thinks just.

(2) The Court shall not require a claimant to give security by reason only of paragraph (1) (C) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without an intention to deceive.

(3) The reference in paragraphs (1) and (2) to a claimant and a defendant shall be construed as reference 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 counterclaim.

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

3. In every suit the costs of the whole suit, and of each particular proceeding therein, and the costs of every proceeding in the court, shall be in the discretion of the Court as regards the person by whom they are to be paid.

4. The Court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit, although the court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

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

6. When the Court adjudges or orders any costs to be paid, the amount of such costs shall be, if practicable, summarily determined by the Court at the time of making the judgment or order, and stated therein.

7. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in establishing his claim, defence or counterclaim, but the Court may take into account all the circumstances of the case.

8. Where the Court orders costs to be paid, or security to be given for costs by any party, the Court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceedings, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

9. When the Court deems it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.

10. Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of Court, to the skill, labour and responsibility involved.

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

12. if upon the taxation of any bill of costs, more than one-sixth is reduced 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.

13. 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 that 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 it in the Court.

14. Where proceedings in court cannot conveniently proceed or are adjourned without useful purpose being made, the party at whose instance the proceedings are adjourned shall pay cost to the other parties.

15. (1) Where in any proceedings costs are incurred improperly or without reasonable cause or by any other misconduct or default, the Judge may make, against any legal practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:

a) directing the legal practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

b) directing the legal practitioner personally to indemnity such other parties against costs payable by them.

(2) The provision of Rule 15 sub-rule (1) shall apply where proceedings in court cannot conveniently proceed or are adjourned without useful progress being made:

a) because of the failure of the legal practitioner to attend in person or by a proper representative; or

b) because of the failure of the legal practitioner to deliver any document for the use of the court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) No order under this rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to appear before the Judge to show cause why the order should not be made.

(4) The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

ORDER 28

FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing orders:

(1) The fees set out in the First, 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.

(2) The allowances set out in part II of the First Schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify:

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. The regulations set out in the fourth Schedule shall be observed by all officers of Court concerned with the rendering of service, and or collection of fees payable, under the provisions of the foregoing Orders.

3. No fees are to be taken in respect of any civil proceedings where such fees would be payable by any Ministry or Non Ministerial Government Department, or Local Government council. All fees which would have been payable but for the provisions of this Rule shall be taken as paid.

ORDER 29

PLEADINGS GENERALLY

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

(2) A defendant shall on service on him of the claim and the accompanying documents file his statement of defence, set off or counter claim in accordance with the provisions of order 2 Rule 8 of these Rules. A

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

(3) A claimant shall within 14 (fourteen) days of service of the statement of defence and counterclaim if any, file his reply, if any, to such defence or counterclaim provided that where a defendant set up a counterclaim, if a claimant or any other person named as party to such counter claim contends that the claim thereby raised ought not to be disposed of by way of counterclaim but in an independent proceedings, a judge may during pre-trial sessions order that such counter claim be excluded.

2. Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved and shall, when necessary be divided into paragraphs numbered consecutively. Dates, sums and number shall be expressed in figures. Pleadings shall be signed by a Legal Practitioner or by the party (if a natural person).

3. (1) In all cases in which the party pleading, relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in 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 matter on which he relies in support of his allegation.

4. An application for 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 requiring particulars may be made to a Judge at the pre-trial sessions. The judge may grant such application upon such terms as may be just.

5. (1) Every allegation of fact in any pleadings, if not specifically or impliedly denied in the pleadings of the opposite party, shall be taken as admitted, except as against a person under legal disability.

(2) A general denial in any pleadings shall not operate as denial of any specific fact in the pleadings of the opposing party.

6. Each party shall specify distinctly in his pleadings any condition precedent, the performance or occurrence of which is intended to be contested.

7. (1) The following facts shall also be specifically pleaded in a statement of defence or reply, as the case may be;

a) all grounds of defence or reply, which make an action or counterclaim, not maintainable,

b) all grounds of defence or reply, which if not raised will take the opposite party by surprise;

c) all issue of facts, not arising out of preceding pleadings.

(2) Where a party raises any ground which makes a transaction void or voidable or such matter as fraud, Limitation Law, release, payment, performance, facts showing insufficiency in contract or

illegality either by any enactment or by common Law, he shall specifically plead same.

8. No pleading shall raise any new ground of claim or contain any allegation of facts, inconsistent with the previous pleadings of the party pleading the same.

9. A party may by his pleadings join issues upon the pleadings of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined except any fact in the pleading upon which the party may be willing to admit.

10. Wherever the contents of any documents 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.

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

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

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

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

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

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

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

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

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

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

a) it discloses no reasonable cause of action or defence as the case may be; or

b) it is scandalous, frivolous or vexatious; or

c) it may prejudice embarrass or delay the fair trial of the action; or

d) it is otherwise an abuse of the process of the court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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

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

19. (1) Where a reply is not filed, then at the expiration of 14 days from the service of the statement of defence on the claimant, pleadings shall be deemed closed.

(2) Where a reply is filed, then at the expiration of 7 days from service of same and there is no pleading subsequent to reply to wit, a rejoinder, then pleadings shall be deemed closed.

(3) Where pleadings subsequent to a reply, to wit a rejoinder, is filed, then at the expiration of 7 days from the service of same on the claimant and there is no surrejoinder, pleadings shall be deemed closed.

(4) Where there is a surrejoinder then at the expiration of 7 days from the service of same on the defendant and there is no rebuttal, pleadings shall be deemed closed.

(5) Where there is a rebuttal, then at the expiration of 7 days from the service of same on the claimant and there is no surrebuttal, pleadings shall be deemed closed.

(6) Where there is a surrebuttal, then at the expiration of 7 days from the service of same on the defendant, pleadings shall be deemed closed.

ORDER 30

STATEMENT OF CLAIM

1. (1) The statement of claim 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) 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. A statement of claim may be amended without amending the endorsement on the claim, provided the claimant may not completely change the cause of action indorsed on the claim without amending the claim.

ORDER 31

DEFENCE AND COUNTER-CLAIM

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

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

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

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

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

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

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

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

6. 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 supporting a right of set-off or counter-claim.

7. 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 counterclaim were to be enforced by cross action, would be defendants to such cross action and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the claimant.

8. Where any such person as in rule 7 of this order, is not a party to the action he shall be summoned to appear, by being served with a copy of the defence and counterclaim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter claim so served, shall be endorsed in Form 26 with such modification or variations as circumstances may require.

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

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

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

12. Where in an action, a set off or counterclaim is established as a defence against the claimants claim, the Judge may, if the balance is an 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. (1) Any ground of defence which arises after the action has been filed but before the defendant has delivered his defence, and before the time limited for doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence.

(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 counterclaim respectively, it may be raised by the claimant in his reply (in the case of a set -off) or defence to counterclaim, either alone or together with any other ground of reply or defence to counterclaim.

14. Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivery of a reply has expired, the claimant may, within 7 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. 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 21with 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.

ORDER 32

REPLY

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

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

ORDER 33

PLEADINGS SUBSEQUENT TO REPLY

1. (1) Where there is reply and the defendant desires to file a rejoinder, he shall file it within 7 days from the service of the reply.

(2) Where there is a rejoinder and the claimant desires to file a surrejoinder, he shall file it within 7 days from the service of the rejoinder.

(3) Where there is a surrejoinder and the defendant desires to file a rebuttal, he shall file same within 7 days from the service of the surrejoinder.

(4) Where there is a rebuttal and the claimant desires to file a surrebuttal, he shall file same within 7 days from the service of the rebuttal.

ORDER 34

ADMISSIONS

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

2. (1) Either party may not later than 7 days before the pre-trial session by notice in writing filed and served, require any other party to admit any document that was not specifically reacted to in that party's pleadings 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 authenticity of the document, and requires it to be proved at the trial.

(3) Where a party gives notice of non-admission and that the document be 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. (1) Either party may not later than 7 days before the pre-trial sessions 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, failing which he shall be deemed to have admitted it, unless a Judge otherwise orders.

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

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

4. The Judge may, on application at a pre-trial session or at any other stage of the proceedings where admission 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.

ORDER 35

DEFAULT OF PLEADING

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

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

3. If the claimant claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and defendant or all the defendants, if more than one, make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for judgment. The Judge before giving such judgment shall require evidence only as to the quantum of damages and/or value of the goods.

4. When in any action as in rule 3 of this Order, there are several defendants and any of them defaults in filing the statement of defence, the claimant may if the claim against the defendant(s) are severable, apply to a Judge for judgment to be entered against the defaulting defendant(s) and the Judge may proceed to enter such judgment as the justice of the case demands, and shall proceed with the case against the remaining defendants in respect of reliefs, being sought against them.

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

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

7. Where the claimant has indorsed a claim for mesne profits or arrears of rent in respect of the premises claimed, or any part of profits or rent, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned rule 1, or if there be more than one defendant, some or one of the defendants make such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in rules 3 and 4.

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

Provided that the unanswered consist of a separate cause of action or is severable from the rest, as in the case of part of a debt.

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

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

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

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

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

ORDER 36

AMENDMENT

1. A party may amend his originating process and/or pleadings with leave of the Judge at anytime before the close of pre-trial and not more than twice during the trial.

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

3. Where any originating process and or a pleading is to be amended except for clerical errors, 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. 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 within7 days from the date of the order, such party shall pay an additional fee of N200.00 (two hundred naira) for each day of default.

5. 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. Whenever any endorsement or pleading is amended, it shall be marked in the following manner: Amended this …….. day of ……. 20 ……. pursuant to the Order of (name of Judge)

dated the ……. day of ……

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

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

ORDER 37

INTERROGATORIES, DISCOVERY, INSPECTION AND NOTICE TO PRODUCE.

1. In any cause or matter, the claimant or defendant may deliver interrogatories in writing for the examination of the opposite parties or anyone or more of such parties and 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 sessions.

2. Interrogatories shall be in Form 22 with such modifications or variations as circumstances may require.

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

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

5. Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow and be served, a copy thereof delivered to the party that delivered the interrogatories.

6. An affidavit in answer to interrogatories, shall be Form 23 with such modifications or variations as circumstance may require.

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

8. (1) Any party may in writing, request any other party to any cause or matter, to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial sessions. They 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 the pre-trial session.

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

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 24 with such modifications or variations as circumstance may require.

9. (1) Any process to be filed after the pre-trial sessions 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.

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

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

(3) 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 time, been in his possession, custody, power or control, when he parted with the same and what has become of it.

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

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

13. Any party may at the trial of a cause or matter or 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.

14. 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.

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

PART II

NOTICE TO PRODUCE

16. Where a party to a suit desires any other party to the suit to produce in court at the trial, a document or any other thing, which he believes to be in the possession or power of that other party desirous of the production shall give “Notice to Produce” to that other party.

17. A notice to produce may be included in the pleadings of the party seeking the production of the document or thing, or be in a separate notice delivered to the other party or his counsel.

18. A notice to produce shall specify sufficient particulars to identify to the other party the exact document or thing required.

19. Fees for notice to produce shall be paid as prescribed by these rules; Provided that where more notice than one are included in the pleadings payment shall be made for only one notice.

20. Where a party to whom notice to produce was given, fails to produce the document or thing required to be produced, the party that gave the notice, shall be at liberty to lead secondary evidence of the matter contained in the document or thing that was not produced.

ORDER 38

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES.

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

(2) If the parties differ on the issues, the Judge may settle the issues.

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

4. The referee may, subject to the order of the Judge, hold the inquiry at or adjourn it to any place which he may deem most expedient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him. He shall, so far as practicable, proceed with the inquiry from day to day.

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

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

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

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

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

(3) On the receipt of a referee's report, the Judge may:

a)adopt the report in whole or in part;

b)vary the report;

c)require an explanation from him;

d)remit the whole or any part of the question or issue originally referred to him for further consideration by him or other referee;

e)decide the question or issue originally referred by him on the evidence taken before him, either with or without additional evidence.

(4) When the report of the referee has made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made by the Judge for the further consideration of the cause or matter, after giving not less than 4 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 a Judge orders that the further hearing of the cause or matter in question, shall not stand adjourned until the receipt of the referee's report, the order may contain direction with respect to the proceedings and on the receipt of the report the foregoing provisions of the rule, shall have effect subject to any direction.

7.The Judge may order or direct an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account, the books of accounts in which the accounts in question have been kept, shall be taken as prima facie evidence of the truth of their contents, with liberty to the interested parties to object.

8. Where any account is directed to be taken, the accounting party shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and left in the Registry.

9. Upon the taking of any account, the Judge may direct that the voucher be produced at the chambers of the accounting party's Legal Practitioner or at any other convenient place and that only such items as may be contested or surcharged, shall be brought before the Judge.

10. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice to accounting party, stating so far as he is able, the amount sought to be charged with particulars.

11. Where be any judgment or order any accounts are directed to be taken or inquires to be made, each and such direction shall be numbered so that as far as may be, each distinct account and inquiry may be designated by a number and such judgment or order shall be in form 25 with such modification or variation as the circumstances of the case may require.

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

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

PART II

APPOINTMENT OF RECEIVER

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

(2) Every application for appointment of a receiver shall be determined at the pre-trial sessions except otherwise in extreme circumstance.

(3) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with application for the order.

15. (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 paragraph (1) of this Rule 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 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.

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

17. (1) A receiver shall submit accounts 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.

(3) 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 application for the purpose of passing the account.

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

18. 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.

19.(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the court may, either in chambers or after adjournment into court, give such directions as it thinks proper including if necessary directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into Court on the date fixed by his account as due from him, the court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of ten per centum per annum on that sum while it remains in his possession as a receiver.

ORDER 39

SPECIAL CASE

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

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

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

5. (1) The parties to a special case may, if they think fit, enter into an agreement in writing which shall not be subject to any stamp duty, that on the judgment of the court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, 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.This Order shall apply to every special case stated in a cause or matter and in any proceedings incidental thereto.

ORDER 40

NON-SUIT

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

ORDER 41

FILING OF FINAL WRITTEN ADDRESS

1.At the close of evidence in a suit, the Judge shall direct on the filing of final written address by parties.

2. A written address shall be printed on good quality paper, set out in paragraphs and shall contain:-

i. the claim on which the address is based,

ii. a brief statement of the facts with reference to the exhibits tendered at the trial,

iii. the issues arising from the evidence adduced and

iv. a succinct statement or argument on each issue incorporating the purport of the authorities referred to, together with full citation of each such authority.

3.All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be included in the address, where any unreported judgment is relied upon, the certified true copy shall be submitted along with the written address.

4.Each party to the suit shall file sufficient copies of his address for use of the court and service on the other parties to the suit.

5.Oral argument in amplification or expanciation of the written address, may be allowed and shall be of such duration as the Judge may allow.

ORDER 42

ALTERNATIVE DISPUTE RESOLUTION (A.D.R.)

1.At the pretrial session, the Judge shall, with the assistance of counsel if parties are represented, explain to the parties the doors that are available that is to say: Litigation, Arbitration, Mediation and Conciliation.

2. ARBITRATION:

(a) If the parties voluntarily submit to arbitration, each shall appoint an arbitrator of his own choice while the Judge shall act as the umpire but called the third Arbitrator by the Arbitration and conciliation Act of Nigeria.

(b) The Judge shall drive the arbitration by fixing the period of time for the appointment by the parties and all other matters incidental to an expeditions hearing such as venue, time and mode of hearing to ensure informality in the spirit of arbitration.

(c) If any of the parties desires, he may still be represented by counsel of his choice.

(d) At the end of the hearing the arbitral tribunal shall make an award which to all intents and purposes has the status of a judgment of the High Court and shall be enforced as such a judgment of the High Court.

(e) The arbitral tribunal shall have all power of a High Court to compel the attendance of witnesses at the instance of the parties.

(f) The arbitral tribunal shall be guided by the need to expeditiously hear and make an award without being bogged down by adjournments and technicalities usually associated with the litigation door.

(g) The arbitral tribunal shall conduct the hearing in substantial conformity with the provisions of the Arbitration and Conciliation Act of Nigeria, and the relevant and helpful provision of the High Court (Civil Procedure) Rules of Abia State.

3. MEDIATION AND CONCILIATION:

(a) If the parties opt for either mediation or conciliation, each shall appoint a mediator or conciliator to perform the duties of such as prescribed by the common law on mediation and the Conciliation and Arbitration Act of Nigeria.

(b) The Judge shall facilitate, assist drive and propel the procedure decision is reached at the end of the process which shall have a binding effect on the parties and enforceable as a judgment of the High Court.

4. In other situations where an Agreement provides for Arbitration or any other Alternative Dispute Resolution, the provisions of the Arbitration and Conciliation Act of Nigeria shall apply and govern the proceedings.

5. The Judge shall have powers to make orders to cure any unforeseen development provided such an order shall not violate the spirit, the law and the intention of the parties to the arbitration.