

THE HIGH COURT RULES AKWA-IBOM

GOVERNMENT OF AKWA IBOM STATE OF NIGERIA HIGH COURT

(CIVIL PROCEDURE) RULES, 2009

GOVERNMENT OF AKWA IBOM STATE OF NIGERIA

HIGH COURT (CIVIL PROCEDURE) RULES, 2009

(1st day of December, 2009)

IN EXERCISE of the authority conferred on the High Court Rules Committee constituted by virtue of Section 76 of the High

Court Law Cap 55 Laws of Akwa Ibom State of Nigeria, 2000, the High Court Rules Committee pursuant to its powers under

Section 77(1) of the High Court Law aforesaid and all other enabling powers in that behalf, makes the following-

1.(1) The provisions contained in the rules set out in the schedule and hereinafter called 'the Rules' shall be the rules

of civil procedure to be followed in the High Court of Akwa Ibom State

(2) The Rules may be cited as the High Court (Civil Procedure) Rules, 2009

2. Where a matter arises in respect of which no provisions or no adequate provisions are made in the Rules, the Court shall

adopt such procedure as will, in its view, do substantial justice between the parties concerned.

3.(1) Any reference in the Rules to anything done under the Rules includes a reference to anything done before the

commencement of the Rules under any corresponding law or rule of Court ceasing to have effect on the commencement of the

Rules.

(2) Except where the context otherwise requires, any reference to any enactment shall be construed as a reference to that

enactment as amended in these Rules.

4. The Forms in the appendix to the schedule shall be used where Forms applicable with such variations as the circumstances

of the particular case require.

5. In these Rules, unless the context otherwise requires "the court" means the High Court of Akwa Ibom State of Nigeria;

"convention country" means a foreign country with which Nigeria shares legal commitments on a matter
"return date" means the day

endorsed on a Writ for the first appearance of the parties before a Court or any other day as the Court may appoint and

in the case of Order 11 where a writ is marked "Undefended", it is the day fixed for hearing.

6. The Rules may be cited as the High Court (Civil Procedure) Rules, 2009 and shall come into force on the 1st day of

December, 2009.

DATED this 1st day of December, 2009

1. CHIEF JUDGE OF AKWAIBOM STATE (CHAIRMAN)

2. (MEMBER)

3. (MEMBER)

4. (MEMBER)

5. (MEMBER)

SCHEDULE

AKWA IBOM STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2009

CONTENTS

[ORDER 1](#)

APPLICATION AND INTERPRETATION

1. Application

2. Interpretation

3. Citation and Commencement

[ORDER 2](#)

PLACE OF INSTITUTING AND TRIAL OF SUITS

1. Suits relating to Land and Property distrained or seized

2. Suits for recovery of penalties, forfeitures

3. Suits upon contract

4. Other Suits

5.Suits commenced in the wrong Judicial Division

[ORDER 3](#)

FORM AND COMMENCEMENT OF ACTION

- 1.Proceedings which must be begun by Writ
- 2.Mode of beginning civil proceedings
- 3.Form of Writ (Civil Form I)
- 4.Form of Writ for Service out of Nigeria, (Civil Form 2)
- 5.Proceedings which may be begun by originating summons
- 6.Construction of enactment
- 7.Discretion of the Judge
- 8.Forms of originating summons (Civil Forms 3, 4, 5)
- 9.Service outside the State
- 10.Registrar to indicate date and time

[ORDER 4](#)

INDORSEMENT OF CLAIM AND OF ADDRESS

- 1.Indorsement
- 2.Indorsement to show representative capacity
- 3.Probate actions
- 4.Indorsement where the claim is liquidated
- 5.Ordinary account
- 6.Indorsement of address by claimant or by Legal Practitioner
- 7.Indorsement as to address
- 8.Originating process without an address or with fictitious address

[ORDER 5](#)

EFFECT OF NON-COMPLIANCE

- 1.Non-compliance with Rules
- 2.Application to set aside for irregularity

[ORDER 6](#)

ISSUANCE OF ORIGINATING PROCESS

- 1.Preparing Originating Process
- 2.Signing and stamping of Originating Process
- 3.What is to be done after signing and stamping
- 4.Copies to be served
- 5.Probate action: affidavit with originating process
- 6.Renewal of Originating Process (Civil Form 6)
- 7.Indorsement of Renewal
- 8.Loss of Originating Process
- 9.Concurrent Originating Process
- 10.Concurrent Originating Process for service within and out of jurisdiction

[ORDER 7](#)

SERVICE OF PROCESS

- 1.Means by which service is to be effected
- 2.Service of Originating Process
- 3.When originating process need not be served personally
- 4.Mode of service when not personal
- 5.Substituted service
- 6.Persons under legal disability
- 7.Prisoner or detainee
- 8.Partners
- 9.Corporation or company
- 10.Foreign corporation or company
- 11.Local agent of principal who is out of jurisdiction
- 12.Where violence is threatened
- 13.Proof of service generally
- 14.Expenses of service
- 15.Time of service on certain days
- 16.Recording of service

[ORDER 8](#)

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

- 1.Cases where service of originating process, etc. are allowed out of Nigeria
- 2.Agreement as to service
- 3.Service abroad by letter of Request (Civil Forms 7, 8 and 9)
- 4.Where leave is granted or not required (Civil Form 10)
- 5.Service of Foreign Processes
- 6.Inapplicability of Rule 4
- 7.Service on behalf of foreign tribunal
- 8.Substituted service of foreign process

[ORDER 9](#)

APPEARANCE

- 1.Mode of entry of appearance (Civil Form 11)
- 2.Defendant appearing in person or represented by Legal Practitioner
- 3.Fictitious address
- 4.Defendants appearing through same Legal Practitioner
- 5.Late appearance
- 6.Intervener in probate matters
- 7.Recovery of Land
- 8.Landlord appearing
- 9.Person under legal disability appearing
- 10.Tenant

[ORDER 10](#)

DEFAULT OF APPEARANCE

- 1.Default of appearance by person under legal disability
- 2.Default of appearance generally
- 3.Liquidated demand
- 4.Liquidated demand: several defendants
- 5.Judgment in default of appearance
- 6.Several defendants

7. Detention of goods, damages and liquidated demand
8. Recovery of Land
9. Mesne profits
10. Judgment of costs upon payment satisfaction, etc.
11. Setting aside judgment
12. Default of appearance in actions not otherwise specifically provided for
13. Compulsory service

[ORDER 11](#)

I. SUMMARY JUDGEMENT

1. Where claimant believes there is no defence
2. Delivery of extra copies
3. Service
4. Where defendant intends to defend
5. Where defendant has good defence, or has no good defence or has good defence to part of the claim
6. Where there are several defendants
7. Oral submission on written brief

II. undefended List

8. The Undefended List. Affidavit
9. Copy of affidavit to be served
10. Notice of intention to defend
11. Judgment in undefended suit
12. Oral evidence

[ORDER 12](#)

APPLICATION FOR ACCOUNT

1. Order for account
2. Application how made
3. Account may be taken by a Judge or Referee

[ORDER 13](#)

PARTIES GENERALLY

1. Person claiming jointly or severally
 2. Action in the name of wrong claimant
 3. Misjoinder and counterclaim
 4. Any person may be joined as defendant
 5. Action in the name of wrong defendant
 6. Defendant need not be interested in all the reliefs sought
 7. Joinder of persons severally or jointly and severally liable
 8. Claimant in doubt as to person from whom redress is to be sought
 9. Persons under legal disability
 10. Guardian
 11. Trustees, Executors, etc. may be sued as representing the estate
 12. Numerous persons
 13. Representation of persons or classes of persons in certain proceedings
 14. Power to approve compromise
 15. Where there is no personal representative
 16. Proceedings not defeated by misjoinder or nonjoinder
 17. Application to add or strike out
 18. Where defendant is added
 19. Third parties may be joined by any of the parties
 20. Appearance by Third Party
 21. Default by Third Party
 22. Subsequent Third Party
 23. Claim against co-defendant
- II. Actions Against Firms and Persons Carrying on Business in Names Other than Their Own
24. Actions by and against firms
 25. Disclosure of partners' names
 26. Appearance of partners
 27. Application of rules to actions between co-partners
 28. Persons trading as firms

III. Change of Parties by Death or Otherwise

29. Action not abated where cause of action survives

30. Order to carry on proceedings

31. In case of assignment, creation or devolution of estate or title

32. Application to discharge order by person under disability having a Guardian

33. By persons under disability having no Guardian

IV. Legal Practitioners or Agents

34. Acts may be done by Legal Practitioner or agent

[ORDER 14](#)

JOINDER OF CAUSES OF ACTION

1. All causes of action may be joined

2. Recovery of Land

3. Executor and Administrator

4. Claims by joint claimants

[ORDER 15](#)

PLEADINGS GENERALLY

1. Filing of Pleadings

2. Pleadings to state material facts and not evidence: How facts are to be stated

3. Particulars to be given where necessary

4. Further and better statements or particulars

5. Denial

6. Conditions precedent

7. Certain facts to be specifically pleaded

8. Pleadings to be consistent

9. Joinder of issues

10. Effect of documents to be stated

11. Notice

12. Implied contract or relation

13. Presumptions of LaZw

14. Stated or settled account
15. Technical objection
16. Striking out pleadings
17. Defamation
18. Where pleading discloses no reasonable cause of action
19. Close of pleadings

[ORDER 16](#)

STATEMENT OF CLAIM

1. Statement of claim
2. Claim beyond indorsement

[ORDER 17](#)

DEFENCE AND COUNTER CLAIM

1. Statement of defence
2. Evasive denial
3. Denials generally
4. Denials specifically
5. Pleadings as to damages
6. Set-off and Counterclaim
7. Title of counterclaim
8. Claim against persons not party (Civil Form 12)
9. Appearance by added parties
10. Reply to counterclaim
11. Discontinuance of the claimant's claim
12. Judgment for balance
13. Grounds of defence after action brought
14. Further defence or reply
15. Concession to defence (Civil Form 13)
16. Defence to originating summons

[ORDER 18](#)

REPLY

- 1.Filing of reply
- 2.Reply to counterclaim

[ORDER 19](#)

ADMISSIONS

- 1.Admission of facts
- 2.Notice to admit documents
- 3.Notice to admit facts
- 4.Judgment or Order upon admission of facts
- 5.Costs of notice where documents are unnecessary

[ORDER 20](#)

DEFAULT OF PLEADING

- 1.Claim for debt or liquidated demand
- 2.Several defendants: default of one
- 3.Damages and detention of goods
- 4.Default of one or more defendants
- 5.Debt or damages and detention of goods or damages
- 6.Recovery of Land
- 7.Claim for mesne profit, arrears or damages
- 8.Where a defence is filed to part of claim only
- 9.Defendant in default
- 10.One of several defendants in default
- 11.Default of third party
- 12.Setting aside judgment by default

[ORDER 21](#)

PAYMENT INTO AND OUT OF COURT

- 1.Payment into and out of court (Civil Form 14)
- 2.Claimant may receive money (Civil Form 15)
- 3.Money remaining in court

4. Several defendants (Civil Form 16)
5. Counterclaims
6. Persons under legal disability
7. Payment into and withdrawal of money from court

[ORDER 22](#)

PROCEEDINGS IN LIEU OF DEMURRER

1. Demurrer abolished
2. Points of law may be raised by pleading

[ORDER 23](#)

DISCONTINUANCE

1. Claimant may discontinue before defence
2. Withdrawal by consent

[ORDER 24](#)

AMENDMENT

1. Amendment of originating process pleadings and other process
2. Application
3. Amendment of originating process
4. Failure to amend after Order
5. Filing and service of amended process
6. Date of order and amendment to be displayed
7. Clerical mistakes and accidental omissions
8. General power to amend

[ORDER 25](#)

PRE-TRIAL CONFERENCES AND SCHEDULING

1. Pre-trial conference notice (Civil Form 17, 18)
2. Scheduling and planning
3. Agenda
4. Timetable
5. Report

6.Sanctions

7.Management

[ORDER 26](#)

DISCOVERY AND INSPECTION

1.Discovery by interrogatories

2.Form of interrogatories (Civil Form 19)

3.Corporation or companies

4.Objection to interrogatories by answer

5.Affidavit in answer, filing of

6.Form of affidavit in answer (Civil Form 20)

7.Order to answer or answer further

8.Application for discovery of documents (Civil Form 21)

9.Processes filed after pre-trial conference

10.Verification of business books

11.Attachment of party after service on Legal Practitioner

12.Attachment of Legal Practitioner

13.Using answers to interrogatories at trial

14.Discovery against Sheriff

15.Order to apply to person under legal disability

[ORDER 27](#)

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

1.Issues of facts

2.Reference to referee

3.Instruction to referee

4.General powers of referee

5.Evidence

6.Reports made in pursuance of reference under order

7.Special directions as to mode of taking account

8.Accounts to be verified by affidavit numbered and left in the Registry

9. Mode of vouching account
10. Surcharge
11. Accounts and inquiries to be numbered (Civil Form 22)
12. Just allowances
13. Expediting proceedings in case of undue delay
14. Interpretation of reference to Referee

[ORDER 28](#)

SPECIAL CASE

1. Special case by consent
2. Special case order before trial
3. Special case to be signed
4. Application to set down where a person under legal disability is a party
5. Agreement as to payment of money and costs
6. Application of order

[ORDER 29](#)

CAUSE LISTS

1. List of causes for hearing
2. Pre-trial and Weekly Cause List
3. Public holidays
4. Judge unable to sit
5. Notice boards

[ORDER 30](#)

TRIAL PROCEEDINGS

1. Non-appearance of both parties
2. Default of appearance by defendant at trial
3. Default of appearance by claimant
4. Judgment by default may be set aside on terms
5. Adjournment of trial
6. Times of commencement and termination of trial

7. Order of proceeding
8. Burden of proof by party to begin
9. Documentary evidence
10. Additional witness
11. Close of case of parties
12. Exhibits during trial
13. Written address by party beginning
14. Written address-by the other party
15. Written address of party beginning
16. Right of reply
17. Custody of Exhibits after trial
18. Office copy of list of exhibits
19. Indolent prosecution

[ORDER 31](#)

FILING OF WRITTEN ADDRESS

1. Application
2. Content of written address
3. Summation of address
4. Oral argument
5. Copies of written address

[ORDER 32](#)

EVIDENCE GENERALLY

1. Facts how proved
2. Particular facts
3. Limitation of medical and expert evidence
4. Limitation on use of documentary evidence
5. Revocation and variation
6. Office copies admissible in evidence
7. Examination of witnesses abroad (Civil Forms 23, 24)

8. Form of order for examination of witnesses abroad (Civil Form 25)
9. Order for attendance of person to produce document
10. Disobedience to order for attendance
11. Expenses of persons ordered to attend
12. Contempt of court
13. Examination of witnesses
14. Depositions not to be given in evidence without consent or leave of a judge
15. Oaths
16. Attendance of witness under subpoena for examination or to produce documents
17. Practice as to taking of evidence at any stage of cause or matter
18. Special directions as to taking of evidence
19. Evidence in proceedings subsequent to trial
20. Form of praecipe of a subpoena (Civil Form 26)
21. Form of subpoena (Civil Forms 27, 28 & 29)
22. Subpoena for attendance of witness in Chambers
23. Correction of errors in subpoena
24. Personal service of subpoena
25. Duration of subpoena
26. Action to perpetuate testimony
27. Examination of witnesses to perpetuate testimony
28. Action not to be set down for trial

[ORDER 33](#)

AFFIDAVITS

1. Evidence on motions, etc.
2. Title of Affidavit
3. Use of defective Affidavit
4. Special time for filing Affidavits
5. Affidavits in support of ex parte applications
6. Notice of intention to use affidavit

7.Alterations in accounts to be initialled

8.Exhibits

9.Certificate of exhibit

10.Certificate of Evidence Act

11.Affidavit taken in a commonwealth country admissible without proof of seal, etc.

[ORDER 34](#)

NON-SUIT

1.Power of court to non-suit

2.Non-suit where no leave reserved

[ORDER 35](#)

JUDGMENT, ENTRY OF JUDGMENT

1.Deli very of judgment at or after trial

2.Date of judgment pronounced in court

3.Date of judgment directed to be entered

4.Judge may direct time for payment or performance and interest

5.Time to be stated for doing any act

6.Judgment by consent where defendant appears by a Legal Practitioner

7.Judgment by consent where defendant has no Legal Practitioner

[ORDER 36](#)

DRAWING UP OF ORDERS

1.Date of order when drawn

2.What orders need not be drawn up

3.Form of order

[ORDER 37](#)

TRANSFERS AND CONSOLIDATION

I.Transfers

1.Order transferring proceedings to High Court by Chief Judge

2.Payment of filing fees

3.Duties of Registrar

4.Directions

5.Party failing to attend

6.Construction

II.Consolidation

7.Consolidation of actions

[ORDER 38](#)

INTERLOCUTORY ORDERS, ETC.

1.Preservation or interim custody of subject matter of disputed contract

2.Early trial of cause

3.Order for sale of perishable goods, etc.

4.Detention, preservation or inspection of property, the subject of an action

5.Sale of property in possession of Court

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

7.Allowance of income of property pendente lite

8.Injunction against repetition of wrongful act for breach of contract

9.Appointment of a receiver by way of equitable execution

10.Receivers: security and remuneration (Civil Forms 30, 31)

11.Where Receiver appointed in court: adjournment to give security

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

13.Receiver's' Accounts (Civil Form 32)

14.Affidavit verifying Receiver's Account (Civil Form 33)

15.Consequences of default by Receiver

16.Passing of Guardians' Accounts

[ORDER 39](#)

MOTIONS AND OTHER APPLICATIONS

1.Application by motion

2.Restriction on rule nisi and order to show cause

3.When notice of motion should be given

4.Motion on Arbitral Award

- 5.Special leave
- 6.Motions may be dismissed or adjourned where necessary notice not given
- 7.Adjournment of hearing
- 8.Service of motion with writ
- 9.Account by Legal Practitioner
- 10.Interim Certificate

[ORDER 40](#)

APPLICATION FOR JUDICIAL REVIEW

- 1.Cases appropriate for application for Judicial Review
- 2.Joinder of claims for relief
- 3.Grant of leave to apply for judicial review
- 4.Time within which to bring application
- 5.Mode of applying for judicial review
- 6.Statement and affidavits
- 7.Claim for damages
- 8.Interlocutory application
- 9.Hearing of application for judicial review
- 10.Person acting in obedience to an order of mandamus
- 11.Consolidation of applications

[ORDER 41](#)

APPEALS FROM MAGISTRATES COURT

- 1.Notice of Appeal
- 2.Contents of Notice of Appeal
- 3.Copies of record of proceedings
- 4.Filing of Briefs
- 5.Procedure at hearing
- 6.Where time expires
- 7.Constitution of Court hearing appeals
- 8.Time and place for hearing

9. Appeal limited to grounds given in notice
10. Request to affirm judgment on other grounds
11. Counter appeal
12. Objection to form of grounds of appeal
13. Defects in proceedings under appeal
14. Defects in notice of appeal or recognizance
15. Additional evidence
16. Mode of taking evidence
17. Fees (First Schedule)
18. Allowances to witnesses (Third Schedule)
19. Stay of Execution
20. Costs
21. Security for costs
22. Orders of High Court to be certified to Magistrate's Court
23. Enforcement of Judgment
24. Enforcement of Orders
25. Interpretation

[ORDER 42](#)

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

I. Habeas Corpus

1. Application: How made
2. Affidavit to accompany ex parte application
3. Power to issue Order of Release immediately
4. Service of notice
5. Copies of affidavits
6. Service of order to release
7. Statement and verifying affidavit
8. Procedure at hearing

II. Attachment for Contempt

9.Procedure for attachment

10.Procedure on disobedience to Court order

11.Response

12.Return

[ORDER 43](#)

INTERPLEADER

1.When relief by inter-pleader is granted

2.Matter to be proved by applicant

3.Adverse title of claimants

4.When application is to be made by a defendant

5.Summons by applicant

6.Stay of action

7.Order upon summons

8.Questions of law

9.Failure of claimant to appear, or neglect to obey summons

10.Costs, etc.

[ORDER 44](#)

COMPUTATION OF TIME

1.Rules for computation of time

2.Holiday

3.Time of service

4.Court may extend time

[ORDER 45](#)

MISCELLANEOUS PROVISIONS

I.Court Sittings and Vacation

1.Days of sittings

2.Sittings of the court

3.Office hours

4.Days of sittings and long vacation

5.Vacation

6.Vacation not reckoned in time for pleadings

II.General

7.Recovery of penalties and costs

8.Notice

9.Filing

10.How process is addressed

11.No fees where proceedings are by Government Departments

12.Regulations

13.Saving

14.What orders to be made

[ORDER 46](#)

ARREST OF ABSCONDING DEFENDANT

1.Defendant leaving Nigeria

2.Warrant to arrest

3.Bail for appearance or satisfaction

4.Deposit in lieu of bail

5.Committal in default

6.Cost of subsistence of person arrested

[ORDER 47](#)

PROCEEDINGS IN FORMA PAUPERIS

1.Application

2.Who may sue or defend in forma pauperis

3.Conditions to be fulfilled

4.Fees and costs

5.Procedure to be followed

6.Revocation of order, discontinuance, etc.

7.Payment to Legal Practitioner

8.Duty of Legal Practitioner

9.Appeals

[ORDER 48](#)

CHANGE OF LEGAL PRACTITIONER

- 1.Legal Practitioner to conduct cause or matter to final judgment
- 2.Application for change or withdrawal of Legal Practitioner
- 3.Service of application

[ORDER 49](#)

COSTS

- 1.Principles to be observed in fixing costs
- 2.Security for costs
- 3.Security for costs by claimant temporarily within jurisdiction
- 4.Action founded on judgment or bill of exchange
- 5.Bond as security for costs
- 6.Costs at discretion of court
- 7.Costs out of fund or property
- 8.Stay of proceedings costs till is paid
- 9.Stage of proceedings at which costs to be dealt with
- 10.When costs is to follow the event
- 11.Matters to be taken into account in exercising discretion
- 12.Costs arising from misconduct or neglect
- 13.Personal liability of Legal Practitioner for costs
- 14.Taxation of costs
- 15.Notice to other party
- 16.Power of taxing officer
- 17.Supplementary powers of taxing officers
- 18.Extension of time
- 19.Power of taxing officer where party liable to be paid and to pay costs
- 20.Mode of beginning proceedings for taxation
- 21.Provisions as to bills of costs

22.Provisions as to taxation proceedings

23.Scale of costs

24.Certificate of taxing officer

25.Fees on taxation

26.Application for review

27.Application for summons

[ORDER 50](#)

I.PROCEEDINGS IN CHAMBERS

1.Representation in Chambers

2.Matters to be disposed of in Chambers

II.Proceeding Relating to Persons under Legal Disability

3.Evidence upon application for appointment of Guardians and for maintenance

4.Guardian with reference to proceeding in Chambers

III.Further Consideration

5.Further consideration of matter originating in Chambers

IV.Registering and Drawing Up of Orders in Chambers Costs

6.Notes of proceedings in Chambers

7.Drawing up and entry of order made in Chambers

8.Costs

9.Decisions given in Chambers how set aside or varied

[ORDER 51](#)

JURISDICTION OF CHIEF REGISTRAR

1.Chief Registrar

2.Business to be transacted by Chief Registrar

3.Chief Registrar may refer matter to the Chief Judge

4.Appeal from order of Chief Registrar

5.Chief Registrar's lists

6.Legal Practitioners may represent party

I.Chief Registrar's Certificate

- 7.Certificate
- 8.Reference to judgment, etc.
- 9.Form of Certificate (Civil Form 34)
- 10.When Certificate becomes binding
- 11.Bill of Costs
- 12.Discharge or variation of certificate after lapse of any time

[ORDER 52](#)

FORCLOSURE AND REDEMPTION

- 1.Originating summons for foreclosure
- 2.Form of orders for payment and for possession (Civil Forms 35,36,37)
- 3.Service and execution of judgment

[ORDER 53](#)

I. SUMMONS TO PROCEED

- 1.Bringing in judgment etc, directing account and inquiries
- 2.Summons to proceed with accounts and inquiries: Directions
- 3.Settling deed where parties differ
- 4.Where service of notice of judgment or order is dispensed with
- 5.Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order
- 6.Documents: copies for use of Judge

II.Summons to Proceed Book

- 7.Entry in Summons to Proceed book

[ORDER 54](#)

SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNERS CONSENT

- 1.Application of this Order
- 2.Proceedings to be brought by originating summons (Civil Form 38)
- 3.Affidavit in support
- 4.Service of originating summons

- 5.Application by occupier to be made a patty
- 6.Order for possession (Civil Form 39)
- 7.Writ of possession
- 8.Setting aside of order

[ORDER 55](#)

STAY OF EXECUTION PENDING APPEAL

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

[ORDER 56](#)

PROBATE AND ADMINISTRATION

I.Grant of Probate or Administration in General

- 1.Petition to be made to Registrar
- 2.Preservation of property
- 3.Unauthorised persons intermeddling with property
- 4.Production of testamentary papers
- 5.Judge may order production
- 6.Examination respecting papers
- 7.Notice to executor to come in and prove
- 8.Liability of Executor neglecting to apply for probate
- 9.Evidence of Identity
- 10.Judge may refuse grant until person or persons interested are-given due notice
- 11.Value of property
- 12.Answers required before grant
- 13.Form of suits
- 14.Testator may deposit Will
- 15.Custody of Wills for which probate is granted
- 16.Will not given out without order of Judge
- 17.Examination of Will as to its execution

18. Evidence as to due execution of Will
19. Evidence on failure of attesting witnesses
20. Evidence as to terms; conditions and date of execution of Will
21. Attempted revocation of a Will
22. Affidavit as to due execution, terms etc. of Will
23. Will of persons in military service and seamen
24. Evidence of foreign law
25. Order of priority for grant where deceased left a Will
26. Joinder of Administrators
27. Will of blind or illiterate testator
28. Interlineations, erasures or obliterations
29. Documents referred to in a Will or annexed or attached thereto
30. Executor dying without proving or not appearing
31. Making of Wills
32. Viva voce examination of persons making affidavits
33. Letters of Administration
34. Administration Bond
35. Guarantee (Probate Form 1)
36. Assignment Bond
37. Administration summons
38. Order for Administration
39. Order relating to property
40. Administration may be granted to officer
41. Officer to act under the direction of Judge
42. Court may appoint person to be Administrator
43. Remuneration of Administrator
44. Securing and collection of estate
45. Application by Consular officer or person authorised by him to administer estate
46. Accounts to be filed

47. Court may refuse application to review
48. Grant to be signed by Probate Registrar
49. Application
50. Application for grants through Legal Practitioners
51. Personal Application
52. Duty of Registrar on receiving application for grant
53. Oath in support of grant
54. Grant in additional name
55. Engrossment for purposes of record
56. Grant to attesting witnesses, etc
57. Right of assignee to a grant
58. Additional Personal Representatives
59. Grant where two or more persons are entitled in the same degree
60. Exceptions to rules as to priority
61. Grant to persons having spes successiois
62. Grant where deceased was domiciled outside the State
63. Grant to Attorney
64. Grant on behalf of minors
65. Grant where minor is co-executor
66. Grant in case of mental or physical incapacity
67. Renunciation of probate and administration
68. Notice to state of intended application for grant
69. Resealing (Probate Form 2)
70. Amendments and revocation of grant
71. Notice to prohibit grant (Probate Forms 3,4,5,6)
72. Citation
73. Citation to accept or refuse a grant
74. Citation to propound a Will
75. Address for service

76. Application for order to bring or to attend for examination

77. Limited grants

78. Grants ad colligenda bona

79. Application for leave to swear to death of a person

80. Grants in respect of codicils and copies of Wills

81. Grants Durant absentia

82. Notice of election by surviving spouse to redeem life interest (Probate From &)

83. Photocopy of Wills or other documents may be certified and sealed

84. Power to require application to be made by summons or motions

85. Service of Notice of motion and summons

86. Service of Notice, etc. at the person's address

87. Affidavit

88. Time

89. Application

90. Contentious probate; form of suits

91. Probate actions

92. Service of Writ of Summons

93. Pleadings and further actions

94. Where claimant disputes defendants' interest

95. Notice of opposition to Will

96. Inquiry as to outstanding personal estate

97. Discretion to order costs

98. Originating summons relating to deceased person

99. Order or Administration of Estate of deceased and of Trust

100. Persons to be served

101. Judge not bound to order Administration

102. Order which may be made on application for Administration or execution of Trust, where no account or insufficient accounts have been rendered

103. Interference with discretion of Trustee

104. Application by summons

105. Interpretation

ORDER 57

FEES AND ALLOWANCES

1. (1) Fees: 1st, 2nd, 3rd, 4th and 5th Schedules

(2) Allowances: Part II of 5th Schedule

2. Regulations: 6th Schedule

3. Specific services: 7th Schedule

AKWA IBOM STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2009

(ARRANGEMENT OF RULES)

ORDERS

ORDER 1

APPLICATION AND INTERPRETATION

1.-(1) These Rules shall apply to all proceedings including all part-heard causes and matters.

(2) In respect of causes and matters already pending, these 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.

2. In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several

words hereinafter mentioned or referred to shall have or include the following meanings, as the case may be. "Plaintiff" or

"Claimant" shall include a claimant in a counterclaim;

"Court" means the High Court of the State;

"Court Process" or "Processes" include writ of summons, originating summons, originating process, notices, petitions,

pleadings, orders, motions, summonses, warrants and all documents or written communication of which service is required;

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

recommendation "Defendant" shall include a defendant to a counter-claim;

"Guardian" means any person who has for the time being, the charge of or control over a person under legal disability and

includes a person appointed to institute or defend an action on behalf of any person under legal disability;

"Law" means the High Court Law of Akwa Ibom State, or any re-enactment thereof;

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

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

"Persons Under Legal Disability" means persons who lack capacity to institute or defend any proceedings by reason of age,

insanity, unsoundness of mind or otherwise;

"Probate action" means an action for the grant of Probate of the Will, or Letters of Administration of the estate of a

deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged

will, not being an action which is non-contentious or common form probate business;

"Registrar" means the Chief Registrar, Deputy Chief Registrar, Assistant Chief Registrar, Principal Registrar, Senior

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

"Registry" means the

Registry of the High Court of the 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.

3. The Rules may be cited as the High Court (Civil Procedure) Rules and shall come into force on the 1st day of December,

2009.

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

Subject to the provisions of the Law on transfer of suits, the place for trial of any suit shall be regulated as follows:

1. All suits relating to land or any mortgage or charge on or any other interest or damage to land and also all actions

relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division

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

2. All actions for recovery penalties, forfeitures, and 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, may be commenced and determined in the Judicial

Division in which such contract was made or ought to have been performed or in which the defendant resides or carries on

business.

4. (1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on

business or in which the cause of action arose.

(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be

commenced in anyone of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most

convenient arrangement for trial of the suit.

5. If any suit is commenced in the wrong Judicial Division, it may be tried in that Division unless the Judge otherwise

directs.

6. Where the Court is satisfied that the cause or matter before it is within the jurisdiction of the Federal High Court the

Court shall transfer the cause or matter to the Federal High Court in the State or that covers the State.

ORDER 3

FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of these Rules or any applicable law requiring any proceedings to be begun by originating

summons, originating motion or petition, a writ of summons shall be the form of commencing all proceedings:

(a) Where a Plaintiff or 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 or wrongful death of any person, or in respect of damage or injury to any person, or

property.

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

(c) where an interested person claims a declaration.

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

(a) statement of claim;

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

(c) written statements on oath of the witnesses and

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

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

Registry.

3. Except in the cases in which different forms are provided in these Rules, the writ of summons shall be as in Form 1 with

such modifications or variations as circumstances may require.

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

may require.

5. Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating

summons for the determination of any question of construction arising under the instrument and for a declaration of the

rights of the persons interested.

6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled

to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination

of such question of construction and for a declaration as to the right claimed.

7. A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined

on originating summons but may make any such orders as he deems fit.

8.(1)An originating summons shall be as in Forms 3, 4 or 5 of these Rules, with such variations as circumstances may require.

It shall be prepared by the applicant or his Legal Practitioner, and shall be signed, stamped and filed in the Registry, and

when so signed, stamped and filed, shall be deemed to be issued.

(2)An originating summons shall be accompanied by:

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

(b)all the documentary exhibits to be relied upon;

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

(3)The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with

the documents in sub-rule 2 above for service on the respondent or respondents.

9.Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by

the Court for service outside the State shall be endorsed by the Registrar of the Court with the following notice:

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

10.-(1) The Registrar shall indicate the date and time of presentation for Registrar to filing on every originating process

presented to him and shall arrange for service indicate date and thereof to be effected.

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

ORDER 4

INDORSEMENT OF CLAIM AND OF ADDRESS

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

claimant.

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

process shall state that capacity.

3.In probate actions the originating process shall state whether a claimant claims as creditor, executor, administrator,

beneficiary, next of kin or in any other capacity.

4.(1) Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt

or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the

claimant's Legal Practitioner within the time allowed for appearance and that upon such payment the proceedings shall

terminate.

(2)The defendant may, notwithstanding payment under this Rule, have the costs taxed and if more than one sixth of the costs

shall be disallowed, the claimant's Legal Practitioner shall pay the costs of taxation.

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

state.

6.(1) A claimant suing in person shall state on the originating process his residential or business address as his address

for service. If he lives and carries on business outside the jurisdiction he shall state an address within the jurisdiction

as his address for service.

(2)Where a claimant sues through a Legal Practitioner the Legal Practitioner shall state on the originating process his

chamber's address as the address for service. If the Legal Practitioner is based outside the jurisdiction he shall state a

chamber's address within the jurisdiction as his address for service.

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

required in Rule 6.

8.If the originating process does not state an address for service it shall not be accepted and if any such address is

illusory, fictitious or misleading the process may be set aside by a Judge on the application of the defendant.

ORDER 5

EFFECT OF NON-COMPLIANCE

1.(1) Where 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 as to time, place, manner, or form, the failure shall be treated as an

irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to

regularise such steps.

(2)The Judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on

the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one

employed.

2.(1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is

made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the

irregularity,

(2)An application under this Rule may be made by summons or motion and the grounds of objection shall be stated in the

summons or notice of motion.

ORDER 6

ISSUANCE OF ORIGINATING PROCESS

1.Originating process shall be prepared by a Plaintiff or claimant or his Legal Practitioner, and shall be clearly printed on

good quality white opaque paper.

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

(2)A Plaintiff or Claimant or his Legal Practitioner shall, on presenting any originating process for signing and stamping,

leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of

service on each defendant.

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

and shall be certified after verification by the Registrar as being a true copy of the original process filed.

3. The Registrar shall after signing and stamping an originating process, file it and note on it the date of filing and the

number of copies supplied by a plaintiff or claimant or his Legal Practitioner for service on the defendants. The Registrar

shall then make an entry of the filing in the Cause Book and identify the action with a suit number that may comprise

abbreviation of the Judicial Division, a chronological number and the year of filing.

4. The Registrar shall promptly arrange for personal service on each defendant a copy of the originating process and

accompanying documents duly certified as provided by Rule 2 (3) of this Order.

5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a plaintiff or claimant or one

of several claimants verifying the contents of the process.

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

(2) If a Judge is satisfied that it has proved impossible to serve an originating process on any defendant within its life

span and a claimant applies before its expiration for renewal of the process, the Judge may renew the original or concurrent

process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications

or variations as circumstances may require.

7. A Judge may order only two renewals in each case strictly for good cause and upon prompt application, provided that no

originating process shall be in force for a period longer than a total of 12 months. The Registrar shall state the fact,

date, and duration of renewal on every renewed originating process.

8. Where an originating process is lost, and a copy of it exists, the Judge may, upon being satisfied of the correctness of

the copy, make an order that the existing copy be filed, signed and stamped in place of the lost originating process.

9. A claimant may at the issuance of an originating process or at any time during its life span, cause to be issued one or

more concurrent originating processes each of which shall bear the same date as the initial process marked 'CONCURRENT' and

have stated on it the date of issue.

10. An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with

one for service out of jurisdiction and an originating process for service out of jurisdiction may be issued and marked as a

concurrent originating process with one for service within jurisdiction.

ORDER 7

SERVICE OF PROCESS

1.(1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officers

of the court. The Chief Judge may also appoint and register any Law Chambers, Courier Company or any other person to serve

court processes.

(2) A person given the responsibility of serving court processes under sub-rule 1 of this Rule shall be called a process

server.

(3) Where a party is represented by a Legal Practitioner service of court process of which personal service is not required

may be made on such Legal Practitioner or on a person under his control.

2. The process server shall serve an originating process by delivering to the party to be served a copy of the process duly

certified as prescribed by Order 6 Rule 2 (3).

3. No personal service of an originating process shall be required where the defendant has authorised his Legal Practitioner

in writing to accept service and such Legal Practitioner enters appearance.

Provided that such written authority shall be attached to the memorandum of appearance filed by such Legal Practitioner,

4. All processes in respect of which personal service is not expressly required by these Rules or any applicable law shall be

sufficiently served if left with an adult person resident or employed at the address for service given under Order 4 Rule 6.

5.(1) Where personal service of an originating process is required by these Rules or any applicable law, and a Judge is

satisfied that prompt personal service cannot be effected, the Judge may upon application by the claimant make such order for

substituted service as may seem just.

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

which the application is made.

6.(1) Where a person under legal disability is a defendant, service on his Guardian shall be deemed good and sufficient

personal service, unless a Judge otherwise orders. Provided that personal service on a minor who is over 16 years of age

living independently or doing business is good and sufficient.

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

7. Where a detainee or prisoner is a defendant, service on the head or other officer in charge of the station, facility or

prison where the defendant is, or officer of the agency in charge of the station, facility or prison shall be good and

sufficient personal service on the defendant.

8. Where persons are sued as partners in the name of their firm the originating process shall be served upon any one or more

of the partners at the principal place of business within the jurisdiction or upon any person having control or management of

the partnership business there; and such service shall be deemed good service upon the firm whether any of the partners are

out of the jurisdiction or not, and no leave to issue an originating process against them shall be necessary;

Provided that in the case of a partnership that has been dissolved to the knowledge of the claimant before the commencement

of the action, the originating process shall be served upon every member of the dissolved partnership within the

jurisdiction, sought to be made liable.

9.-(1) Subject to any statutory provision regulating service on a registered company, corporation or body corporate, every

originating process or other processes requiring personal service may be served on the organisation by delivery to a

director, secretary, Trustee or other senior, principal or responsible officer of the organisation, or by leaving it at the

registered, principal or advertised office or place of business of the organisation within the jurisdiction.

(2) Where service under sub-rule 1 of this Rule cannot be effected, the Judge upon the application of the claimant may make

such order of substituted services as in Rule 5 (1) of this Order.

10. When the suit is against a foreign corporation or company within the meaning of Section 54 of the Companies and Allied

Matters Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action

which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on

the principal officer or representative of such foreign corporation or company within the jurisdiction;

Provided that where a foreign company has complied with the provision of Chapter 3 of the Companies and Allied Matters Act,

personal service shall be effected on one of the persons authorised to accept service on behalf of the said company.

11. Where a contract has been entered into within the jurisdiction Local agent of by or through an agent residing or carrying

on business within the jurisdiction on principal who is behalf of a principal residing or carrying on business out of the

jurisdiction, an out of originating process in an action relating to or arising out of such contract may, jurisdiction before

the determination of such agent's authority or of his business relations with the principal, be served on such agent. A copy

of the originating process shall be sent promptly by the claimant through a courier company registered as a process server

under Rule 1 of this Order, at the principal's address out of jurisdiction.

12. Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to

the process server, the process server may leave the process within the reach of the person to be served, and this shall be

deemed good and sufficient service for all purposes.

13.(1) After serving any process, the process server shall promptly prove of service by depositing and filing an affidavit setting

out the fact, date, time, place, mode of service and description of the process served and shall, except in the

circumstance mentioned in Rules 5 and 12 of this Order, exhibit the acknowledgement of service.

(2) After service, the affidavit shall be prima facie proof of service.

(3) Where service was effected by a courier company or such organisation, production of a delivery note or waybill by the

process server or company, duly signed by the addressee or his agent or servant, shall be prima facie proof of service of the

process.

14.(1) It shall be lawful, where parties give consent, to effect service of processes by electronic means, hereinafter

referred to as E-SERVICE. Every process of court produced and/or transmitted electronically by means of internet services, e-

mail, world wide web (www) and similar devices shall be deemed to have been served by that process, upon confirmation by the

electronic device that the information or process had been sent or delivered, after forty-eight (48) hours, with or without

acknowledgement of the addressee

(2) The print-out shall be evidence of such confirmation

15.(1) The party requiring service of any process shall pay in advance all costs and expenses of and incidental to service.

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

16.(1) Service of originating and other processes, pleadings, notices, summons, orders, and documents whatsoever shall be

effected between the hours of six in the morning and six in the evening.

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

17.(1) A register shall be kept at the Registry in such form as the Chief Judge may direct for recording service of processes

by any process server. The Registrar shall record therein the names of the claimant and defendant, the method of service,

whether personal or otherwise, and the manner used to ascertain that the right person was served.

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

certified copy thereof shall be prima facie evidence of the matters stated therein.

ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

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

(a) the whole subject matter of the claim is land situate within jurisdiction, or

(b) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within jurisdiction is

sought to be constructed, rectified, set aside or enforced; or

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

(d) the claim is for the administration of the personal estate of any deceased person, who at the time of his death was

domiciled within jurisdiction or for the execution (as to property situate within jurisdiction) of the trusts of any written

instrument, which ought to be executed according to the law in force in the State, or

(e) the claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise affect a contract or to

recover damages or other relief for or in respect of a contract:

(i) made within jurisdiction, or

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

carrying on business out of jurisdiction; and

(iii) which by its terms or by implication is to be governed by the applicable law in the State, or the parties have agreed

that the court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the

defendant in respect of a breach committed within jurisdiction, of a contract wherever made notwithstanding that such breach

was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract which

ought to have been performed within jurisdiction.

(f) the claim is founded on a tort or other civil wrong committed within jurisdiction, or

(g) an injunction is sought in respect of anything to be done within jurisdiction, or any nuisance within jurisdiction is

sought to be prevented or removed, whether or not damages are sought in respect thereof, or

(h) any person out of the jurisdiction is a necessary or a proper party to an action properly brought against some other

person duly served within jurisdiction, or

(i) the claim is by a mortgagee or mortgagor in relation to a mortgage or property situate within jurisdiction and seeks

relief of the nature or kind following, that is: sale, foreclosure, delivery of possession by the mortgagor; redemptions,

reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under

paragraph (e) of this Rule) any judgment or order for payment of any monies due under the mortgage, or

(j) the proceedings relate to a person under legal disability, or

(k) where any proceedings relate to probate matters, or

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

2. Where parties have by their contract prescribed the mode or place of service, or the person that may serve or the person

who may be served process in any claim arising out of the contract, service as prescribed in the contract shall be deemed

good and sufficient service.

3.(1)Where leave is granted to serve an originating process in any foreign country with which no convention in that behalf

has been made, the following procedure may be adopted:

(a)the process to be served shall be sealed with the seal of the Civil Form 7. Court for service out of Nigeria, and shall be

transmitted to the Solicitor-General of the Federation by the Chief Registrar, together with a copy translated into the

language of that country, if not English, and with a request for its further transmission to the appropriate authority in

that country. The request shall be in Form 7 with such modifications or variations as circumstances may require;

(b)a party wishing to serve a process under this Rule shall file a Civil Form 8. praecipe in Form 8 with such modifications

or variations as circumstances may require;

(c)a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a

court or other appropriate authority of the foreign country, to the Court, shall be deemed good and sufficient proof of

service.

(d)where a certificate, declaration, affidavit or other notification Civil Form 9. transmitted as aforesaid states that

efforts to serve a process have failed, a Judge may, on an ex parte application order substituted service whereupon the

process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor- General of

the Federation together with a request in Form 9 with such modifications or variations as circumstances may require

Provided that notwithstanding the foregoing provisions a claimant may with leave of a Judge serve any originating process by

courier or by any other acceptable means. Nothing herein contained shall in any way affect any power of a Judge in cases

where lands, funds, chases in action, rights or property within the jurisdiction are sought to be dealt with or affected. The

Court may, without assuming jurisdiction over any person out of the jurisdiction, cause such person to be informed of the

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

intervening.

4.(1) Where leave is granted or is not required in a civil suit and it is granted or not desired to serve any process in a

foreign country with which a Convention is required that behalf has been made, the following procedure shall, subject to any

special provisions contained in the Convention be adopted-

(a) the party desiring such service shall file in the Registry a request in Form 10 with such modifications or variations as

circumstances may require and the request shall state the medium through which it is desired that service shall be effected

either:

(i) directly through diplomatic channels, or

(ii) through the foreign judicial authority.

(b) the request shall be accompanied by the original document and a translation thereof in the language of the country in

which service is to be effected, by or on behalf of the person making the request, and a copy of each for every person to be

served and any further copies which the Convention may require (unless the service is required to be made on a Nigerian

subject directly through diplomatic channels, in which case the translation and copies thereof need not accompany the request

unless the Convention expressly requires that they should do so);

(c) the documents to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be

forwarded by the Chief Registrar to the Permanent Secretary, Federal Ministry of Foreign Affairs for onward transmission to

the foreign country;

(d) an official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a Nigerian

diplomatic agent to the Court, establishing the fact and the date of the service of the document shall be deemed to be

sufficient proof of service within the requirements of these Rules.

(2) A Judge, in granting leave to serve a process out of jurisdiction under this Order, may upon request therefore in

appropriate cases direct that a courier company as in Order 7 Rule 1 be used for effecting service.

5. Where in any civil cause or matter pending before a court or tribunal of a foreign country, a written request from such

court or tribunal for service on any person or citation in such matter is transmitted to the Court by the State Attorney-

General with intimation that it is desirable that effect be given to the same, the following procedure shall be adopted.

(a) the written request for service shall be accompanied by a translation in the English Language, and by two copies of the

process or citation to be served, and two copies thereof in English Language.

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

(c) such service shall be effected by delivering to and leaving with the person to be served one copy of the process or

citation to be served, and one copy of the translation thereof in accordance with the rules and practices of the Court

regulating service;

(d) after service has been effected by the process server he shall file an affidavit of service in which he shall furnish

particulars of charges for the cost of effecting the service. The affidavit shall be transmitted to the Chief Registrar with

one copy of the process annexed;

(e) the Chief Registrar shall examine and verify the process server's particulars of charges and may approve it or approve

some lesser figure, whereupon the Chief Judge shall forward to the Attorney-General a copy of the request for service, the

approved amount for service, evidence of service and a certificate appended to it.

6. Rule 4 of this Order shall not apply to or render invalid, defective or insufficient any otherwise valid or sufficient any

otherwise valid or sufficient mode of service in any foreign country with which a Convention has been made, provided that no

mode of service expressly excluded by the Convention shall be allowed.

7. Where in any civil suit pending before a court or tribunal in a foreign country with which a Convention in that behalf has

been made, request for service of any process or document on any person within the jurisdiction is received by the Chief

Judge from the appropriate authority in that country, the following procedure shall, subject to any special provisions in the

Convention, be adopted:

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

served;

(b) The process server shall submit the particulars of the costs and expenses of service to the Chief Registrar who shall

certify the amount payable in respect of the service;

(c) The Chief Registrar shall transmit to the appropriate foreign authority a certificate establishing the fact and date of

service, or indicating reasons for failure to service, and also notify the authority as to the amount certified under

paragraph (b) of this rule.

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

ORDER 9

APPEARANCE

1.(1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file

in the Registry the original and copy of a duly completed and signed memorandum of appearance as in Form 11 with such

modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof, sign and stamp the copy indicating the

date he received it and return the signed and stamped copy to the person making the appearance.

(3) A defendant entering appearance shall not later than 5 days thereafter serve a signed and stamped copy of the memorandum

of appearance on a claimant's Legal Practitioner or on the claimant if he sues in person.

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

within the State.

(2) Where a defendant appears by a Legal Practitioner, the Legal Practitioner shall state in the memorandum of appearance his

place of business and an address for service which shall be within the state, and where any such Legal Practitioner is only

the agent of another Legal Practitioner, he shall also insert the name and place of business of the principal Legal

Practitioner.

3. The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such

address is illusory, fictitious or misleading, the appearance may be set aside by a Judge on the application of a claimant.

4. If two or more defendants in the same action appear through the same Legal Practitioner the memorandum of appearance shall

include the names of all defendants.

5. If a defendant files an appearance after the time prescribed in the originating process, he shall pay to the Court an

additional fee as may have been approved by the High Court Rules Committee in a schedule of fees for each day of default. If

the defendant appears late but within the time prescribed for filing his defence, he shall file his defence within that time.

6. In probate matters any person not named in the originating process may intervene and appear in the matter on filing an

affidavit showing his interest in the estate of the deceased.

7. Any person not named as a defendant in an originating process for recovery of land may with leave of a Judge appear and

defend, on filing an affidavit showing that he is in possession of the land either by himself or through his tenant.

8. Any person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in

possession, only through his tenant, shall state in his appearance that he appears as landlord.

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

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

otherwise.

ORDER 10

DEFAULT OF APPEARANCE

1. Where no appearance has been entered for a person under legal disability, a claimant shall apply to a Judge for an order

that some person be appointed Guardian for such defendant and when appointed the person may appear and defend. The

application shall be made after service of the originating process. Notice of the application shall be served on the person

intended to be appointed the guardian of the defendant.

2. Where any defendant fails to appear, a claimant may proceed upon default of appearance under the appropriate provisions of

these Rules upon proof of service of the originating process.

3. Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to

appear, a claimant may apply to a Judge for judgment for the claim on the originating process or such lesser sum and interest

as a Judge may order.

4. Where the claim in the originating process is a liquidated demand and there are several defendants of whom one or more

appear and others fail to appear, a claimant may apply to a Judge for judgment against those who have not appeared and may

execute the judgment without prejudice to his right to proceed with the action against those who have appeared.

5. Where the claim in the originating process is for pecuniary damages, or for detention of goods with or without claim for

pecuniary damages, and the defendant or all of several defendants fail to appear, a claimant may apply to a Judge for

judgment. The value of the goods and the damages, or the damages only as the case may be, shall be ascertained in such manner

and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the claim.

6. Where the claim in the originating process is as in Rule 5 of this Order and there are several defendants one or some of

whom appear while another or others do not appear, a claimant may apply for judgment against the defendant or defendants

failing to appear. The value of the goods and the damages, or the damages only as the case may be, shall be ascertained in

such manner and subject to the filing of particulars as a Judge may direct before judgment in respect of that part of the

claim.

7. Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for

pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a claimant may apply to a Judge

for judgment. The value of the goods and the damages, or the damages only as the case may be, shall be ascertained in such

manner and subject to the filing of such particulars as a Judge may direct before judgment in respect of that part of the

claim.

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

appearance is entered but the defense limited to part only, a claimant may apply to a Judge for judgment stating that the

person whose title is asserted in the originating process shall recover possession of the land, or of that part of it to

which the defence does not apply.

9. Where in an originating process for recovery of land a claimant claims mesne profit, arrears of rent, damages for breach of

contract or wrong or injury to the premises, he may apply for judgment as in Rule 8 of this Order for the land, and may

proceed to prove the other claims.

10. In any case to which Rules 3-8 of this Order do not apply and the defendant or all of several defendants fail to appear,

but by reason of payment, satisfaction, abatement of nuisance, or any other reason, it is unnecessary for a claimant to

proceed, he may apply to a Judge for judgment for costs:

Provided that such application shall be filed and served in the manner in which service of the originating process was

effected or in such manner as a Judge shall direct.

11. Where judgment is entered pursuant to any of the preceding Rules of this Order, a Judge may set aside or vary such

judgment on just terms upon an application by the defendant. The application shall be made within a reasonable time, showing

a good defence to the claim and a just cause for the default.

12. In all claims not specifically provided for under this Order, where the party served with the originating process does not

appear within the time prescribed in the originating process, a claimant may proceed as if appearance has been entered.

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

ORDER 11

SUMMARY JUDGMENT

1. Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement

of claim, the documentary exhibits, the depositions of his witnesses and an application for summary judgment which

application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof.

2. A claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in Rule 1 of this

Order as there are defendants.

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

under Order 7.

4. Where a party served with the processes and documents referred to in Rule 1 of this Order intends to defend the suit he

shall, not later than the time prescribed for defence, file:

(a) His statement of defence,

(b) Depositions of his witnesses,

(c) A written brief in reply to the application for summary judgment.

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

granted leave to defend

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

claimant.

(3) Where it appears to a Judge that the defendant has a good defence to part of the claim but no defence to other parts of

the claim, the judge may thereupon enter judgment for that part of the claim to which there is no defence and grant leave to

defend that part to which there is a defence.

6. Where there are several defendants and it appears to a judge that any of the defendants has a good defence and ought to be

permitted to defend the claim and other defendants do not have a good defence and ought not to be permitted to defend, the

former may be permitted to defend and the judge shall enter judgment against the latter.

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

submission to expatiate his written brief.

Undefended List

8.(1) Where a claimant in respect of a claim to recover a debt or liquidated money demand believes that there is no defence

to his claim, he shall make an application to a court for the issue of a writ of summons in respect of the claim to recover

such debt or liquidated money demand and shall support the application by an affidavit setting forth the grounds upon which

the claim is based and stating that in the deponent's belief there was no defence thereto.

(2)The Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit

for hearing in what shall be called the "Undefended List", and mark the writ of summons accordingly, and enter thereon a date

for hearing suitable to the circumstances of the particular case.

9. There shall be delivered by the Claimant to the Registrar upon the issue of the writ of summons as aforesaid, as many

copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one

such copy to each copy of the writ of summons for service.

10.-(1) If the party served with the writ of summons and affidavit delivers to the Registrar, before the day fixed for

hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the

merit, the Court may give him leave to defend upon such terms as the Court may think just.

(2)Where leave to defend is given under this Rule, the action shall be removed from the Undefended List and placed on the

ordinary Cause List; and the claimant shall then comply with Order 3 Rule 2 (i) (b) (c) within such time as the court may

direct.

11. Where any defendant neglects to deliver the notice of defence and affidavit prescribed by Rule 10 (1) or is not given

leave to defend by the Court, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon

the claimant to prove his case formally,

12. Nothing herein shall preclude the Court from hearing or requiring oral evidence should it deem fit, at any stage of the

proceedings under Rule 11.

ORDER 12

APPLICATION FOR ACCOUNT

1. Where in an originating process a claimant seeks an account under Order 4 Rule 5 or where the claim involves taking an

account, if the account defendant either fails to appear, or after appearance fails to satisfy a Judge that there is a

preliminary question to be tried, the Judge shall, on application make an order for the proper accounts, with all necessary

inquiries and direction.

2. An application for an account shall be supported by an affidavit Application how filed on a claimant's behalf, stating

concisely the grounds of his claim to an account made. The application may be made at any time after the time prescribed for

defence.

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

Judge.

ORDER 13

PARTIES GENERALLY

1. All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or

severally and judgment may be given for such one or more of the claimants as may be found to be entitled to relief and for

such relief as he or they may be entitled to, without any amendment.

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, a Judge may order the substitution or addition of any other person as claimant

on such terms as may be just.

3. Where in commencing an action any person has been wrongly or improperly included as a claimant and a defendant has set up a

counterclaim or set-off, such defendant may establish his counterclaim or set-off as against the parties other than a

claimant so included notwithstanding the inclusion of such claimant or any proceeding based thereon.

4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally

or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to

their respective liabilities, without any amendment.

5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated,

a Judge may upon application order the substitution or addition of any person as defendant or correction of any such name on

any term as may be just.

6.(1) It shall not be necessary that every defendant shall be interested as to all the reliefs prayed for, or as to every

cause of action included in any proceeding against him.

(2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may

appear just to prevent him from being embarrassed or put to expense by being required to attend any proceedings in which he

may have no interest.

7. A claimant may at his option join as parties to the same action all or any of the persons severally, or jointly and

severally, liable on any contract, including parties to Bills of Exchange and Promissory notes.

8. Where a claimant is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter

mentioned, or as may be prescribed by any special order join two or more defendants, to the intent that the question as to

which, if any, of the defendants is liable and to what extent, may be determined as between all parties.

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

10. Where any person's name is to be used in any action as Guardian of a person under legal disability or other party or as

relation, a written authority for that purpose signed by that person shall be filed in the Registry.

11.(1) Trustees, Executors and Administrators may sue and be sued on behalf of or as representing the property or estate of

which they are Trustees or Executors and Administrators, without joining any of the persons beneficially interested in the

trust or estate, and shall be considered as representing such person, but a Judge may, at any stage of the proceedings, order

any of such persons to be made parties in addition to or in lieu of the previously existing parties.

(2)The Rule shall also apply to Trustees, Executors and Administrators in proceedings to enforce a security by foreclosure or

otherwise.

12.(1)Where more persons than one have the same interest in one suit, one or more of such persons may sue or be sued on

behalf of or for the benefit of all persons so interested.

(2)Where more persons than one have the same interest in one suit and they seek to defend the action, a Judge may allow one

or more of such persons to defend the action on behalf of all persons so interested.

13.(1) Where in any proceedings concerning:

(a)the administration of an estate or

(b)property subject to a Trust or

(c)land held under Customary Law as family or community property or

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

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

(ii)the person, the class or some members of the class interested if ascertained cannot be found;

(iii)though the person or the class and the members thereof can be ascertained and found:

it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or

class or member of the class, the Judge may make the appointment.

The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

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

appointed.

(3) If in any proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the

matter to be determined attend the hearing by separate Legal Practitioners, then, unless the Judge considers that the

circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these

persons, and the judgment or order shall be framed accordingly.

(4) In this Rule, the word "class" includes the persons recognised by Customary Law as members of a family or as members of a

land owning Community.

14. Where in any proceedings mentioned in sub-rule (1) of Rule 13 this Order, a compromise is proposed and some of the absent

persons who compromise are interested in or may be affected by the compromise are not parties to the proceedings (including

unborn or unascertained persons) but where:

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

court sanctions the compromise or

(b) the absent persons are represented by a person under Rule 13 of this Order who so assents;

A Judge if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise

this power, may approve the compromise and order that such compromise shall be binding on the absent persons, and they shall

be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

15.(1) If in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no

legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased

person, or may appoint some person to represent his estate for the purpose of the proceeding, on such notice to such persons

(if any) as the Judge shall deem fit, either specifically or generally by public advertisement, and the order so made and any

order consequent thereon shall bind the estate of the deceased person in the same manner in every respect as if a duly

constituted Legal Personal Representative of the deceased had been a party to the proceedings.

(2) Where a sole surviving claimant or defendant in a proceedings dies and the cause of action survives, but the

person entitled to proceed fails to proceed, a Judge may on the application of either the deceased's Legal Practitioner or

the opposing party order any person to take the place of the said deceased and proceed with the suit

(3) In default of such application or where the person substituted fails to proceed, judgment may be entered for the defendant

or as the case may be, for the person against whom the proceedings might have been continued.

16.(1) No proceedings shall be defeated by reason of misjoinder or nonjoinder of parties, and a Judge may deal with the

matter in controversy so far as regards the rights and interests of the parties actually before him.

(2) A Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as

may appear to the Judge to be just, order that the names of any parties improperly joined be struck out.

(3) A Judge may order that the names of any party who ought to have been joined or whose presence before the court is

necessary to effectively and completely adjudicate upon and settle the questions involved in the proceedings be added.

(4) No person under legal disability shall be added as a claimant suing without a Guardian and no person shall be added as the

Guardian of a claimant under legal disability without his own consent in writing.

(5) Every party whose name is added as defendant shall be served with the originating processes or notice in the manner

prescribed in these Rules or in such manner as maybe prescribed by a Judge and the proceedings against such person shall be

deemed to have begun on the service of such originating processes or notice.

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

(2) Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim

or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses.

Provided that where the application is to substitute a deceased party with another person the application may not be

accompanied by the document specified above.

18. Where a defendant is added or substituted, the originating process shall be amended accordingly and the claimant shall

unless otherwise ordered by a Judge file an amended originating process and cause the new defendant to be served in the same

manner as the original defendant.

All parties in the action shall also amend all pending processes and serve the same on the new defendant.

19.-(1) Where it appears to a Judge that any person not a party in the may proceedings may bear eventual liability either in

whole or in part, the Judge may upon an ex parte application allow that person to be joined as a Third Party by any of the

defendants. The application shall state the grounds for the applicant's belief that such Third Party may bear eventual

liability.

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

20. Where a party is joined to any proceedings as a Third Party he Appearance by may after service enter appearance within 8

days or within 30 days if he resides or carries on business outside jurisdiction or within such further time as a Judge may

order.

21. If a Third Party duly served with the order and all existing processes does not enter an appearance or defaults in filing

any pleading, he shall be deemed to admit the validity of and shall be bound by any judgment given in an action, whether by

consent or otherwise.

22. A party joined as a Third Party in any proceedings may join any other party in the same manner as he was joined and the

expression "Third Party" shall apply to and include every person so joined.

23. A defendant may in his pleading make a claim against a co-defendant.

II. Actions against Firms and Persons carrying on Business in names other than their own.

24. Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue

or be sued in the name of firms, if any, of which they were partners when the cause of action arose and any party to an

action may in such case apply to the Judge for a statement of the names and addresses of the persons who were partners in the

firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Judge may

direct.

25.(1) When an originating process is issued by partners in the name of their firm, the claimants or their Legal Practitioner

shall, on demand in writing by or on behalf of any defendant, declare in writing the names and residential addresses of all

the persons constituting the firm on whose behalf the action is brought.

(2) Where the claimants or their Legal Practitioner fail to comply with such demand, the action may upon an application for

that purpose, be struck out or dismissed as the Judge may consider appropriate.

(3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in

all respects shall follow as if they had been named as claimants on the originating process provided that the proceedings may

continue in the name of the firm.

26.(1) Where persons are sued as partners in the name of their firm, they may enter appearance individually in their own

names; but all subsequent proceedings shall continue in the name of the firm.

(2) Where an originating process is served upon a person having the control or management of the partnership business, no

appearance by him shall be necessary unless he is a member of the firm sued.

27. The above Rules in this Part shall apply to proceedings between a firm and one or more of its partners and between firms

having one or more partners in common? provided such firm or firms carry on business within the jurisdiction.

28. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such

name or style as if it were a firm name, and, so far as the nature of the case will permit, all rules relating to proceedings

against firms shall apply.

III. Change of Parties by Death or otherwise, etc.

29. No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and

shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the

cause of action survives or not, there shall be no abatement by reason of the death of either party between the finding on

issues of fact and judgment, but judgment may in such case be entered notwithstanding the death.

30. (1) Where by reason of death or bankruptcy, or any other event occurring after the commencement of a proceeding and

causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after

the commencement of the proceeding, it becomes necessary or desirable that any person not already a party should be made a

party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be

carried on between the continuing parties and such new party or parties may be obtained ex parte upon an allegation of such

change, or transmission of interest or liability, or of any such person interested having come into existence.

(2) An order obtained under this Rule shall be served upon the continuing party or parties, or their Legal Practitioner and

also upon such new party unless the person making the application is the new party.

(3) Every person served who is not already a party to the proceedings shall where applicable enter an appearance thereto

within the same time and in the same manner as if he had been served with the originating process. He shall thereupon be

served with the originating and all existing processes.

(4) Any party served under this Rule who was not already a party to the proceedings shall file his pleading and other

documents as if he had been an original party in the proceedings.

31. In case of an assignment, creation or devolution of any estate or title pendente lite, the cause or matter may be

continued by or against the person to or upon whom such estate or title has come or devolved.

32. Where any person who is under no legal disability or being under any legal disability but having a guardian in the

proceedings is served with an order under Rule 30, such person may apply to a Judge to discharge or vary such order at any

time within 14 days from the service of the order.

33. Where any person under any legal disability and not having a guardian in the proceedings is served with an order under

Rule 30, such a person may apply to a Judge to discharge or vary such order at anytime within 14 days from the appointment of

a guardian for such party, and until such period of 14 days has expired, such order shall have no force or effect as against

the person under legal disability.

IV. Legal Practitioners or Agents

34. Where by these Rules any act may be done by any party in any proceedings, such act may be done either by the party in

person, or by his Legal Practitioner, or by his agent (unless an agent is expressly barred under these Rules).

ORDER 14

JOINDER OF CAUSES OF ACTION

1. Subject to the following Rules of this Order, the claimant may action several causes of action; but if it appears that they

action cannot be conveniently tried or disposed of together, a Judge may order separate trials of any such causes of action

or may make such order as may be necessary or expedient for the separate disposal thereof.

2.(1) An action for recovery of land may be joined with an action for declaration of title, mesne profit or arrears of rent,

damages for breach of any contract under which the land or any part thereof is held, or for any wrong or injury to the premises.

(2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property

and a claim for payment of principal money or interest secured by or any other relief in respect of the mortgage of or charge

on such land.

3. Claims by or against an Executor or Administrator as such may be joined with claims by or against him personally provided

the last mentioned claims are alleged to arise with reference to the estate in respect of which the claimant or defendant

sues or is sued as Executor or Administrator.

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

ORDER 15

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 file his statement of defence, or counterclaim, if any, not later than 42 days after service on him of

the claimant's originating process and accompanying documents.

A counterclaim shall have the same effect as a cross action, so as to enable the court pronounce a final judgment in the same

proceedings. A set-off must be specifically pleaded.

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

defence or defence to counterclaim, if any.

Provided that where a defendant sets up a counterclaim, if a claimant or any other person named as party to such counter-

claim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent

proceeding, a Judge may at any time order that such counterclaim be excluded.

2.(1) Every pleading shall contain a statement in summary form of the material facts on which the party pleading relies for

his claim or defence as the case may be but not the evidence by which they are to be proved, and shall, when necessary, be

divided into paragraphs, numbered consecutively.

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

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

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

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 all other cases, in which particulars may be necessary, particulars (with dates and items if

necessary) shall be stated in the pleadings.

(2) In an action for libel or slander if the claimant alleges that the words or matter complained of were used in a

defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in

support of his allegation.

4. 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 shall be made to a Judge at the first pre-trial conference. 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 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 consented.

7.(1) All grounds of defence or reply which make an action or counterclaim not maintainable or if not raised will take the

opposite party by surprise or will raise issues of facts not arising out of the preceding pleadings shall be specifically

pleaded.

(2)Where a party raises any ground which makes a transaction void or voidable or such matters 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 pleadings shall raise any new ground of claim or contain any allegation of fact 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 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 documents 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 persons is to be implied from a series of letters or conversations, or

otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer

generally to such letters, conversations or circumstances without setting them out in detail. If in such case the person so

pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such

circumstances, he may state the same in the alternative.

13. A party may not allege in any pleadings any matter of fact which the law presumes in his favour or as to which the burden

of proof lies upon the other side, unless the same had first been specifically denied.

14. In every case in which the cause of action is 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 ways 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 pretrial conference in any proceedings order to be struck 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 circumstances from which the same is to

be inferred.

(2) Where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair

comment on a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to

allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters which

such malice is to be inferred.

(3) Wherein an action for libel or slander the defendant alleges that in so far as the words complained of are 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 indorsement of any

writ in the action, or anything in any pleading or in the indorsement, 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;

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

(3) This Rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as

the case may be, were a pleading.

(4) No proceedings shall be open to objection on the ground that only a declaratory judgment or order is sought thereby arid.

a judge may make a binding declaration of right whether any consequential relief is or could be claimed or not.

19.(1) Where a pleading subsequent to reply is not ordered, then at the expiration of 7 days from the service of the defence

or reply (if a reply has been filed) pleadings shall be deemed closed.

(2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file the same fails

to do so within the period limited for the purpose, then at the expiration of the period limited, pleadings shall be deemed

closed:

Provided that this Rule shall not apply to a defence to counterclaim and unless the claimant files a defence to counterclaim,

the statements of fact contained in such counterclaim shall at the expiration of 14 days from the service thereof or of such

time (if any) as may by order be allowed for filing of a defence thereto be deemed to be admitted, but the Judge may at any

subsequent time give leave to the claimant to file a defence to counterclaim.

ORDER 16

STATEMENT OF CLAIM

1.(1) Every statement of claim or counterclaim shall state specifically the relief claimed either singly or in the

alternative, and it shall not be necessary to ask for general or other relief, which a Judge may think just.

(2)Where the claimant seeks relief in respect of several distinct claims or causes of complaint founded upon separate and

distinct grounds, they shall be stated, as far as may be , separately and distinctly. The same rule shall apply where the

defendant relies upon several distinct grounds of defence, set-off or counterclaim founded upon separate and distinct facts.

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

indorsement of the writ:

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

ORDER 17

DEFENCE AND COUNTERCLAIM

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, but a full and substantial answer shall be given.

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) If 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 dishonor 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: they 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 counterclaim, he shall in his defence

state specifically that he does so by way of supporting a right of set off or counterclaim.

7. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the claimant along

with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of

claim, setting forth the names of all persons who, if such counterclaim were to be enforced by cross action, would be

defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period

which he is required to deliver it to the claimant.

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 counterclaim so served shall be indorsed in Form 12 with such

modifications 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 had been served with an originating process to appear in an action.

10. Any person not already a party to the action, who is named in a defence as a party to a counterclaim thereby made, shall

deliver a defence in a mode and manner prescribed under this Order and the provisions of the Order shall apply to such a

person.

11. If, in any case in which the defendant sets up a counterclaim, the action of the claimant is stayed, discontinued or

dismissed, the counterclaim may nevertheless be proceeded with.

12. Where in an action, a set off or counterclaim is established as a defence against the claimant's claim, the Judge may, if

the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the

defendant such relief as he may be entitled to upon the merits of the case.

13. (1) Any ground of defence which arises after the action has been defended after filed, but before the defendant has

delivered his defence, and before the time action 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 counterclaim, any basis for answer or ground of defence

arises to any such set-off or counterclaim respectively, it may be raised by the claimant in his reply (in the case of a

set-off) or defence to counterclaim, either alone or together with any other ground or 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 8 days after such ground of defence has arisen

or at any subsequent time by leave of a Judge deliver a further defence or further reply, as the case may be, setting forth

the same.

15. Whenever any defendant in his defence or in any further defence pursuant to Rule 14 of this Order alleges any ground of

defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may

be in Form 13 with such modification as circumstances may require) and may thereupon obtain judgment up to the time of the

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

16. A respondent to an originating summons shall file a counter affidavit together with all the exhibits he intends to rely

upon and a written address within 21 days after service of the originating summons.

ORDER 18

REPLY

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

accompanied documents, if any, in line with the provisions of Order 3 Rule 2(1) (b) (c) and (d).

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

applicable to defences.

ORDER 19

ADMISSIONS

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

facts of the case of any other party.

2.(1) Either party may, not later than 7 days before the first pre-trial conference, by notice in writing filed and served,

require any other party to admit any document and the party so served, shall not later than 4 days after service, give notice

of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise

orders.

(2) When a party decides to challenge the authenticity of any document, he shall not later than 7 days of service of that

document give notice that he does not admit the document and requires it to be proved at the trial.

(3)Where a party gives notice of non-admission and the document is proved at the trial, the cost of providing 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 first pretrial conference by notice in writing filed and served

require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later

than 4 days after service, give notice of admission or non-admission of the fact or facts failing which he shall be deemed to

have admitted it unless a Judge otherwise orders.

(2)Any admission made pursuant to such notice shall be deemed to be made only for the purposes of that particular proceedings

and not as an admission to be used against the party or any other party than the party giving the notice.

(3)Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further

time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five

thousand naira, shall be paid by the party so refusing or neglecting, whatever the result of the proceedings, unless the

judge certifies that the refusal to admit was reasonable or unless the judge at any time otherwise orders or directs.

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

have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party

may be entitled to, without waiting for the determination of any other question between the parties.

5.Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not

be less than five thousand naira shall be borne by the party giving such notice.

ORDER 20

DEFAULT OF PLEADING

1.If the claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for the purpose,

file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

2.When in any such action as in Rule 1 of this Order there are several defendants, if one of them is in default as mentioned

in Rule 1 of this Order, the claimant may apply for final judgment against the defendant in default and issue execution upon

such judgment without prejudice to his right to proceed with his action against the other defendants.

3.If the claim is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages, and the

defendant or all the defendants, if more than one defaults, as mentioned in Rule 1 of this Order, the claimant may apply to a

Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the

damages only, as the case may be, shall be ascertained in any way which the Judge may order.

4.When in any such action as in Rule 3 of this Order there are several defendants, if one or more of them make default as

mentioned in Rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or

defendants so making default and proceed with his action against the others. In such case the value and amount of damages

against the defendant making default shall be assessed at the trial of the action or issues therein against the other

defendants, unless the judge shall otherwise order.

5.Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a

claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in Rule 1, the

claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory

judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in Rules 3

and 4.

6. In an action for the recovery of land, if the defendant makes Recovery of land default as mentioned in Rule 1, the claimant

may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land

with his costs.

7. Where the claimant has indorsed a claim for mesne profit or Claim for mesne arrears of rent in respect of the premises

claimed, or any part of them, or damages profit, arrears or for breach of contract or wrong or injury to the premises claimed

upon a writ for damages. the recovery of land, if the defendant makes default as mentioned in Rule 1, or if there be more

than one defendant, some or one of the defendants make such default, the claimant may apply for final judgment against the

defaulting defendant or defendants and proceed as mentioned in Rules 3 and 4.

8. If the claimant's claim is for a debt or liquidated demand or for defence pecuniary damages only, or for detention of goods

with or without a claim for is filed to part of pecuniary damages, or for any such matters, or for the recovery of land, and

the defendant files a defence which purports to offer an answer to part only of the claimant's alleged cause of action, the

claimant may apply for judgment, final or interlocutory, as the case may be, for the part unanswered:

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

part of a debt or liquidated demand:

Provided also that where there is a counterclaim, execution on any such judgment as above mentioned in respect of the

claimant's claim shall not issue without leave of the Judge.

9. In all actions other than those in the preceding Rules of this Order, if the defendant makes default in filing a defence,

the claimant 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, 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 Order of these Rules shall be final and remain valid and may

only be set aside upon application to the Judge on grounds of fraud, non-service or lack of jurisdiction upon such terms as

the court may deem fit.

ORDER 21

PAYMENT INTO AND OUT OF COURT

1.-(1) Where after service in any proceeding for debt or damages, a Payment into and defendant envisages an intention to pay

money into court in respect of the out of court. proceeding, he shall notify the Chief Registrar who will thereupon direct

him to pay the money into an interest yielding account in the name of the Chief Registrar in a commercial bank and he shall

file the teller or other form of acknowledgement for such payment with the Chief Registrar.

(2) Where a teller or other form of acknowledgement for payment is filed with the Chief Registrar, he shall forthwith give

notice of the payment to the claimant who may apply to a Judge for an order to withdraw the amount so paid.

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

Court.

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

paid into court.

(5)Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify

the cause or causes of action in respect of which payment is made and the sum paid in respect of each such cause of action

unless a Judge otherwise directs.

(6)The notice shall be in Form 14 with such modifications or variations as circumstances may require. The receipt of the

notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered

in an amended form by leave of a Judge upon such terms as may be just.

(7)Where money is paid into Court with denial of liability the Claimant may claimant may proceed with the action in respect

of the claim and if he succeeds, receive money, the amount paid shall be applied so far as is necessary in satisfaction of-

the claim, and the balance, if any shall on the order of a Judge be repaid to the defendant. Where the defendant succeeds in

respect of such claim the whole amount paid into Court shall be repaid to him on the order of a Judge.

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, accept the whole sum or anyone 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 15 with such modifications or variations as

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

aforesaid.

(2)Payment shall be made to the claimant, or on his written authority, to his Legal Practitioner, and thereupon proceedings

in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) If the claimant accepts money paid into court in satisfaction of his claim, or if he accepts a sum or sums paid in respect

of one or more specified causes of action, and gives notice that he abandons the other causes of action, he may after 4 days

from payment out and unless a Judge otherwise orders, tax his costs incurred to the time of payment into court, and 48 hours

after taxation may sign judgment for his taxed costs.

(4) Where in an action for libel or slander, the claimant accepts money paid into court, either party may apply by summons to

a Judge for leave for the parties, or either of them, to make a statement in open court in terms approved by the judge.

3. If the whole of the money in court is not taken out under Rule 2, the money remaining in court shall not be paid out except

in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order

of a Judge which may be made at anytime before, at or after trial.

4.(1) Money may be paid into court under Rule 1 of this Order by one or more of several defendants sued jointly or in the

alternative upon notice to the other defendant or defendants.

(2) If the claimant elects within 14 days after receipt of notice of payment into court to accept the sum or sums paid into

court, he shall give notice as in Form 16 with such modifications or variations as circumstances may require to each

defendant and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as

the case may be) shall abate.

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

action.

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into court, the

claimant may within 14 days elect to accept the sum paid into court in satisfaction of his claim against the defendant making

the payment and shall give notice to all the defendants as in 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.

The claimant may continue with the action against any other defendant but the sum paid into Court shall be set off against

any damage awarded to the claimant against the defendant or defendants against whom the action is continued.

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

modification.

6.(1) In any proceeding in which money or damages is or are claimed by or on behalf of a person under legal disability suing

either alone or in conjunction legal disability, with other parties, no settlement or compromise, or payment or acceptance of

money paid into court, whether before, at or after the trial, shall as regards the claims of any such person be valid without

the approval of a Judge.

(2) No money (which expression for the purpose of this Rule includes damages) in any way recovered or adjudged or ordered or

awarded or agreed to be paid in any such proceedings in respect of the claims of any such person under legal disability

whether by judgment, settlement, compromise, payment into court or otherwise, before at or after the trial, shall be paid to

the claimant or to the Guardian of the claimant or to the claimant's Legal Practitioner unless the 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 monies paid or expenses incurred or for maintenance

or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the claimant's

Legal Practitioner in respect of costs or of the difference between party and party and Legal Practitioner and client costs.

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

ORDER 22

PROCEEDING IN LIEU OF DEMURRER

1. No demurrer shall be allowed.

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

(2) If in the opinion of the Judge, the decision on such point of law substantially disposes of the whole proceedings or of

any distinct part thereof, the Judge may make such decision as may be just.

ORDER 23

DISCONTINUANCE

1. (1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other

proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the

defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's cost of the action, or if the

action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

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

(3) Where a defence has been filed, the claimant may with the leave of a Judge discontinue the proceedings or any part thereof

on such terms and conditions as the Judge may order.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order no

subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the

Judge have been fully complied with.

(5)The Judge may in like manner and like discretion as to terms, upon the application of a defendant order the whole or any

part of his alleged grounds of defence or counterclaim to be withdrawn or struck out.

2.When a cause is ready for trial, it may be withdrawn by either claimant or defendant upon producing to the Registrar a

consent in writing signed by the parties and thereupon a judge shall strike out the matter without the necessity of

attendance of the parties or their Legal Practitioner.

ORDER 24

AMENDMENT

1.A party may amend his originating process, pleadings and other processes, at any time before the close of pre-trial

conference and not more than twice during the trial but before the close of the cause.

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, pleading or other process is to be amended a list of any additional witness to be called

together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment, shall

be filed with the application.

4.If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the

order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional

fee as the High Court Rules Committee may fix in a schedule of fees payable in court for each day of default.

5.Whenever any originating process, pleading or other process 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 originating process, pleading or other process is Date of order and amended, it shall be marked in the

following manner: amendment to be displayed.

"amended this..... day of..... Pursuant to Order of (name of Judge) dated the.....day of.....

7. A Judge may at anytime correct clerical mistakes in judgments Clerical mistakes or orders, or errors arising therein from

any accidental slip or omission upon and accidental application without an appeal being filed.

8. Subject to the provisions of Rule 1 of this Order, a Judge may General power to at any time and on such terms at to costs

or otherwise as may be just, amend any defect or error in any proceedings and all necessary amendments shall be made for the

purpose of determining the real question or issue raised by or depending on the proceedings.

ORDER 25

PRE- TRIAL CONFERENCE AND SCHEDULING

1.(1) Within 14 days after close of pleadings, the claimant s all apply conference notice to the Registrar for the issuance of

a pre-trial conference Notice as in Form 17.

(2) Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their Legal

Practitioners (if any) a pre-trial conference notice as in Form 17 accompanied by a pre-trial information sheet as in Form 18

for the purpose set out hereunder:

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

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

economical disposal;

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

(3) If the claimant does not make the application in accordance with sub-rule 1 of this Rule, the defendant(s) may do so

within 14 days or apply for an order to dismiss the action.

(4)(i) if neither the claimant nor the defendant makes an application in accordance with sub-rules 1 and 3 of this Rule, the

Registrar shall by a certificate to the Judge notify the Judge of the fact.

(ii) the Judge upon receipt of the certificate of the Registrar shall cause the case to be listed for striking out and the

parties to the case shall be so notified.

(5)(i) Upon the case coming up for striking out, the Judge shall strike out the case unless good cause be shown why the case

should not be struck out.

(ii) A claimant who does not want his case to be struck out under paragraph (i) of this Rule shall file in court within 3 days

of the service upon him of the notice of striking out, an application containing the reasons for his failure to comply with

sub-rule 1 or sub-rule 3 as the case may be of this Rule.

2. At the pre-trial conference, the Judge shall enter a scheduling

(a) Joining other parties;

(b) Amending pleadings or any other processes; Filing motions;

(c) Further pre-trial conference;

(d) Any other matters appropriate in the circumstances of the case.

3. At the pre-trial conference, the Judge shall consider and take appropriate action with respect to such of the following (or

aspects of them) as may be necessary or desirable:

(a) Formulation and settlement of issues;

(b) Amendments and further and better particulars;

(c) The admissions of facts, and other evidence by consent of the parties;

(d) Control and scheduling of discovery, inspection and production of documents;

(e) Narrowing the field of dispute between expert witnesses, by their participation at pre-trial conference or in any other

manner;

(g) Giving orders or directions for separate trial of a claim, counterclaim, set-off, cross-claim or third party claim or of

any particular issue in the case;

(h) Settlement of issues, inquiries and accounts under Order 27;

- (i) Securing statement of special case of law or facts under Order 28;
- (j) Determining the form and substance of the pre-trial order;
- (k) Referring the matter for amicable settlement or Alternative Dispute Resolution; and
- (l) Such other matters as may facilitate the just and speedy disposal of the action.

4. The pre-trial conference or series of pre-trial conferences with respect to any case shall be completed within 3 months of

its commencement, and the parties and their Legal Practitioners shall co-operate with the Judge in working within this

timetable. As far as practicable, pre-trial conferences shall be held from day to day or adjourned only for purposes of

compliance with pretrial conference orders, unless extended by the Chief Judge.

5. After a pre-trial conference or series of pre-trial conferences the Judge shall issue an order giving direction for further

proceedings in the matter. The order shall guide the subsequent course of the proceedings unless modified by the trial Judge.

6. If a party or his Legal Practitioner fails to attend the pre-trial conference or obey a scheduling or pre-trial order or is

substantially unprepared to participate in the conference or fails to participate in good faith the Judge shall:

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

Any judgment given under this Rule may be set aside upon an application made within 7 days of the judgement or such other

period as the pre-trial Judge may allow not exceeding the pre-trial conference period. The application shall be accompanied

by an undertaking to participate effectively in the pre-trial conference.

7. The Judge shall direct the pre-trial conference with due regard Management to its purposes and agenda as provided under

this Order, and shall require parties or their Legal Practitioners to co-operate with him effectively in dealing with the

conference agenda.

ORDER 26

DISCOVERY AND INSPECTION

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 such interrogatories when delivered shall have a note at the end of it stating

which of the interrogatories each person is required to answer. Interrogatories shall be delivered within 7 days of close of

pleadings and shall form part of the agenda of the pre-trial conference.

2. Interrogatories shall be in Form 19 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 anyone or more of several interrogatories on the ground that it is or they are scandalous or

irrelevant may be taken in the affidavit in answer at the pre-trial conference.

5. Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow.

Two copies of the affidavit in answer shall be supplied to the Registrar.

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

require.

7. If any person interrogated omits to answer or answers insufficiently, the pre-trial Judge shall on application issue an

order requiring him to answer further as the case may be.

8. Any party may in writing request any other party to any cause or matter to make discovery or oath of the documents that are

or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for

discovery shall be served within 7 days of close of pleadings and shall form part of the agenda of pre-trial conference. The

party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within

such other time as the Judge may allow and it shall be dealt with at pre-trial conference.

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

referred to therein.

(3) The affidavit to be made by any person in answer to a request for discovery of document shall specify which, if any, of

the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 21 with such

modifications or variations as circumstances may require.

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

referred to in the process after pre-trial conference.

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

process.

10.(1) Where a document required to be attached to any process or Verification of produced under this or any other Rule is a

business book a Judge may upon business books application order a copy of any entry therein to be furnished and verified in

an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.

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

(3) Where, on request or application for inspection, privilege is claimed for any document, the Judge may inspect the

documents for the purpose of deciding the validity of the claim of privilege.

(4) The Judge may suo motu or on application, and whether or not an affidavit of documents has already been ordered or made,

make an order requiring any party to state by affidavit whether any particular document is or are or has or have at any time

been in the possession, custody, power or control, of that party when that party parted with the same and what has become of

same.

(5)The Judge may, suo motu or otherwise, at pre-trial conference, order or direct or require a party (including a defendant

who is not disputing the claim or otherwise defending), a counsel, a witness or a prospective witness, or even a non-party,

to answer such interrogatories and furnish such discovery and inspection as the Judge may direct, in the interest of justice.

11.An order for interrogatories or discovery or inspection made against any party if served on his Legal Practitioner shall

be sufficient service to found an application for attachment of a party for disobedience to the order.

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

attachment.

13.Any party may, at the trial of a cause, matter or issue, use in evidence anyone 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;

14.In any action against or by a Sheriff in respect of any matter 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

ORDER 27

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES

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

pleadings.

(2)If the parties differ on or fail to define and file the issues the pre- trial Judge may settle the issues.

2.In any legal proceeding the Judge may at any time order the whole cause or matter or any question or issue of facts arising

therein, to be tried before a Referee, notwithstanding that it may appear that there is a special or other relief

sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the

ordinary manner.

3. In any case in which a matter is referred to a Referee the Court shall furnish the Referee with such part of the

proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct

the parties if necessary to attend upon the referee during the inquiry.

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 is 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 trials before a Court.

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

(3) Nothing in these Rules shall authorise any Referee to commit any person to prison or to enforce any order by attachment or

otherwise; but the Judge may, in respect of matters before a Referee, make such order of attachment or committal as he may

consider necessary.

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

thereof served on the parties to the reference.

(2) A Referee may by his report submit any question arising therein for the decision of the Judge or make a special statement

off acts from which the Judge may draw such inferences as he deems fit.

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

(a) adopt the report in whole or in part;

(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 any

other referee;

(e) decide the question or issue originally referred to him on the evidence taken before him, either with or without

additional evidence.

(4) When the report of the Referee has been made, an application to vary the report or remit the whole or part of the question

or issue originally referred may be made on the hearing 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 consideration of the cause or matter in question

shall not stand adjourned until the receipt of the Referee's report, the order may contain directions with respect to the

proceedings on the receipt of the report and the foregoing provisions of this Rule shall have effect subject to any such

directions.

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 prime 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 filed 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 the accounting party, stating so far as he is able, the amount sought to be charged with particulars.

11. Where by any judgment or order any accounts are directed to be taken or inquiries to be made, each 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 22 with such modifications or variations 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 under this Order, the

Judge may require the party having the conduct of the proceedings under this Order or any other party, to explain the delay

and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and

as to the costs of the proceedings as the circumstances of the case may require, and for the purposes aforesaid any party may

be directed to summon the persons whose attendance is required and to conduct any proceeding and carry out directions which

may be given.

14. Reference to a Referee under this Order includes a reference to an alternative dispute resolution body ordered by the

Court.

ORDER 28

SPECIAL CASE

1. At the pre-trial conference parties may agree to the questions of law arising in their case in the form of a special case

for the opinion of the Judge. Every such special case shall be divided into paragraphs, numbered consecutively and shall

concisely state such facts and documents as may be necessary to enable the court to decide the questions. Upon the argument

of such case, the Judge and the parties may refer to all the contents of such documents and the Judge may draw from the facts

and documents stated in any such special case any inference, whether of fact or law, which might have been drawn from them if

proved at a trial.

2. If at the pre-trial conference it appears to the Judge that there is in any cause or matter a question of law, which could

be conveniently decided before any evidence is given or any question 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 on 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, shall be paid by one of the parties to the other of them, either with or without costs as the case may be.

(2)The judgment of the court may be entered for the sum so agreed ascertained, with or without costs, as the case may be, and

execution may be issued 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 29

CAUSE LISTS

1.(1)The Registrar shall keep a list (hereinafter called the Pre-Trial List of causes for List) of actions directed to be set

down for pre-trial conference under Order 25 hearing Rule3.

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

2.(1) The Registrar shall post up every Friday a Pre-Trial and Weekly Cause List which shall set out the arrangement of

causes before each of the Judges sitting in Court during the following week.

(2)Nothing in this rule shall preclude the Chief Judge from making special arrangements, whenever necessary or convenient,

for the disposal of causes and matters included in the list.

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

holiday.

4.On any day when a Judge shall be unable to sit in Court and Judge unable to deal with any cause or matter fixed for

hearing, a minute, recording the parties sit, present and the step taken by the Registrar, shall be entered on the Court

file.

5. Pre-Trial Lists and Weekly Cause Lists and other such lists shall be posted up on one or more notice boards set up in such

place or places within or near the Court premises as the Chief Judge may designate.

ORDER 30

TRIAL PROCEEDINGS

1. When a cause on the Weekly Cause List has been called for hearing 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 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

counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such

counterclaim, so far as the burden of proof lies upon him.

4.-(1) where a cause is struck out under Rule 1 of this Order either party may apply that the cause be restored on the cause

list on such terms as the Judge may deem fit.

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

deem fit.

(3) an application to re-list a cause struck out or to set aside a judgment shall be made within 6 days after the order or

judgment or such longer period as the Judge may allow.

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

such terms, if any, as he shall deem fit.

6. The Registrar or other proper officer present at any trial or hearing shall make a note of the times at which the trial or

hearing commences and terminates respectively and the time it actually occupies on each day it goes on for communication to

the Taxing Officer if required.

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

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

party to begin.

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

10.-(1) A party who desires to call any witness not being a witness whose deposition on oath accompanied his pleading shall

apply to the Judge for witness leave to call such witness.

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

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

application to have the case closed.

(2) Notwithstanding the provisions of sub-rule 1 above, the Judge may suo-motu where he considers that either party fails to

conclude his case within a reasonable time, close the case for the party.

12.-(1) The Registrar shall take charge of every document or object during put in as an exhibit during the trial of an

action and shall mark or label every trial 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 exhibits is proved) and with a number, so that all the exhibits put in

by a party (or proved by a witness) are numbered in one consecutive series.

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

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

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

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

in.

13. When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call

evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of

evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his

own written address.

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

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

address.

16. The party who file the first address shall have a right of reply on points of law only. The reply shall be filed within 7

days after service of the other party's address.

17.-(1) An exhibit shall not be released after trial to the person who has put it in unless the period during which notice of

appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence,

another judge) grants leave to release such exhibit on being satisfied:

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

(2) After a notice of appeal has been filed, an exhibit produced at the trial shall not be released by the Court unless leave

to release such exhibit is granted by the Court of Appeal.

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

purpose of an appeal to the Court of Appeal

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

purpose of the appeal.

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

prosecution.

ORDER 31

FILING OF WRITTEN ADDRESS

1.This order shall apply in all causes and matters where written addresses are required.

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

contain:

(i)The claim or application on which the address is based;

(ii)A brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial

(iii)The issues arising from the evidence; and

(iv)a succinct statement of argument on each issue incorporating the purport of the authorities referred to together with

full citation of each such authority.

3.All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all

authorities referred to shall be submitted with the address.

Where any unreported judgment is relied upon the Certified True Copy shall be submitted along with the written address.

4.Oral argument of not more than thirty minutes shall be allowed for each party provided that where any party fails to appear

to adopt his written address on the day fixed for hearing, such address shall be deemed to have been adopted and the court

may proceed to ruling or judgment.

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

@@#ORDRR 32#@@

EVIDENCE GENERALLY

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

Legal Practitioner.

(3)The oral examination of a witness during his evidence-in-chief shall be limited to confirming his written deposition and

tendering in evidence all disputed documents or other exhibits referred to in the deposition.

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

2.(1) A Judge may, at or before the trial of an action, order or direct that evidence of any particular fact be given at the

trial in such manner as may be specified by the order or direction.

(2)The power conferred by sub-rule 1 of this Rule extends in particular to ordering or directing that evidence of any

particular fact be given at the trial:

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

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

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

(d)In the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the

production of a specified newspaper which contains a statement of that fact.

3.A Judge may, at or before the trial of an action order or direct that the number of medical or expert witnesses who may be

called at the trial be limited as specified by the order or direction.

4.Unless, at or before trial, a Judge for special reasons otherwise Limitation on use orders or directs, no document, plan,

photograph or model shall be receivable of documentary in evidence at the trial of an action unless it has been filed along

with the pleadings evidence. of the parties under these Rules.

5.Any order or direction under this Order may, on sufficient cause being shown, be revoked or varied by a subsequent order to

direction of a Judge made or given at or before the trial.

6.Office copies of all writs, processes, records, pleadings and documents filed in the Court shall be admissible in evidence

in all matters to the same extent as the original would be admissible.

7. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a

Convention in that behalf has been or shall be made the following procedure shall be adopted:

(a) The party obtaining such order shall file in the Registry an undertaking in Form 23 which may be varied as may be

necessary to meet the circumstances of the particular case in which it is used; or

(b) Such undertaking shall be accompanied by-

(i) A request in Form 24, with such modifications or variations as may be directed in the order for its issue, together with a

translation in the language of the country in which it is to be executed (if not English);

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

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

8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign

country with which a Convention in that behalf has been made, the order shall be in Form 25. The form may be modified or

varied as may be necessary to meet the circumstances of the particular case in which it is used.

9. The Judge may at any stage of any proceedings order the attendance of any person for the purpose of producing any writings

or other documents named in the order.

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

be compelled to produce at the hearing of trial.

10. Any person willfully disobeying any order requiring his attendance for the purpose of being examined or producing any

document shall be in contempt of court, and may be dealt with accordingly.

11. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to payment

for expenses and loss of time occasioned by his attendance from the party requiring him to attend.

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

revenue.

12.If any person duly summoned by subpoena to attend for examination shall refuse to attend or if having attended, he shall

refuse to be sworn or to answer any lawful question, he shall be in contempt of court and may be dealt with accordingly by

the Judge.

13.When the examination of any witness before any examiner under Rule 7 above shall have been conducted, the original

depositions authenticated by the signature of the examiner, shall be transmitted by him to the registry and filed.

14.Except where by this order otherwise provided or directed by a Judge, no deposition shall be given in evidence at the

hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the

Judge is satisfied that the deponent is dead or beyond the jurisdiction of the court or unable from sickness or other

infirmity to attend the hearing or trial, in any of which case the deposition certified under the hand of the person taking

the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such

certificate.

15.Any officer of the Court or other person directed to take the examination of any witness, or any person nominated or

appointed to take the examination of any witness or person, pursuant to the provisions of any convention now made or which

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

16.A party may by subpoena ad testificandum or duces tecum require the attendance of any witness or person appointed to take

the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such

witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit

to be used in any proceeding in the cause or matter shall be bound on being so subpoenaed to attend before such officer or

person for cross-examination.

17. The practice with reference to the examination, cross-examination and re-examination of witnesses at a trial shall extend

and be applicable to evidence taken in any cause or matter at any stage.

18. The practice of the court with respect to evidence at the trial, when applied to evidence to be taken before an officer of

the court or other person in any course of matter after the hearing or trial, shall be subject to any special directions

which may be given by the Judge in any case.

19. Subject to the provisions of the Evidence Act, all evidence taken at the hearing or trial of any cause or matter may be

used in any subsequent proceedings in the same cause or matter.

20. Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal

with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken

down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his

predecessor left it

21. Where it is intended to issue out a subpoena, a praecipe for that purpose in Form 26 containing the name or firm and the

place of business or residence of the Legal Practitioner intending to issue out the same, and where such Legal Practitioner

is an agent only, then also the name or firm and place of business or residence of the Principal Legal Practitioner, shall in

all cases be delivered and filed at the Registry No subpoena shall be issued unless all court fees have been paid (including

fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's

attendance.

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

23. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in chambers, such subpoena

shall issue from the Registry upon the Judge's directive.

24. In the interval between the issue and service of any subpoena, the Legal Practitioner issuing it may correct any error in

the names of parties or witnesses, and may have the writ rescaled upon leaving a corrected praecipe of the subpoena marked

with the words "altered and resealed", with the signature, name and address of the Legal Practitioner.

25. A subpoena shall be served personally unless substituted service has been ordered by a Judge in a case where a person

persistently evades service. The provisions of Order 7 shall so far as possible apply to service and proof of service of a

subpoena.

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

27. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future

event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal the right or

claim to which cannot be brought to trial by him before the happening of such event, may commence an action to perpetuate any

testimony which may be material for establishing such right or claim.

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

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

ORDER 33

AFFIDAVITS

1. Upon any motion, petition, summons or other application, evidence may be given by affidavit, but the judge may, suo motu or

on application, order the attendance for cross-examination of the deponent and where, after such an order has been made the

person in question does not attend, his affidavit shall not be used as evidence save by special leave.

2. Every affidavit shall bear the title in the cause or matter in which it is sworn but in every case in which there is more

than one claimant or defendant, it shall be sufficient to state the full name of the first claimant or defendant

respectively, and that there are other claimants or defendants, as the case may be.

3. The Judge may receive any affidavit sworn for the purpose of being used in any cause of matter, notwithstanding any defect

by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may

direct a memorandum to be made on the document that it has been so received.

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

leave of the Judge.

5. Except with the leave of the Judge no order made ex-parte in court founded on any affidavit shall have any force unless the

affidavit on which the application was based was made before the order was applied for, and produced or filed at the time of

making the application.

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

concerned.

7. Every alteration in any account verified by affidavit shall be marked with the initials of the Commissioner before whom the

affidavit is sworn and such alterations shall not be made by erasure.

8. Accounts, extracts from registers, particulars of creditors' debt, and other documents referred to by affidavit, shall not

be annexed to the affidavit or referred to as annexed, but shall be referred to as exhibits.

9. Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn

shall be marked with the short title of the cause or matter.

10. The provisions of the Evidence Act which set out provisions Application of governing affidavits shall be applicable under

these rules.

11. A document purporting to have affixed or impressed thereon or subscribed thereto the Seal or signature of a Court, Judge,

Notary Public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of

an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the Seal or signature

of that Court, Judge, Notary Public or person.

ORDER 34

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 light to make

submissions about the propriety or otherwise of making such order.

2. The Judge may upon a motion for a new trial or review of judgment, order a non-suit or judgment to be entered, although no

leave had been reserved at the trial.

ORDER 35

JUDGMENT, ENTRY OF JUDGMENT

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

be entered.

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 made on application for judgment, the judgment shall, unless the

Judge otherwise orders, be dated as of the day on which the order is made and take effect from that date:

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

effect from that date.

4. The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the

payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point

of time, as the Judge deems fit and may order interest at a rate not exceeding 10% per annum to be paid upon any judgment.

5. Every judgment or order made in any cause or matter requiring any person to do an act shall state the time or the time

after service of the judgment or order, within which the act is to be done, there shall be indorsed on the judgment or order

a memorandum by the Registrar in the following words, viz:

"If you, the within-named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to

process of execution for the purpose of compelling you to obey the said judgment (or order)" and. same shall be served upon

the person required to obey the judgment or order.

6. 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 or agent. .

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

open court.

ORDER 36

DRAWING UP OF ORDERS

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

2.-(1) Where an order has been made not embodying any special terms, nor including any special directions, but simply

enlarging time for taking any proceedings or doing any act or giving leave:-

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

(b) For the amendment of any writ or pleading;

(c) For the filing of any document; or

(d) For any act to be done by any officer of the court other than a legal practitioner, it shall not be necessary to draw up

such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge

shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

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

direction within the meaning of this Rule.

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

ORDER 37

TRANSFERS AND CONSOLIDATION

1. Transfers

1. Where the Chief Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any

action or matter from a lower court to the Court, a copy of the order duly certified by the Registrar shall forthwith be sent

to the Registrar of the lower court and the latter shall forthwith transmit to the Court the processes and proceedings in

every such action or matter and other necessary documents and processes.

2.(1) On receipt by the Court of the relevant proceedings, documents and processes, the Registrar shall notify the party who

applied for the transfer, or where the transfer was not made on the application of any party, the claimant, to attend at the

Registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how the costs

shall ultimately be borne.

(2) The notification shall be effected by serving a notice personally on the party concerned, or, where an address for service

has been given by such party, at that address.

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

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

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

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

(2) The Registrar shall then give notice to the parties to attend in person or by counsel before a named Judge on the day and

at the time specified in the notice. The fees for the service of this notice shall be borne in the first instance by the

party who has paid the fees for filing as provided by Rule 2 of this Order.

4.(1) The Chief Judge or such other Judge appointed by him shall, not later than 14 days after receiving the documents

referred to in Rule 3 of this

(a)Hear the parties or their Legal Practitioners;

(b)Take cognizance of the documents and

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

(2)Directions given under this Rule may include directions for the filing and service of pleadings. d may, suo motu or on

application, dismiss the action or matter. Upon an application by a defendant to dismiss the action or matter, the Judge may

either dismiss the action or matter upon such terms as may be just or make such other order on such terms as he deems just.

(2)If the defendant fails or all of several defendants fail to attend in compliance with a notice given under sub-rule 2 of

Rule 3, the court may enter judgment with costs and grant the order prayed for in the transferred proceedings.

6.In the preceding Rule of this Order, the references to the claimant and defendant shall, in relation to proceedings

commenced otherwise than by writ, be construed as references to the applicant and the respondent.

II.Consolidation

7.(1) The Judge may on application consolidate several actions pending before him where it appears that the issues are the

same in all the actions, and can therefore be properly tried and determined at the same time.

(2)Where actions are pending before different Judges, a party desiring consolidation shall first apply to the Chief Judge for

transfer of the matter to a Judge before whom one or more of the matters is pending.

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

or between the same claimant and different defendants or between different claimants and the same defendant or between

different claimants and different defendants;

Provided that where the same claimant brings actions against different defendants, they will not be consolidated without the

consent of all parties unless the issues to be tried are identical.

(4) Where an order for consolidation has been made the Judge shall give such directions as may be necessary for the trial or

hearing of the action or matter.

(5) An order for consolidation shall be drawn up at the expense of the party or parties who applied for consolidation and

shall be recorded in the Cause Book.

ORDER 38

INTERLOCUTORY ORDERS, ETC.

1.(1) When by any contract a prima facie case of liability is established and there is alleged as a matter of defence a right

to be relieved wholly or partially from such liability, a Judge may make an order for the preservation or interim custody of

the subject matter of the litigation or may order that the amount in dispute be brought into Court or otherwise secured.

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

thereto appears from the pleadings.

2. Where an application is made before trial for an injunction or other order and on the opening of such application, or at

any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter is

one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or

other evidence for the purposes of the application, it shall be lawful for the Judge to make an order for such trial

accordingly and in the meantime to make such order as the justice of the case may require.

3. The Judge may upon the application of any party make any order for the sale' by any person or persons named in such order

and in such manner and on such terms as the Judge may deem desirable, of any goods, wares, or merchandise which may be of a

perishable nature, or likely to deteriorate if kept, or which for any other just and sufficient reason it may be desirable to

sell at once.

4.(1) A Judge may upon the application of any party to an action or matter and upon such terms as may be just, make any order

for the detention, preservation or inspection of any property or thing, being the subject of such action or matter or as to

which any question may arise therein, and for all or any of the purposes aforesaid authorise any persons to enter upon or

into any land or building in the possession of any party to such action or matter, and for all or any of the purposes

aforesaid authorise any samples to be taken or any observation to be made or experiment to be tried, which may be necessary

or expedient for the purpose of obtaining full information or evidence.

(2) Where an order for the inspection of any property or thing is made on an application under this rule (including an

application made before any pleadings have been delivered in the action or matter) it appears that inspection was requested

in writing by the applicant and was not given, then, unless the Judge is satisfied that the respondent did not unreasonably

fail or refuse to permit the inspection, the Judge shall order the costs to be paid by the respondent in any event and except

where the respondent is a "Poor Person", shall order the costs to be paid forthwith.

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

question may arise therein.

5.(1) Where any property is in possession of the Court either before or after judgment and it has remained so for a period of

12 months, a Judge may upon application make an order for sale of that property and the proceeds thereof to be paid into an

account in a commercial bank directed by the Judge for the benefit of the person that succeeds at the trial or on appeal.

(2) The money paid after disposal of any such property shall be withdrawn from the bank by the successful party who shall

present to the Chief Registrar a certified true copy of the enrolled judgment.

6. Where an action or counterclaim is filed to recover specific property and the party from which such recovery is sought does

not dispute title but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the

Judge may at the pre-trial conference order that the party claiming to recover the property be at liberty to pay into Court,

to abide the event of the action, the amount of money in respect of which the lien or security is claimed and such further

sum, if any, for the interest and costs as the Judge may direct and that upon such payment into Court being made, the

property claimed be given up to the party claiming it.

7. Where any real or personal estate or property forms the subject of any proceedings and the Judge is satisfied that the same

will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge

may at any time after the commencement of the Sale of property in possession of court proceedings, allow to the parties

interested therein or anyone or more of them, the whole or part of the annual income of the real estate or a part of the

personal estate or property or the whole or part of the income thereof, up to such time as the Judge shall direct.

8. In any action or matter in which an injunction has been or might have been claimed, the claimant may, before or after

judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful

act or breach of contract complained of or from the commission of any injury relating to the same property or right or

arising out of the same contract and the Judge may grant the injunction either upon or without terms as may be just.

9. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Judge in

determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt

claimed by the applicant, to the amount which may probably be obtained by the Receiver and to the probable costs of his

appointment and may if the Judge shall deem fit, direct any inquiries on these or other matters before making the

appointment.

10. Where an order is made directing a Receiver to be appointed, unless otherwise ordered, the person to be appointed shall

first give security, to be approved by the Judge, duly to account for what he shall receive as such Receiver, and to pay the

same as the Judge shall direct, and the person so to be appointed shall, unless otherwise ordered be allowed a proper salary

or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 30 and 31 with such variations as

circumstances may require. The undertaking shall be filed in the Registry and shall form part of the record of proceedings

until it has been duly vacated.

11. Where any judgment or order is pronounced or made in court appointing a person therein named to be Receiver, they may

adjourn so that the Receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such

judgment or order to be drawn up.

12. When a Receiver is appointed with a direction that he shall pass accounts, the Judge shall fix the days upon which he

shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances

appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him. With respect

to any such receiver as neglects to leave and pass his accounts and pay the balances at the times fixed for the purpose as

aforesaid, the Judge may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the

salary claimed by such Receiver and may also charge him with interest at a rate not exceeding twenty-five per cent per annum

upon the balances so neglected to be paid by him during the time the same appears to have remained in his hands.

13. Receivers accounts shall be in Form 32 and with such variations as circumstances may require.

14. Every Receiver shall deliver to the Registrar his account, together with an affidavit verifying the same in Form 33 with

such variations as circumstances may require. An appointment shall thereupon be obtained by the claimant or person having the

conduct of the action for the purpose of passing such account.

15. Where any Receiver fails to leave any account or affidavit or to pass such account or to make any payment or otherwise,

the Receiver or the parties or any of them, may be required to show cause why such account passed or such payment was made or

any other proper proceedings taken and thereupon such directions as shall be proper may be given, including the discharge of

any receive and appointment of another and payment of costs.

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

accounts.

ORDER 39

MOTIONS AND OTHER APPLICATIONS

1.(1) Whereby these Rules any application is authorised to be made to a Judge, such application shall be made by motion which

may be supported by affidavit and shall state under what rule of Court or law the application is brought. Every motion shall

be served within 5 days of filing.

(2) Every such application shall be accompanied by a written address in support of the relief sought.

(3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application,

file his written address and may accompany it with a counter-affidavit.

(4) The applicant may on being served with the written address of the opposing party file and serve an address in reply on

point of law within 7 days of being served. Where a counter affidavit is served on the applicant he may file further

affidavit with his reply.

2. Except as expressly provided by law, no motion or application for a rule nisi or order to show cause shall be made in any

action.

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

to the other party.

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

of the application.

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

(4) A Judge may upon application extend the effective period of an order made ex-parte if he is satisfied that the motion on

notice has been served and that such extension is necessary in the interest of justice or to prevent an irreparable or

serious mischief. The application for such an extension shall be made before abatement of the order and extension shall not

be for a period exceeding 7 days from the day the extension is granted.

4.(1) Every motion on notice to set aside, remit or enforce an Arbitral Award shall state in general terms the grounds of the

application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall

be served with the notice of motion.

(3) An award made by an arbitrator or a decision reached at the Multi-Door Court House may by leave of a Judge be enforced in

the same manner as a judgment or order of Court.

(4) An application to set aside or remit any award may be made at any time within 6 weeks after such award has been made, and

published to the parties:

Provided that a Judge may by order extend the said time either before or after the same has elapsed.

5. Unless a Judge grants special leave to the contrary, there must Special leave be at least 2 clear days between the services

of all processes in respect of a motion and the day named in the notice for hearing the motion.

6.If on the hearing of a motion or other application the Judge shall be of opinion that any person to whom notice has not

been given ought to have had such notice, the Judge may either dismiss the motion or application or adjourn the hearing

thereof, in order that such notice may be given upon such terms, if any, as the Judge may deem it fit to impose.

Motions may be dismissed or adjourned where necessary notice not given.

7.The hearing of any motion or application may from time to time of be adjourned upon such terms, if any, as the Judge shall

deem fit.

8.A claimant may file any application along with an originating process and may serve both on any defendant simultaneously.

.

9.Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his

representatives for the delivery of a cash account or the payment of monies or the delivery of securities, and a Judge may

from time to time order the respondent to deliver to the applicant a list of the monies or securities which he has in his

custody or control on behalf of the applicant or to bring into court the whole or any part of the same, within such time as

the judge may order. In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision

for the taxation and the payment of security thereof or the protection of the respondent's lien (if any) as he may deem fit.

10.If during the taxation or any bill of costs or the taking of any account between Legal Practitioner and client, it shall

appear to the taxing officer that there must, in any event, be moneys due from the Legal Practitioner to the client, the

taxing officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner. Upon

the filing of such certificate, a Judge may order the moneys so certified to be forthwith paid to the client or brought into

Court.

ORDER 40

APPLICATION FOR JUDICIAL REVIEW

1.(1) An application for:

(a) An order of mandamus, prohibition or certiorari; or

(d) An injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an

application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction in rule (1) (b) of this Rule) may be made by

way of an application for judicial review and the court to grant it by way of judicial review, having regard to:

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or

certiorari;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and

(c) all the circumstances of the case.

2. On an application for judicial review any relief mentioned in Rule 1 may be claimed as an alternative or in addition to any

other relief so for mentioned if it arises out of, relates to or is connected with the same matter.

3.(1) No application for judicial review shall be made unless the leave to of the Court has been obtained in accordance with

this Rule.

(2) An application for leave shall be made ex-parte to the Judge and shall be supported by:

(a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds on which they are

sought;

(b) an affidavit verifying the facts relied on; and

(c) a written address in support of application for leave.

(3) The Judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying

different or additional grounds of relief or otherwise on such terms, if any, as he deems fit.

(4)The Judge shall not grant leave unless he considers that the applicant has a sufficient interest in the matter to which

the application relates.

(5)Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment,

order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the

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

(6)Where leave to apply for judicial review is granted, then:

(a)if the relief sought is an order of prohibition or certiorari and the Judge so directs, the grant shall operate as a stay

of the proceedings to which the application relates until the determination of the application or until the Judge enters an

order;

(b)if any other relief is sought, the Judge may at any time grant in the proceedings such interim relief as could be granted

in an action begun by writ;

(c)the Judge may impose such terms as to costs and as to giving security as he deems fit.

4.An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the

application.

5.(1) When leave has been granted the application shall be made by motion or by originating summons.

(2)The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings

before a Judge and the object of the application is either to compel the Judge or an officer of the court to do any act in

relation to the proceedings, or to quash them or any order made therein, the notice or summons shall also be served on the

Clerk or Registrar of the Court and where any objection to the conduct of the Judge is to be made, on the Judge.

(3)Unless the Judge granting leave has otherwise directed, there shall be at least 7 days between the service of the notice

of motion or summons and the day named therein for the hearing.

(4) A motion shall be entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of and the places and dates of service on all persons who have been served

with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and if any person who

ought to be served under this Rule has not been served, the affidavit shall state that fact and the reason for it and the

affidavit shall be before the Judge on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Judge is of opinion that any person who ought, whether under this Rule or

otherwise, to have been served has not been served, the Judge may adjourn the hearing on such terms, if any, as he may direct

in order that the notice or summons may be served on that person.

6.-(1) Copies of the statement in support of an application for leave Statement and under Rule 3 shall be served with the

notice of motion or summons and subject affidavits. to sub-rule 2, no grounds shall be relied upon or any relief sought at

the hearing except the grounds and relief set out in the statement.

(2) The Judge may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying

different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit and may allow further

affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice

of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the

hearing including, in the case of the applicant, the affidavit in support of the application for leave under Rule 3.

7. On an application for judicial review the Judge may, subject to Rule 2, award damages to the applicant if:

(a) he has included in the statement in support of his application for leave under Rule 3 a claim for damages arising from any

matter to which the application relates; and

(b) the Judge is satisfied that if the claim had been made in an action begun by the applicant at the time of making his

application, he could have been awarded damages.

8. Any interlocutory application in proceeding on an application for judicial review may be made to the Judge.

9.(1) On the hearing of any motion or summons under Rule 5, any person who desires to be heard on the motion or summons, and

appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with

notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them,

the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless

before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to

do so to the satisfaction of the Judge hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as is referred to in sub-rule 2, the order shall, subject to sub-

rule 4, direct that the proceedings shall be quashed forthwith on their removal into Court.

(4) Where the relief sought is an order of certiorari and the Judge is satisfied that there are grounds for quashing the

decision to which the application relates, the Judge may, in addition to quashing it, remit the matter to the Court, tribunal

or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.

(5) Where the relief sought is a declaration, an injunction or damages and the Judge considers that it should not be granted

on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the

applicant at the time of making his application, the Judge may, instead of refusing the application, order the proceedings to

continue as if they had been begun by writ.

10.No action or proceeding shall be brought or prosecuted against any person in respect of anything done in obedience to an

order of mandamus.

11.Where there is more than one application pending against several persons in respect of the same matter on the same

grounds, the Judge may order the applications to be consolidated.

ORDER 41

APPEALS FROM MAGISTRATE'S COURT, ETC.

1.Every appeal shall be brought by Notice of Appeal which shall be lodged in the lower Court within 30 days of the decision

appealed from and served on all other parties affected by the appeal within that period.

2.(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 the 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.

(4)The Notice of Appeal shall be in Form 40 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 3months of the decision appealed from, prepare as many certified copies

of the record of proceedings, including the Notice of Appeal, required for the consideration of the appeal as there are

parties on record.

(2)The Registrar shall within 7 days of preparing the certified copies of the record of proceedings and Notice of Appeal

referred to in sub-rule 1 of this Rule notify the parties to come forward and collect their own copies upon payment of

necessary fees, and shall send copies also 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 the Division.

(3) Except where the fees for preparing the copies are remitted, a deposit decided upon by the Registrar as likely to cover

the fee, shall be made by the appellant before the preparation of the copies.

4.(1) The appellant shall within 30 days of the receipt of the Record of Proceedings from the lower Court file in the Court a

written brief which shall contain a succinct statement of his argument in the appeal.

(2) The respondent shall also within 30 days of the service of the written address of the appellant on him file the

respondent's written address, which shall answer all material points of substance contained in the appellant's written

address and contain all the points raised therein which the respondent wishes to concede as well as reasons why the appeal

ought to be dismissed.

(3) The appellant may if necessary, within 14 days of the service on him of the respondent's written address file and serve a

reply written address which shall deal with all new points arising from the respondent's written address.

(4) All parties, whose interests are identical or joint, shall file joint written address, and separate written address may be

filed only by those parties whose interests are separate or in conflict.

5. At the hearing of the appeal, both parties shall adopt their written Procedure at briefs and may be allowed a maximum

period of thirty minutes for oral argument hearing in amplification of their briefs.

Provided that where any party shall fail to appear to adopt his brief on the day fixed for hearing, such brief shall be

deemed to have been adopted and the court may proceed to ruling or judgment.

6.(1) The times prescribed in this Order may be enlarged or abridged Where time at any time by the Court on such terms (if

any) as may seem fit, after notice for expires enlargement or abridgement of time.

(2) Where the time available to the appellant for the taking of any step has expired before such step has been taken or

completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may

strike out, or enlarge the time for sufficient reason shown.

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

8. The appeal shall come on for hearing at such time and at such places as the Registrar of the Court shall notify to the

parties.

9. At the hearing, it shall not be competent for the appellant to go into any other reasons for appeal than those set for in

his notice of grounds of appeal; but 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

10.(1) The respondent may give notice that he intends at the hearing to ask the Court to affirm the judgment of the lower

Court on grounds other than those stated by that Court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to

confirm the judgment of the lower Court.

(3) Such notice and grounds shall be filed in Court within 14 days of service on the respondent of the notice and grounds of

appeal, and shall be served on the appellant or his legal practitioner.

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

(2) The grounds shall be filed by the respondent within 30 days of service on him of the appellant's notice and grounds of

appeal, and shall be served on the appellant or his legal practitioner before the hearing.

12.(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 opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the

respondent to enquire into the subject-matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any ground of appeal ought to prevail, the Court may, if

it thinks fit, cause the ground of appeal forthwith to be amended upon such terms and conditions, if any, as the Court may

think just.

13. On any appeal from a decision of a lower Court, no objection shall be taken or allowed to any proceeding in such Court for

any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to

or of such Court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons

and the evidence adduced in support thereof in such Court:

Provided, however, that if any error, defect, or variance mentioned in this Rule appears to the Court at the hearing of any

appeal to be such that the appellant 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 it or to reverse the decision appealed from, or to

make such other order for disposing of the case as justice may require.

14. No objection shall be taken or allowed, on any appeal, to any Notice of Appeal or to any recognisance entered into under

this Order for the due prosecution of the appeal for any alleged error or defect therein; but if the error or defect appears

to the Court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the

Court to amend it and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the

adjournment, if any, being made on such terms as the Court may think just.

15. The Court may, in any case where it considers 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.

16.-(1) When additional evidence is to be taken by the lower Court and specific findings of fact reported, it shall certify

the evidence to the Court which shall thereupon proceed to dispose of the appeal.

(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of Rule 28 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 28, 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.

17. The fees in the First Schedule shall be chargeable in civil appeals save where they would have to be paid by a Government

officer acting in his official capacity or where the lower Court or the Court waives or remits the fees on the ground of the

poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

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

19.(1) On application being made for stay of execution under any enactment establishing the lower court, the lower court or

the court may impose one or more of the following conditions:

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of 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 appellant's property shall be seized and attached pending the making of a deposit or the giving of security as

aforsaid, including a deposit or a security for the expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in Court pending

determination of the appeal,

(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the

conditions imposed, and direct that in default of the 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

judgement of the Notice of Appeal and shall in the first instance be made to the lower court but where execution has been

ordered by the Court the application shall not be made to the lower Court but to the Court.

(4) The application may be ex-parte but the Court may direct notice thereof to be given to the other party to the appeal; and

where an order is made ex-parte the Registrar of the Court shall notify the other party of the order made.

(5) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the

security and the name of the surety proposed (if any).

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

(7) An appeal shall not operate as a stay of execution under the decision or judgment appealed from except so far as the lower Court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

20. The Court may make such order as to the payment of costs by or to the appellant as it may consider to be just and the order may be made also in any case where an appeal has not been entered into or prosecuted.

21. (l) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the Court of its own motion or on application made ex-parte or on notice, as the Court may see fit.

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

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made

under paragraph (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on

the appellant's goods are sufficient to satisfy the amount payable under the judgment or decision appealed from.

22.(1) When a case is decided on appeal the Court shall certify its judgment or order to the lower Court in which the

decision appealed against was pronounced.

(2) The lower Court to which the Court certifies its judgment or order shall thereupon make such orders as are conformable to

the judgment or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

23. After the pronouncement of the judgment of the Court, the lower Court from which the appeal came shall have the same

jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or

substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as

if such decision or judgment had been pronounced by itself.

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

25. In this Order the lower court means the court whose judgement is appealed against.

ORDER 42

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

I. Habeas Corpus

1. An application for an Order of Habeas Corpus Ad Subjiciendum shall be made to the Court, except that:

(a) In vacation or at anytime when no Judge is sitting in Court it may be made to a Judge sitting otherwise than in Court;

(b) In cases where the application is made on behalf of a child, it shall be made in the first instance to a Judge sitting

otherwise than in Court.

2.(1) The application may be made ex-parte and shall be accompanied by an affidavit by the person restrained showing that it

is made at his instance and setting out the nature of the restraint.

(2)Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied

by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make

the affidavit himself.

3.(1) A Judge to whom the application is made may make the order forthwith.

(2) Where the application is made to a Judge sitting otherwise than in court, he may direct the Order to issue or that an

application there for be made by notice of motion to the Judge or to a Judge.

(3)A Judge to whom the application is made may adjourn it so that notice thereof may be given to the jailer.

(4) Where the person detained is produced before a Judge he may discharge him immediately with or without conditions.

4.(1) The summons or notice of motion aforesaid shall be served on the person against whom the order is sought and on such

other persons as the Judge may direct.

5. Every party to the application shall supply to the other party or parties copies of the affidavits which he proposes to use

at the hearing of the application.

6.-(1) The order or notice of motion may be served personally or by courier on a jailer where the person is confined or

restrained or on any other to public official and copies of the order or motion may be served in like manner on each person

connected with or having authority over the place of confinement or restraint.

(2) The order shall contain the date on which the person restrained is to be brought before a Judge and that in default of

obedience, proceedings for attachment of the party disobeying will be taken.

7. Upon service of the order or notice of motion on the jailer, he shall within 2 days file a statement stating the reasons

for the detention, the period of the detention and any other matter that may be directed by the Judge.
The statement shall be

verified by an affidavit deposed to by the jailer.

8.(1) Where the prisoner is brought up in accordance with the order, his Legal Practitioner shall be heard first, then the

Legal Practitioner for the State and then the Legal Practitioner for the prisoner in reply.

(2) Where the prisoner is not brought in accordance with the order, a Judge may upon the application of his Legal

Practitioner order that he be discharged or make any other order.

II.Attachment for Contempt

9.(1) The procedure in applications for attachment for contempt of court in cases to which this Rule applies shall be the

same as for applications for an order for judicial review under Order 40 so far as may be applicable.

(2)The notice of motion shall be personally served unless the Judge dispenses with such service.

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

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

(b)in connection with criminal proceedings;

(c)subject to the provisions of the Sheriff" and Civil Process Act, any proceedings in the 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*.

10.When an order enforceable by committal has been made against a judgment debtor, and if the order for delivery of goods

without the option of paying their value or is in the nature of an injunction the Registrar shall when the order is drawn up

immediately endorse it as follows:

Notice of Consequence of Disobedience to Court Order.

To.....of

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

liable to be committed to prison.

Dated this.....day of20

.....

Registrar

11. Upon service of the application for committal issued in a case to which Rule 9 of this Order applies, the Respondent

shall before the return date stated in the application file a statement stating the reasons why an order for attachment

should not be issued, The statement shall be verified by an affidavit deposed to by the respondent.

12. Every order of attachment issued in a case to which Rule 9 of this Order applies shall be made returnable before the

Judge. If a return of non est inventus (not found) is made, a subsequent order or orders may be issued on the return of the

previous order.

ORDER 43

INTERPLEADER

1. Relief by way of Interpleader may be granted where the person seeking relief ("the applicant") is under liability for any

debt, money, goods or chattels, for or in respect of which he is, or expects to be sued by two or more parties ("the

claimants") making adverse claims thereto:

Provided that where the applicant is a Sheriff or other officer charged with the execution of process by or under the

authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil Process Act and the rules made under it

shall apply.

2. The applicant must satisfy the Judge by affidavit or otherwise that is:

(a) Claims no interest in the subject matter in dispute other than for charges or cost;

(b) Does not collude with any of the claimants; and

(c) Is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants do not have a common

origin, but are adverse to and independent of one another

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

process.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their

claims, and either to maintain or relinquish them.

6. If the application is made by a defendant in an action the Judge may stay further proceedings in the action.

7. If the claimants appear in pursuance of the summons, the Judge may order either that any claimant be made a defendant in

any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant or that

an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be

claimant and which is to be defendant.

8. Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without

directing the trial of an issue or order that a special case be stated for the opinion of the Judge. If a special case is

stated, Order 28 shall as far as applicable apply thereto.

9. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does

not appear in pursuance of the summons or having appeared, neglects or refuses to comply with any order made after his

appearance, the Judge may make an order declaring him and all persons claiming under him, forever barred against the

applicant and persons claiming under him but the order shall not affect the rights of the claimants as between themselves.

10. The Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other

matters as may be just.

ORDER 44

COMPUTATION OF TIME

1. Where by any law or order made by a Judge a time is appointed or limited for the doing of any act, the period shall be

reckoned:

(a) as excluding the day on which the order is made or on which the event occurs;

(b) where the last day of the period is a holiday the time shall continue until the end of the next day following which is

not a public holiday;

(c) where the act is required to be done within a period which does not exceed 6 days, holidays shall be left out of account

in computing the period.

2. In this order holiday means a day which is a Saturday, Sunday or a public holiday.

3. No pleading, summons, motions, orders, originating process, documents and other processes shall be served before 6:00am or

after 6:00pm. Service effected after 6:00pm shall be deemed to have been effected the following day;

Provided that service effected after 6:00pm on Friday shall be deemed to have been effected on the next following working

day.

4. The Judge may, as often as he deems fit, and either before or after the expiration of the time appointed by these Rules or

by any judgment or order of the court, extend or adjourn the time for doing any act or taking any proceedings:

Provided that any party who defaults in performing an act within the time authorised by the Judge or under these Rules, shall

pay to the Court an additional fee of N200.00 (two hundred naira) for each day of such default at the time of compliance.

ORDER 45

MISCELLANEOUS PROVISIONS

I. Court Sittings and Vacation

1. Subject to the provisions of the Law, the Judge may, in his Days of sittings. discretion, appoint any day or days and any

place or places from time to time for the hearing of causes as circumstances require.

2. The sittings of the Judge for the hearing of causes shall be public, Sittings of the subject to the provisions of the

Constitution of Federal Republic of Nigeria.

3.The offices of the court shall be open at such times as the Chief Judge shall direct.

4.Subject to the directions of the Chief Judge, sittings of the High Court for the dispatch of civil matter will be held on

every week day except:

(a)On public holidays;

(b)During the week beginning with Easter Monday;

(c) During the period beginning on Christmas eve and ending on the 2nd January next following; and

(d) During the long vacation, i.e, the period beginning on a date in August and ending on a date not more than 6 weeks later

as the Chief Judge may by notification in the Gazette appoint.

5.(1) Notwithstanding the provisions of Rule 4, any cause or matter Vacation, may be heard by a Judge during any of the

periods mentioned in paragraphs (b),(c) or (d) of Rule 4 (except on a Sunday or public holiday) where such cause or matter is

urgent or a Judge, at the request of all the parties concerned, agrees to hear a cause or matter.

6.The time for filing and service of pleadings shall not run during vacation not the annual vacation unless otherwise

directed by the judge.

II.General

7.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.

8.When the publication of any notice is required, the same may be made by advertisement in the Gazette, unless otherwise

provided in any particular case by any Rule of Court or otherwise ordered by the Judge.

9.A document shall not be filed unless it has indorsed on it, the name and number of the cause, the date of filing and

whether filed by claimant or defendant; and on being filed such indorsement shall be initialed by the Registrar and recorded

in the Process Register.

10. All warrants and orders of whatever description shall be sufficiently addressed for execution by being directed to the

Sheriff; but this provision shall not prevent any order or warrant from being addressed to a person by name or to a person

named and to officers of court generally or to a Local Government Authority.

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

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

thereto.

13. Where no provision is made by these Rules or by any other written law, the court shall adopt such procedure as will in its

view do substantial justice between the parties concerned.

14. Subject to particular Rules, the Court may in all causes and matters make any order which it considers necessary for doing

justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

ORDER 46

ARREST OF ABSCONDING DEFENDANT

1. If in any action the defendant is about to leave Nigeria or has disposed of or removed from Nigeria his property or any

part thereof or is about to do so, the claimant may, either at the institution of the suit or at any time thereafter until

final judgment, apply by ex-parte motion to the Judge for an order that the defendant should show cause why security should

not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

2.-(1) If the Judge after making such investigation as he may consider necessary shall be of opinion that there is probable

cause for believing that the defendant is about to leave Nigeria and that by reason thereof the execution of any judgment

which may be entered against him is likely to be obstructed or delayed, the Judge shall issue a warrant to bring the

defendant before him, that he may show cause why he should not give good and sufficient bail for his appearance.

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

3.If the defendant fails to show cause, the Judge shall order him to give bail for his appearance at any time when called

upon while the suit is pending appearance or and until execution or satisfaction of any judgment; and the surety or sureties

satisfaction, shall undertake in default of such 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 bail for his appearance, sufficient to answer the claim

against him, with costs of bail, the suit, the Judge may accept such deposit and direct that the deposit be paid into an

interest yielding account in a bank.

(2)Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim

against him, the Judge may accept such and make such order as he may deem fit in the circumstance.

5.-(1) If the defendant fail is to furnish security or offer sufficient deposit, the Judge may commit him into custody until

the decision of the suit or if judgment has been given against the defendant until the execution of the judgment.

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

(3)The Judge may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem

just, release the defendant.

6.The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the claimant in the action

in advance, and the "amount so disbursed may be recovered by the claimant in the suit, unless the Judge shall otherwise

order. The Judge may release the person so imprisoned on failure by the claimant to pay the subsistence money, or in case of

serious illness, order his removal to hospita1.

ORDER 47

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 or the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whatsoever either in connection with his application or

the action taken or defended 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 Registrar.

6.(1) The Chief Judge may at any time revoke the order granting the application and thereupon the applicant shall not be

entitled to the benefit of this Order in any proceedings to which the application relates unless otherwise ordered.

(2) Neither the applicant nor the Legal Practitioner assigned to him shall discontinue, settle or compromise the action

without the leave of a Judge.

7. The Judge may order payment to be made to the Legal Practitioner out of any money recovered by the applicant or may charge

in favour of the Legal Practitioner upon any property recovered by the applicant, such sum as in all the circumstances the

Judge may deem fit.

8. Every order, notice or application on behalf of the applicant, except an application for the discharge of his Legal

Practitioner, shall be signed by his Legal Practitioner, who shall take care that no application or notice is made or given

without reasonable cause.

9. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate Court and then only

on grounds of law; but if so permitted the provisions of this Order shall apply mutatis mutandis to all proceedings on the

appeal.

ORDER 48

CHANGE OF LEGAL PRACTITIONER

1. Every Legal Practitioner who shall be engaged in any cause or matter shall be bound to conduct same on behalf of the party,

by or for whom he shall have been so engaged until final judgment, unless allowed by a Judge for any special reason to cease

acting therein.

2. An application for a change or withdrawal of Legal Practitioner may be made by a party or his Legal Practitioner as the

case may be, not less than 3 clear days before the date fixed for hearing.

3. An application under this Order shall be served on all parties to the cause or matter and where applicable also on the

outgoing Legal Practitioner if he is not the applicant.

ORDER 49

COSTS

1.-(1) In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified

for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in

coming to court. The Judge may take into account all the circumstances of the case.

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable, be summarily determined by the Judge at

the time of delivering the judgment or making the order.

(3) When the Judge deems it to be impracticable to determine summarily the amount of any cost which he has adjudged or ordered

to be paid, all questions relating thereto shall be referred by the Judge to a taxing officer for taxation.

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such

times and in such manner and form as the Judge shall direct.

3. A claimant ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be

temporarily resident within the jurisdiction,

4. In actions brought by persons resident out of the jurisdiction when the claimant's claim is founded on a judgment or order

or on a bill of exchange or other negotiable instrument, the power to require the claimant to give security for cost shall be

exercised at the Judge's direction.

5. Where a bond is to be given as security for costs, it shall unless the Judge otherwise directs, be given to the party or

person requiring the security and not to an officer of the Court.

6. Subject to the provisions of any applicable law and these Rules, costs, both actual and incidental to all proceedings in

the court, including the administration of Estates and Trusts, shall be at the discretion of the Judge, and the Judge shall

have full power to determine by whom and to what extent the costs are to be paid.

7. The Judge may order any costs to be paid out of any fund or Costs out of fund property to which a suit or proceedings

relate, or property.

8. Where the Judge orders costs to be paid or security to be given for costs by any party, the Judge may order all proceedings

by or on behalf of that party in the same suit or proceedings or connected with it to be stayed until the costs are paid or

security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

9.-(1) Costs may be dealt with by the Judge at any stage of the proceedings

(2) Costs when ordered become payable forthwith and shall be paid within 7 days of the order, otherwise the defaulting party

or his Legal Practitioner may be denied further audience in the proceedings.

10. In addition to any penalty payable for default under these Rules, the costs of and occasioned by any application to extend

the time fixed by the Rules or any direction or order there under, for delivering or filing any document or doing any other-

act, including the costs of any Order made on the application, shall be borne by the party making the application unless the

Judge otherwise orders.

11. The Judge in exercising his discretion as to costs shall take into account any offer or contribution made by any of the

parties and any payment into Court and the amount of such payment.

12.-(1) Where in any cause or matter anything is done improperly or unnecessarily by or on behalf of a party, the Judge may

direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other

parties shall be paid by him to them.

(2) Without prejudice to the generality of sub-rule 1 of this Rule, the Judge shall for the purpose of that sub-rule have

regard in particular to the following matters, that is to say:

- (a) the omission to do anything the doing of which would have been calculated to save costs;
- (b) the doing of anything calculated to occasion or in any manner or at any time calculated to occasion unnecessary costs; and
- (c) any unnecessary delay in the proceedings.

(3) The Judge may instead of giving a direction under sub-rule 1 of this Rule in relation to anything done or any omission

made, direct the taxing officer to inquire into it and if it appears to him that such a direction as aforesaid should have

been given in relation to it, to act as if the appropriate direction had been given.

13.(1) Subject to the following provision of this Rule, where in any proceedings costs are incurred improperly or without

reasonable cause or are wasted by undue delay or by other misconduct or default, the Judge may make against any Legal

Practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:

- (a) disallowing the costs as between the Legal Practitioner and his client; and
- (b) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
- (c) directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

(2) The provisions of Rule 13 sub-rule 1 shall apply where proceedings in court cannot conveniently proceed or fail 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 be prepared with any proper evidence or account or otherwise proceed.

(3) No order under this Rule shall be made against a Legal Practitioner unless he has been given a reasonable opportunity to

appear before the Judge to show cause why the order should not be made.

(4)The Judge may direct that notice of any proceedings or order against a Legal Practitioner under this Rule shall be given

to his client in such manner as may be specified in the direction.

(5)If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is

taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for

drawing the bill and for attending the taxation

14. Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which fails to be taxed under the

Legal Practitioners Act shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer

as the Chief Judge may appoint.

15. The party applying for taxation shall file bill and give notice to Notice to other any other parties entitled to be heard

on the taxation, and shall at the same time, party. If he has not already done so, supply them with copy of the bill.

16. A taxing officer shall have power to tax any costs the taxation of which is required by any law or directed by order of a

Judge.

17. A taxing officer may, in the discharge of his functions with respect to the taxation of costs;

(a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so

directs;

(b) require any party represented jointly with any other party in any proceedings before him to be separately represented;

(c) examine any witness in those proceedings; and

(d) direct the production of any document which may be relevant in connection with those proceedings.

Supplementary powers of taxing officers.

18.(1) A taxing officer may:

(a) extend the period within which a party is required by or under these Rules to begin proceedings for taxation or to do

anything in or in connection with proceedings before that officer; and

(b) where no period is specified by or under these Rules or by the Judge for the doing of anything in or in connection with

such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer, then

unless the Judge otherwise directs, the taxing officer may from time to time extend the period so specified on such terms as

he deems fit.

(3) A taxing officer may extend any such period as is referred to in the foregoing provisions of this Rule although the

application for extension is not made after the expiration of that period.

19. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may;

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is liable to be paid

and direct payment of any balance; or

(b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is

liable to pay.

20.(1) A party entitled to reduce any costs to be taxed shall begin proceedings for the taxation of those costs by filing in

the Registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least 7 days notice

to every other party of the day and time appointed for taxation proceedings and at the same time serve a copy of his bill of

costs to the other party if he has not already done so.

(2) A notice under sub-rule 1 of this Rule need not be given to any party who has entered an appearance or taken any part in

the proceedings which gave rise to the taxation proceedings.

21.-(1) In any bill of costs the professional charge and the disbursements Provisions as to shall be entered in separate

columns and every column shall be cast before the bills of costs, bill is left for taxation.

(2) Before a bill of costs is left for taxation it shall be indorsed with:

(a) the name or firm and business address of the Legal Practitioner whose bill it is; and

(b) if the Legal Practitioner is the agent of another, with name or firm and business address of that other Legal Practitioner

22.(1) If any party entitled to be heard in any taxation proceedings does not extend within a reasonable time after the time

appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the

time appointed may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those

proceedings from time to time.

23.(1) Subject to Rule 20, and the following provisions of this Rule, the scale of fees as shall be contained in any Legal

Notice passed pursuant to a law of the Akwa Ibom State House of Assembly shall apply to the taxation of all costs incurred in

relation to contentious business done after the commencement of these Rules.

(2) Where the amount of a Legal Practitioner's remuneration in respect of non-contentious business connected with sales,

purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is

regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the

like contentious business shall be the same, notwithstanding anything in the scale of fees as shall be contained in any

Legal Notice passed pursuant to a law of the Akwa Ibom State House of Assembly.

24. Upon the completion of the taxation of any bill of costs the taxing officer shall certify the result of his taxation

including the costs thereof.

25. The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as

part of the bill

26. Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any

item by a taxing officer or with the amount allowed by a taxing officer in respect of any item, may apply to a Judge for an

order to review the taxation as to that item.

27.(1) An application under the preceding Rules shall be made by summons at any time within 14 days after the taxing

officer's certificate.

(2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this

Rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of

any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to

the subject matter of the application.

(3) On an application under this Rule the Judge may make such order as the circumstances require and in particular may order

the taxing officer's decision to be amended or, except where the dispute as to the item under review is as to amount only,

order the item to be remitted to the same or another taxing officer for taxation

ORDER 50

I. Proceedings in Chambers

1. In any proceedings before a Judge in Chambers, any party may, if he so desires, be represented by a Legal Practitioner.

2. Unless the opposite party or his Legal Practitioner objects, the Matters to be Judge may, on application, conduct any

proceedings, except actual trial, in disposed of in Chambers, and may also on application, adjourn any such proceedings from

Court to Chambers or vice versa.

II. Proceedings Relating to Persons under Legal Disability

3. Upon application for the appointment of Guardians of infants and allowance for maintenance, the evidence shall show;

(a) the ages of the infants;

(b) the nature and amount of the infant's fortunes and incomes; and

(c) what relations the infants have.

4. At any time during the proceedings, pursuant to any judgment or order, the Judge may, if he deems fit, require a Guardian

to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such

judgment or order.

III. Further Consideration

5. Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further

consideration in Chambers, such matter may, after the expiration of 8 days and within 14 days from the filing of the

Certificate, be brought on for further consideration by a summons to be taken out by the party having the conduct of the

matter, and after the expiration of such 14 days by a summons to be taken out by any other party. Such summons shall be in

the form following.

"That this matter, the further consideration whereof was adjourned by the order of the..... day of..... 20..... may be

further considered."

And shall be served 7 clear days before the return:

Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any

subsequent hearing, have been adjourned in Court.

IV. Orders in Chambers

6. Notes shall be kept of all proceedings in the Judges' Chambers with proper dates, so that all such proceedings in such

cause or matter, may appear consecutively and in chronological order, with a short statement of the question or points

decided or ruled at every hearing.

7. Orders made in Chambers shall, unless the Judge otherwise directs, be drawn up by the Registrar and signed by the Judge.

Such orders shall be entered in the same manner as orders made in court.

8. Subject to the provisions of the Law and of these Rules, costs both actual and incidental to all proceedings in Chambers

shall be at the discretion of the Judge.

9.(1) Where any party to proceedings in Chambers does not accept the decision of the Judge in Chamber as final, he shall

forthwith request to have the summons adjourned into Court for argument. If such request is refused, the party may proceed by

way of motion on notice in Court to discharge, set aside or vary the order made or the judgment given in Chambers.

(2)The notice of motion shall be filed not later than 7 days after the drawing up of the Order made in Chambers unless the

Court grants an extension of time on good and sufficient reason being shown, and the motion shall be heard and determined by

the Judge who has dealt with the matter in Chambers, unless this proves impossible or inconvenient owing to such Judge's

death or retirement or prolonged absence from Akwa Ibom State.

(3)This Rule shall apply to decisions given by a Judge in Chambers on appeal from the Chief Registrar under Rule 4 of Order

51

ORDER 51

JURISDICTION OF CHIEF REGISTRAR

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

Registrar.

2.The Chief Registrar may transact all such businesses and exercise all such authority and jurisdiction as may be transacted

or exercised by a Judge in respect of the following matters:

(a)applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner

of deeds documents and papers;

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

(c)the taxation of bills of costs; and

(d)applications leading to the issue of the grant of probate of the Wills or Letters of Administration of the estates of

deceased persons in non-contentious or common form probate business.

3.If any matter appears to the Chief Registrar proper for the decision of a Judge, he may refer the same to the Chief Judge

or the Judge who referred the matter to the Chief Registrar. The Chief Judge or the Judge may either dispose of the matter or

refer the same back to the Chief Registrar with such directions as he may deem fit.

4.Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him

by this Order may appeal therefrom to a Judge. Such appeal shall be by notice in writing to attend before the Judge without a

fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless

otherwise ordered, there shall be at least 2 clear days between service of the notice of appeal and the day of hearing. An

appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

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

boards.

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

represent any party.

I.Chief Registrar's Certificate

7.Except as otherwise provided for in these Rules, the directions to be given for or concerning any proceedings before the

Chief Registrar shall require no particular form, but the result of such proceedings shall be stated in a concise

Certificate.

8.The certificate of the Chief Registrar regarding accounts and inquiries shall not, unless the circumstances of the case

render it necessary, set out the judgment or order or any documents or evidence or reasons but shall refer to the judgment or

order, documents and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the

certificate is founded.

9.-(1) In case of accounts and inquiries the Certificate of the Chief Registrar shall be as in Form 34 with such variations

as the circumstances may require.

(2)The certificate shall state the result of the account and not set the same out by way of schedule, but shall refer to the

account verified by the affidavit filed and shall specify by the numbers attached to the items in the account which(if any)

of such items have been disallowed or varied and shall state what additions (if any) have been made by way of surcharge or

otherwise and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript

of the account so altered, such transcript may be required to be made by the party prosecuting the judgment or order and

shall then be referred to by the certificate. The accounts and transcripts (if any) referred to by certificates shall be

filed therewith.

10. Every Certificate with the accounts (if any) to be filed therewith shall be transmitted by the Chief Registrar to the

Registry for filing and shall thenceforth be binding on all the parties to the proceedings unless discharged or varied upon

an application made to a Judge before the expiration of 8 clear days after the filing of the Certificate.

11. When taxing a bill of costs the Chief Registrar shall insert in red ink against every item disallowed, reduced or altered

by him the substance of the modification made by him and at the bottom of the bill of costs he shall certify the net result

of the taxation. The bill of costs shall then be transmitted by the Chief Registrar to the Registry for filing and the

provisions of Rule 10 of this Order shall apply in respect of such Certificate.

12. The Judge may, if the special circumstances of the case require, upon an application direct a Certificate to be discharged

or varied at any time after the same has become binding on the parties.

ORDER 52

FORECLOSURE AND REDEMPTION

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or

equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take

out an originating summons, for such relief of the nature or kind following as may by the summons be specified, and as the

circumstances of the case may require; that is

(a) payment of money secured by the mortgage or charge;

(b) sale;

(c) foreclosure

(d) delivery of possession, whether before or after foreclosure, to the mortgagee or person entitled to the charge, by the

mortgagor or person having the property subject to the charge, or by any other person in or alleged to be in possession of

property;

(e) redemption;

(f) re-conveyance; and

(g) delivery of possession by the mortgagee.

2. Orders for payment and for possession shall be in Forms 35, 36, 37 and 39 of these Rules with such variations as the

circumstances of the case may require, and the like forms shall be used under corresponding circumstances in actions for the

like relief commenced by writ

3. The Judge may give any special directions concerning the execution of the Judgment, or the service thereof upon persons not

parties to the cause or matter as he deems fit.

ORDER 53

SUMMONS TO PROCEED

I. SUMMONS TO PROCEED

1. Every judgment or order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party

entitled to prosecute the same within 10 days after such judgment or order shall have been entered or filed, and in default

thereof any other party to cause or matter shall be at liberty to bring in the same, and such party shall have the

prosecution of such judgment or order unless the Judge shall otherwise direct.

2. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries

directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been

served with notice of the judgment or order, shall thereupon give directions as to:

(i) the manner in which each of the accounts and inquiries is to be prosecuted;

(ii) the evidence to be adduced in support thereof;

(iii) the parties who are to attend on the several accounts and inquiries; and

(iv) the time within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the

parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary

3. Where by a judgment or order a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed

shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver

a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so

entitled to object shall be directed to deliver to the other party a statement in writing of his objections within 8 days

after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of 8

days.

4. Where upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other

sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall

deem fit, order any substituted service or notice by advertisement or otherwise in lieu of such service.

5.If on the hearing of summons to proceed it shall appear that all necessary parties are not parties to the action or have

not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for

leaving the accounts in Chambers. Adjudication on creditors' claim and the accounts are not to be proceeded with, and no

other proceeding is to be taken except for the purpose of ascertaining notice of the parties to be served, until all

necessary parties shall have been served and until directions shall have been given as to the parties who are to attend the

proceedings

6.Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if

directed, be supplied for the use of the Judge and where so directed, copies shall be handed over to the other parties:

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall

otherwise direct.

II.Summons to Proceed Book

7.At the time any summons to proceed is obtained, an entry thereof shall be made in Summons Book, stating the date on which

the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is

obtained, and at what time such summons is returnable.

ORDER 54

SUMMARY PROCEEDINGS FOR POSSESSION OF LANDED PROPERTY OCCUPIED BY SQUATTERS OR WITHOUT THE OWNERS' CONSENT

1.(1) This Order shall not apply where the person in occupation of land is:

(a)a tenant; or

(b)a tenant holding over after termination of his tenancy; or

(c)a licensee of the owner or person entitled to possession; or

(d)a person who had the consent of the predecessor in title or the person who is entitled to possession.

2. Where a person claims possession of land which he alleges is occupied solely by a person not listed in sub-rule 1 above,

proceedings may be brought by originating summons in accordance with the provisions of this Order.

3. The claimant shall file in support of the originating summons an affidavit stating:

(a) his interest in the land;

(b) the circumstances in which the land has been occupied without license or consent and in which his claim to possession

arises; and

(c) that he does not know the name of any person occupying the land who is not named in the summons.

4.-(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of

the affidavit in support shall be served on him:

(a) personally or in accordance with Order 7 Rule 1 sub-rule 2;

(b) by leaving a copy of the summons and of the affidavit or sending them to him at the premises; or

(c) in such other manner as the Judge may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with sub-rule 1 of this Rule

be served, unless the Judge otherwise directs, by:

(a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter box at the premises, a copy of the summons and a copy of the affidavit

enclosed in a sealed envelope addressed to "the occupiers"

(3) Every copy of an originating summons for service under sub-rule 1 or 2 of this Rule shall be signed and stamped by the

Registrar of the Court.

5. Without prejudice to Rule 16 of Order 13, any person not named as a defendant who is in occupation of the land and wishes

to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be

joined as a defendant.

6.(1) An order for possession in proceedings under this Order shall be as in form 39 with such variations as circumstances

may require.

(2)The Judge may forthwith order a writ of possession to be issued

(3)Nothing in this Order shall prevent the Judge from ordering possession to be given on a specified date, in the exercise of

any power which could have been exercised if possession had been claimed in an action begun by writ.

7.(1) No writ of possession to enforce an order for possession under this Order shall be issued after the expiration of 3

months from the date of the order without the leave of the Judge.

(2)The application for leave may be made ex parte unless the Judge otherwise directs.

8.(1) The Judge may, on such terms as he deems fit, set aside or vary any order made in proceedings under this Order.

(2) In this Order "landed property" means land with or without building thereon.

ORDER 55

STAY OF EXECUTION OR PROCEEDINGS PENDING APPEAL

1.-(1) Where any application is made to a Judge for a stay of execution Stay of execution or of proceedings under any

judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth

the grounds upon which a stay of execution or of proceedings is sought.

(2)The provisions of Order 39 Rule 1 shall apply to an application under this Order.

2.(1) The court may make or refuse an order for a stay of execution or of proceedings.

(2)An Order for stay may be made subject to such conditions as shall appear just, including the deposit in court of any money

adjudged due to any party in the judgment appealed from.

3.Where any application is made to the Judge under this Order, a Formal order to formal order shall be drawn up embodying the

terms of the decision of the Judge and bearing the date upon which the order is made.

ORDER 56

PROBATE AND ADMINISTRATION

I. Grant of Probate or Administration in General

1.-(1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court

dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person, with or without a

Will attached, and all applications on other matters connected therewith shall be made to the Registrar of the Court.

(2)The Chief Judge shall request a Judge of any Judicial Division to take measures and make such orders as may appear

necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the

discovery or preservation of the Will of the deceased or for any other purposes connected with the duties of the judge under

this Order, and every judge shall carry out any such request as far as practicable and report to the Chief Judge.

(3)No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of

administration, without the Will annexed, shall be issued within 14 days of such death.

2.The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon

after as may be, appoint and authorise an officer of the Court, or some other fit person, to take possession of his property

within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

3.If any person other than the named Executor or Administrator, or any officer of the court, or a person authorised by the

Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the

other liabilities he may incur, be liable to a fine of not less than N50,000.00(Fifty Thousand Naira) as the Judge, having

regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit

to impose.

4.Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting

to be testamentary, shall forthwith deliver the original to the Registrar of the Court. If any person fails to do so within

30 days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding N10,000.00

(Ten thousand naira) for every 30 days of the default as the Judge having regard to the condition of such person so in

default and other circumstances of the case may deem 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, a Judge may upon an ex parte application, whether a suit or proceedings in respect to 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 had knowledge of any paper being or

purporting to be testamentary, (although it is not shown that the paper is in his possession or under his control), a Judge

may upon an ex parte application, whether a suit or proceedings in respect of probate or administration is pending or not,

order that he be examined in respect of the same in Court, or on interrogatories, and that he attends for that purpose, and

after examination that he produce the paper and bring it into Court.

7. The Judge may on the application of any person claiming an interest under a Will, give notice to the Executors therein

named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall within 21 days after

notice, come in and prove or renounce accordingly.

8. If any named Executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the

property of the deceased, and does not apply for probate within 30 days after the death, or after the termination of any suit

for or dispute in respect of probate or administration he may, independent of any other liability, be deemed to be in

contempt of Court, and shall be liable to such fine not less than N50,000.00 (fifty thousand naira), as the Judge deems fit

to impose.

9. The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf

seems to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the

relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior

to that of the applicant to the grant of probate or administration sought by the applicant or in respect of any other matter

which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant

should be made.

Provided that the Judge may refuse the grant unless the applicant produces the required evidence on these points or any of

them as required by the Judge.

10. Where it appears to the Judge that some person or persons other than the applicant may have at least an equal right with

the applicant to the grant sought, the Judge may refuse the grant until due notice of the application has been given to such

person or persons and an opportunity given for such person or persons to be heard in respect of the application:

Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority

to the applicant shall have expressly renounced their prior right.

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal

property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on Letters of Administration, the value of the property in respect of which

the grant is made shall be deemed not to include:

(a) Any gratuity payable by the Government of the Federation of Nigeria, or of a State, to the Estate of any person formerly

employed by either of such Governments or by a Statutory Corporation;

(b) Any sum of money payable to an Estate from a Provident Fund and contributory Pension Scheme established under the

provisions of any applicable law.

12. All inquiries a Judge deems fit to institute shall be answered to his satisfaction before the issuance of Letters of

Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent

with due regard to the prevention of error and fraud.

13. Suits in respect of administration shall be instituted and carried on as nearly as may be in like manner and subject to

the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

14. Any person may deposit his Will for safe custody in the Probate Testator may

15. Every original Will, for which probate or administration with Will annexed is granted, shall be filed and kept in the

Probate Registry in such manner as to secure at once its due preservation and convenient inspection. A copy of every such

Will and of the probate or administration shall be preserved in the Registry.

16. No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript

under the seal of the Court of the probate or administration with the Will annexed may be obtained from the court.

17. (1) On receiving an application for administration with Will annexed, a Judge shall inspect the Will, and see whether it

appears to be signed by the testator or by some other person in his presence, and by his direction, and subscribed by two

witnesses according to the applicable law, and shall not proceed further if the Will does not appear to be so signed and

subscribed.

(2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether

the wording thereof states the Will to have been in fact executed in accordance with those enactments.

18.(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge

that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as

to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any

other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with sub-rule 1 of this Rule, the Judge may, if he deems fit having regard

to the desirability of protecting the interest of any person who may be prejudiced by the Will,

(a) accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of

the deceased; or

(b) accept evidence on affidavit on any other matter which may raise a presumption in favour of the due execution of the Will.

(3) If the Judge, after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and

mark the Will accordingly.

19. Where both subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either

of them, resort for such an affidavit shall be had to other persons present at the execution of the Will, but if no such

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.

20.(1) Where in a Will, there is any obliteration, interlineations or other alteration which is not authenticated in the

manner prescribed by law or by the re-execution of the Will or by the execution of a Codicil, the Registrar shall require

evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the

form in which the Will is to be proved .

Provided that this sub-rule shall not apply to any alteration which appears to the Registrar to be of no practical

importance.

(2) Where from any mark on the Will it appears to the Registrar that some other document has been attached to the Will or if a

Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the

Registrar may require the document to be produced and may call for such evidence in respect of the attachment or

incorporation of the document as he may deem fit.

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

necessary to establish the date.

21. Any appearance of an attempt to revoke a Will by burning, tearing or otherwise and every other circumstance leading to a

presumption of revocation by the testator, shall be accounted for to the satisfaction of the Registrar.

22. The Registrar may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of

the matters referred to in Rules 20, 21 and 27. In any such affidavit sworn by an attesting witness or other person present

at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

23. Where it appears to the Registrar that there is prima facie evidence that a Will is one to which Section 6 of the Wills

Law Cap. 143 Vol 6 Laws of Akwa Ibom State, 2000 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.

24. Where evidence of foreign law is required on any application for a grant, the Registrar may accept an affidavit from any

person whom, having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably

qualified to give expert evidence of the law in question.

25. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or

administration with the Will annexed shall be determined in accordance with the following order of Priority;

(a) the Executor;

(b) any residuary legatee or devisee holding in trust for any person;

(c) any residuary legatee or devisee for life;

(d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue

is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal

representative of any such person:

Provided that:

(i) unless the 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

(ii) 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 ascertained at the time of the application for

the grant, allow a grant to be made subject to Rule 68 of this Order to any legatee or devisee entitled to, or to a share in

the Estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(e) any specific legatee or devisee or any creditor or, subject to sub-rule 3 of Rule 59, the personal representative of any

such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the

Estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an

accretion to it; and

(f) specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will

who would have been entitled to a grant if the deceased had died wholly intestate.

26.(1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree,

shall, in default of renunciation by all persons entitled in priority to the latter, be made to the Registrar and shall be

supported by an affidavit by the person entitled, the consent of the person proposed to be joined as Personal Representative

and such other evidence as the Registrar may require;

(2)An application to join with a person entitled to a grant of administration, a person having no right to it, 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;

(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 a minor may nominate for the purpose;

(c)a trust corporation.

27.Where the Testator was blind or illiterate, the Judge shall not Will of blind or grant administration with the Will

annexed, unless the Judge is first satisfied, by proof or by what appears on the face of the Will, that the Will was read

over to the deceased before its execution or that he had at that time knowledge of its contents.

28.(1) The Judge, on being satisfied that the Will was duly executed, shall inspect it to see whether there are any

interlineations, alterations, erasures, or obliterations appearing in it and requiring to be accounted for.

(2)Interlineations, alterations, erasures and obliterations are invalid unless they had existed in the Will at the time of

its execution or unless, if made afterwards, they have been made valid by the re-execution of the Will or by subsequent

execution of some codicil thereto.

(3)Where interlineations, alterations, erasures or obliterations appear in the Will, unless duly executed or recited in or

otherwise identified by the attestation clause, an affidavit in proof of their having existed in the Will before its

execution shall be filed.

(4)Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words

erased or obliterated are not entirely erased, and can, on inspection of the Will, be ascertained, they shall form part of

the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

29.(1) Where a Will contains a reference to any document of such a nature as to raise the question whether it ought or ought

not to form a constituent part of the Will, the Judge shall require the production of the document, with a view to

ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its production

shall be given. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2)If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document

has been at sometime annexed or attached thereto, a satisfactory account of them shall be required, and if it is not

produced, a satisfactory account of its non-production shall be given.

30.Where a person appointed Executor in a Will survives the Testator, but either dies without having taken probate, or having

been called on by the Judge to take probate and 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.

31.Every Will in respect of which an application for a grant is made shall be marked by the signature of the applicant and

the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as

to the validity, terms, condition or date of execution of the Will.

Provided that where the Judge is satisfied that compliance with this Rule might result in the loss of the Will, he may allow

a photocopy to be marked or exhibited in lieu of the original document.

32. In every case where evidence is directed or allowed to be given by affidavit, the Judge may require the personal

attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce respecting the content of

his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Judge deems fit.

33.-(1) A Judge in granting Letters of Administration shall proceed as far as may be as in cases of probate.,

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

administration.

34.(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, condition for duly collecting, getting in, administering the personal property of the deceased, such

sureties to be to the satisfaction of the Probate Registrar.

(2) The Judge may if he deems fit take one surety only where the gross value of the estate does not exceed N250,000,00 (two

hundred and fifty thousand naira) or where a corporation is proposed as a surety.

(3) The bond shall be in form of a penalty which is twice the sum value of the estate of the deceased unless the Judge deems

it expedient to reduce the amount.

(4) The Judge may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety

to such amount as the Judge deems reasonable.

35.(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 25(e) to a creditor or the personal representative of a creditor or a person who has no immediate

beneficial interest in the estate of the deceased but may have such interest in the event of an accretion to the estate;

(b) under Rule 61 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate

died intestate, be entitled to his estate;

(c) under Rule 63 to the Attorney of a person entitled to a grant;

(d) under Rule 64 for the use and benefit of a minor;

(e) under Rule 66 for the use and benefit of a person who by reason of mental or physical incapacity is incapable of managing

his affairs;

(f) To an applicant who appears to the 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 purpose of the Order shall be in Probate Form 1 with such variations as

circumstances may require.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an

authorised officer, Commissioner for Oaths or other person authorised 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 N 250,000,00 (two hundred and fifty thousand naira) or a corporation is a proposed surety, and in those cases

one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall be a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on

the application for the grant;

(e) every surety other than a corporation, shall justify his eligibility.

(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.

36. The Registrar may, on being satisfied that the condition of the bond has been broken, assign to some person, and that

person may thereupon sue on the bond in his own name as if it had been originally given to him, and may recover thereon, as

trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

37. Any person claiming to be a creditor or legatee or the next of kin or one of the next of kin of a deceased, may apply for

and obtain a summons from the court requiring the executor or administrator, as the case may be, of the deceased to attend

the Court and show cause why an order for the administration of the property of the deceased should not be made.

38.-(1) On proof of service of the summons or on appearance of the Order for executor or administrator, and on proof of all

such other things as the Judge may direct, the Judge may, if he deems fit, make an order for the administration of the

property of the deceased.

(2) The Judge may make or refuse any such order or give any special directions in respect of the carriage or execution of it,

and where there are applications for such an order by two or more different persons or classes of persons, to grant the same

to such one or more of the claimant or classes of claimants, as the Judge deems fit. .

(3)Where the Judge deems fit the carriage of the order may subsequently be given to such person, and on such terms, as he may

direct.

39.A Judge may make an order and at any time afterwards, if he deems fit, make any further or other orders which may appear

requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

40.In a case of intestacy, where the special circumstances of the case requires the Judge may, if he deems fit on the

application of any person having interest in the Estate of the deceased or his on own motion, grant Letters of Administration

to an officer of the court, or to a Consular Officer, or to a person in the service of the Government.

41.(1)The officer or person so appointed shall act under the direction of the Judge, and shall be indemnified thereby.

(2) The Judge shall require and compel him to file in Court the accounts of his administration at intervals not exceeding 3

months.

42.Where a person has died intestate as to his personal estate or leaving a Will affecting his personal estate, but without

having appointed an executor thereof willing and competent to take probate or where the Executor shall, at the time of the

death of such person, be resident out of the jurisdiction, and it shall appear to the Judge to be necessary or convenient in

any such case to appoint some person as administrator of the Estate of the deceased or of any part thereof, the Judge may

appoint such person as he shall deem fit to be such administrator upon his giving such security, if any, as the Judge shall

direct, and every administrator may be limited as the Judge shall deem fit.

43.The Judge may direct that any administrator (with or without the Will annexed) shall receive out of the personal and real

estate of the deceased such reasonable remuneration as he shall deem fit not exceeding 10% percent on the amount of the

realised property, or, when not converted into money, on the value of the property duly administered and accounted for by

him.

Provided that where the Judge is satisfied that by reason of exceptional circumstances the administration of the property has

required an extraordinary amount of labour to be bestowed on it, he may allow in respect of such property a higher rate of

remuneration.

44. Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower,

widow or next of kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased,

and shall then inform the nearest consular officer of such country of the death, and transmit to him a list of the money and

property of the deceased.

45. Application may be made to the court by any such Consular Officer or, by any person authorised by him in writing and under

the Consular Seal, for leave to administer the estate of the deceased, and the Judge may make such order as to security for

payment for debts and the method of administration as the Judge shall deem fit, and vary such order when and so often as it

is expedient.

46. (1) Every person to whom a grant of Probate or Letter of Administration shall have been made, every administrator appointed

by the Judge shall file in court the accounts of his administration every 3 months from the date of the grant or the

appointment until the completion of the administration.

(2) Any Executor or Administrator who fails to file his accounts within the prescribed period as aforesaid shall be liable to

a penalty of N 1000.00 (one thousand naira) for every day of default. A fine for non-payment shall be enforceable by

distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) When an account is filed in court under this Rule, the Judge shall scrutinise such account and if it appears to the Judge

that by reason of improper, unvouched or unjustifiable entries or otherwise such account is not a full and proper account,

the Judge shall require the person filing the account to remedy such defects as there may be within such time as the Judge

may deem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such

defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be

taken against such person accordingly.

(4)The Registrar shall bring to the notice of the Judge the fact that any Executor or Administrator has failed to file his

accounts as required by this Rule.

(5)The Judge may, on the motion of any party interested, or suo motu, summon any executor or administrator failing as

above, to show cause why he should not be punished.

(6)The Judge may for good cause shown, extend the time for such filing of accounts.

(7)Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such

extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before

the court shall be as set out above.

(8)The accounts shall be open to the inspection of any person who satisfies the Registrar that he is interested in the

administration.

(9)In this Rule, the word "accounts" includes an inventory, an account of the administration, the vouchers in the hands of

the executor or administrator relating thereto and an affidavit in verification.

47.The Judge may refuse to entertain any application under Rule 2 of this Order if he considers that there has been

unreasonable delay by the applicant in making the application.

48.The grant of Letters of Administration under this Order shall be signed by the Chief judge and the Probate Registrar on

behalf of the Court.

II. Probate (Non-Contentious) Procedure

49. In this Part, Rules 1,4,5,6, 7, 8, 11, 12, 14, 15, 16, 17, 19, 26,27,28,29,30,31 of this Order shall also apply.

50. Every Legal Practitioner through whom an application for a grant is made shall give the address of his place of business

within the jurisdiction.

51.-(1) An applicant for a grant may apply in person.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be represented by any person

acting or appearing to act as his adviser.

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

(a) it becomes necessary to bring the matter before the Court by motion or by action;

(b) an application has already been made by a Legal Practitioner on behalf of the applicant and has not been withdrawn;

(c) the 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 as 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 and lodge them unsworn.

(7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal applicant shall be sworn

or executed by all the deponents or sureties before an authorised officer.

52. (1) The Registrar shall not allow any grant to issue until all inquiries which he may deem fit to make have been answered

to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond those contained

in the oath.

(3) No grant of probate or of administration with the Will annexed shall be issued within 3 months of the death of the

deceased; and no grant of administration (not with the Will annexed) shall be issued within 3 months of such death.

53.(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case,

which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased was domiciled at the time of death.

54. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall

state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it was held in the

other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

55.-(1) Where the Registrar considers that in any particular case a photocopy of the original Will would not be satisfactory

for purposes of record, he may require that an engrossment suitable for photostat reproduction be lodged.

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

the form in which it is to be proved.

(3) Any engrossment lodged under this Rule shall reproduce the punctuation, spacing and division into paragraphs of the Will

and, if it is one to which sub-rule 2 of the Rule applies, it shall be made bookwise on durable paper following continuously

from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing

the pencil writing in which there shall be underlined in red ink those portions which appear in pencil in the original.

56. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting

witness, such person shall not have any right to a grant as a beneficiary named in the Will, without prejudice to his right

to a grant in any other capacity.

57.(1) Where all the persons entitled to the estate of the deceased under a Will have assigned their whole interest in estate

to one or more persons, the assignee or assignees shall replace in order of priority for a grant of probate the assignor or

if there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone or more but not

exceeding four of them.

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

Registry.

58.-(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit

by the personal applicant, the consent of the person proposed to be added as personal representative and representatives.

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 order as the circumstance of the case may

require.

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

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

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

application is finally disposed of.

(4) Unless the Registrar otherwise directs, administration shall be granted to a living person in preference to the personal

representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability

in preference to an infant entitled in the same degree.

60.-(1) Nothing in Rules 25, 26 and 59 shall operate to prevent a grant being made to any person to whom a grant may, or may

require to be made under any enactment.

(2) The Rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the State,

except in a case to which the provisions of Rule 62 apply.

61. When the beneficial interest in the whole Estate of the deceased is vested absolutely in a person who has renounced his

right to a grant of administration with the Will attached and has consented to such administration being granted to the

person or persons who would be entitled to his Estate if he himself had died intestate, administration may be granted to such

person or one or more but not exceeding four of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the Estate has vested absolutely unless he would

be entitled to the whole of the Estate, whatever its value may be.

62. Where the deceased was domiciled outside the State, the Registrar may order that a grant should issue:

(a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the

deceased died domiciled;

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

(c) if there is no such person as is mentioned in paragraph (a) or (b) of this Rule or if in the opinion of the Registrar the

circumstances so require, to such person as the Registrar may direct;

(d) if a grant required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not

less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in

paragraph (a) or

(b) of this rule or with any other person:

Provided that without any such order as aforesaid:

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

i. where the Will is in English or in the local language, to the executor named therein;

ii. where the Will describes the duties of a named person in terms sufficient to constitute him executor according to the

tenure of the Will. .

(b) Where the whole of the Estate in the State consists of immovable property, a grant limited thereto may be made in

accordance with the law that would have been applicable if the deceased had died domiciled in the State.

63.(1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawful Attorney for his use

and benefit, until such person shall obtain a grant or in such other way as the 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 lawful Attorney of a

person entitled to a grant and resident in the State, he may direct the grant to be made to the Attorney for the use and

benefit of such person, until such person obtains a grant or in such other way as the Registrar may direct.

64.-(1) Where the person to whom a grant would otherwise be made is a minor, a grant for his use and benefit until he attains

the age of 18 years shall subject to sub-rules 3 and 5 of this Rule, be granted:

(a) To both parents of the minor jointly or to any Guardian appointed by a Judge; or

(b) Where there is no such Guardian able and willing to act and the minor has attained the age of 16 years, to any next of

kin nominated by the minor, or where the minor is a married woman, to any such next of kin or to her spouse if nominated by

her.

(2) Any person nominated under sub-rule 1 (b) of this Rule may represent any other minor whose next of kin he is, being a

minor below the age of 16 years entitled in the same degree as the minor who made the nomination.

(3) Notwithstanding anything in this Rule, administration for the use and benefit of the minor until he attains the age of 18

years may be granted to any person assigned as guardian by order of a Court in default of, or jointly with, or to the

exclusion of any such person as is mentioned in sub-rule 1 of this Rule; and such an order may be made on application by the

intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of

fitness sworn by a responsible person.

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

take a grant under the foregoing provisions of this Rule, a grant may, unless the 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 a minor who is sale executor has no interest in the residuary estate of the deceased, administration with the Will

attached for the use and benefit of the minor until he attains the age of 18 years shall, unless the Registrar otherwise

directs, be granted to the person entitled to the residuary estate.

(6) A minor's right to administration may be renounced only by a person assigned as Guardian under sub-rule 3 of this Rule and

authorised to renounce by the Registrar.

65.(1) Where one of several executors is a minor, probate may be granted to the adult executor, with power reserved for

making the like grant to the minor on his attaining the age of 18 years and administration for the use and benefit of the

minor until he attains the age of 18 years may be granted under Rule 64 only if the adult executor renounces or, on being

cited to accept or refuse a grant, fails to make an effective application.

(2) A minor executor's right to probate on attaining the age of 18 years shall not be renounced by any person on his behalf.

66.-(1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical infirmity

incapable of managing his affairs, a grant for his use and benefit, during his incapacity may be made:

(a) in the case of mental incapacity, to the person authorised by the Judge to apply for the grant;

(b) where there is no person so authorised or in the case of physical incapacity:

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person

entitled to such residuary estate;

(ii) where the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary

estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or

to such other person as the 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 considered and excluded.

(3) Where legal disability arises out of unsoundness of mind or insanity notice of intended application for a grant under this

rule shall, unless the Registrar otherwise directs, be given to the person alleged to be incapable.

(4) Where there is physical disability notice of intended application for a grant under this Rule shall unless the Registrar

otherwise directs be given to the person alleged to be incapable.

67.(1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to grant of

administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some

other capacity.

(3) A renunciation of Probate or Administration may be retracted at anytime 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 such other person entitled in a lower degree.

68. Where 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 Akwa Ibom State Attorney-General and the Registrar may direct that no

grant shall issue within a specified time after the notice has been given.

69.-(1) An application for the resealing of probate or administration with the Will attached granted by a Court outside the

State shall be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application:

(a) An Inland Revenue affidavit shall be lodged as if the application were one for a grant in the State;

(b) The application shall be advertised in such manner as the Registrar may direct and shall be supported by any oath sworn

by the person making the application.

(3) On application for the sealing of such a grant:

(a) The Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a

purpose mentioned in paragraphs (a) to (f) of Rule 35 (1) or except where he considers that there are special circumstances

making it desirable to require sureties;

(b) Rule 35(2), (4), (5), (6) and 51(4) shall apply with any necessary modifications; and

(c) A guarantee entered into by a surety shall be in Probate Form 2 with such variations as circumstances may require.

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in

paragraph (a) or (b) of Rule 62 or to a person to whom a grant could be made under a proviso to that Rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any Will to which the grant relates or shall be accompanied by a

copy certified as correct by or under the authority of the Court by which the grant was made.

(7)The Registrar shall send notice of the resealing to the court which made the grant.

(8)Where the notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice

of any amendment or revocation of the grant shall be sent to the court by which it was resealed.

70.If a Registrar is satisfied that a grant should be amended or Amendment and revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this Rule except on the application

or with the consent of the person to whom the grant was made. court.

71.(1) A notice to prohibit a grant of administration may be filed in Notice to prohibit grant.

(2)Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

(3)Any person who wishes to enter a caveat, (in this Rule called "the caveator"), may do so by completing Probate Form 3 in

the appropriate book at the Registry and obtaining an acknowledgement of entry from the proper officer, or by sending through

the post at his own risk a notice in Probate Form 3 to Registry in which he wishes the caveat to be entered.

(4)Where the caveat is entered by a Legal Practitioner on behalf of the caveator, the name of the caveator shall be stated in

Probate Form 4.

(5)Except as otherwise provided by this Rule, a caveat shall remain in force for 3 months from the date on which it is

entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(6) The Registrar shall maintain an index of caveat entered in the Registry and on receiving an application for a grant in

the Registry he shall cause the index to be searched and shall notify the applicant in the event of any caveat having been

entered against the sealing of the grant for which application has been made.

(7)The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on which the caveat is entered.

(8) A warning in Probate Form 5 may issue from the Registry against a caveator at the instance of any person interested, in

this Rule called "the person warning", which shall state his interest and, if he claims under a Will, the date of the Will,

and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased;

and every warning or copy thereof shall be served on the caveator .

(9) A caveator having an interest contrary to that of a person warning may, within 8 days of service of the warning upon him

inclusive of the day of such service; or at any time thereafter if no affidavit has been filed under sub-rule 12 of this

Rule, enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate book, and shall

forthwith serve on the person warning a copy of Probate Form 6 sealed with the seal of the Registry.

(10)A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the

Registry and the caveat shall then cease to have effect and if he has been warned, the caveator shall forthwith give notice

of withdrawal of the caveat to the person warning.

(11)A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a

grant to that person may, within 8 days of service of warning upon him inclusive of the day of such service, or at any time

thereafter if no affidavit has been filed under sub-rule 12 of Rule, issue and serve a notice, which shall be returnable

before the Registrar.

(12)If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may

file in the Registry an affidavit showing that the warning was duly served and that he has not received the summons for

directions under the last foregoing sub-rule, and thereupon the caveat shall cease to have effect.

(13)Upon commencement of a probate action the Probate Registrar shall, if a caveat is in force, other than a caveat entered

by the claimant, give to the caveator notice of the commencement of the action and upon the subsequent entry of a caveat at

any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(14) Unless the Registrar otherwise directs:

(a) Any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to

sub-rule 10 of this Rule, remain in force until an application for a grant is made by the person shown to be entitled thereto

by the decision of the court in such proceedings, and upon such application any caveat entered by a party who had notice of

the proceedings shall cease to have effect;

(b) Any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of

a probate action;

(c) The commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a

grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Judge in such

action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given

notice under sub-rule 13 of this Rule, shall cease to have effect.

(15) Except with the leave of the Judge, no further caveat may be entered by or on behalf of any caveator whose caveat has

ceased to have effect under sub-rule 12 or 14 of this Rule.

72.(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require shall be verified by an affidavit

sworn to by the person issuing the citation, in the Order called "the citor", or, if there are two or more citors, by one of

them;

Provided that the Registrar may in special circumstances accept an affidavit sworn to by the citor's Legal Practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless a Registrar on cause shown by affidavit, directs some

other mode of service, which may include notice by advertisement.

(5) Every Will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the Will

is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within 8 days of service of the citation upon him inclusive of the day of such

service, or at any time thereafter if no application has been made by the citor under sub-rule 5 or Rule 73 or sub-rule 2 of

Rule 74 of this Order enter an appearance in the Registry by filing Probate Form 6 and making an entry in the appropriate

book, and shall thereafter serve on the citor a copy of Form 5 sealed with the seal of the Registry.

73.-(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to

a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an Executor has been reserved, a citation calling on him to accept or refuse a grant may

be issued at the instance of the Executors who have proved the Will or the executors of the last survival of deceased

Executors who have proof.

(3) A citation calling on an Executor who has intermeddled in the estate of the deceased to show cause why he should not be

ordered to take a grant may be issued at the instance of any person interested in the Estate at any time after the expiration

of 6 months from the death of the deceased:

Provided that a citation to take a grant shall issue while proceedings as to the validity of the Will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the Registrar for an order for a grant on

filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any

application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) In the case of a citation under sub-rule 1 of this Rule apply to the Registrar for an order for a grant to himself;

(b) In the case of a citation under sub-rule 2 of this Rule, apply to the Registrar for an order that a note be made on the

grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his

rights or interest in respect thereof have ceased;

(c) In the case of citation under sub-rule 3 of this Rule, apply to the Registrar by summons, which shall be served on the

person cited, for an order requiring such person to take a grant within a specified time or for a grant to himself or some

other person specified in the summons.

(6) An application under sub-rule 5 of this Rule shall be supported by an affidavit showing that the citation was duly served

and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule 4 of this Rule, or has failed

to prosecute his application with reasonable diligence, the citor may:

(a) in the case of a citation under sub-rule 1 of this Rule, apply by summons to the Registrar for an order for a grant to

himself;

(b) in the case of a citation under sub-rule 2 of this Rule, apply by summons to the Registrar for an order striking out the

appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of sub-rule 5 of this Rule;

(c) in the case of a citation under sub-rule 3 of this Rule, apply by summons to the Registrar for an order requiring the

person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons;

and the summons shall be served on the person cited in each case.

74.-(1) A citation to propound a Will shall be directed to the executors named in the Will and to all persons interested

thereunder, and may be issued at the instance of any citor having any interest contrary to that of the executors or such

other persons.

(2) Where the time limited for appearance has expired, the citor may:

(a) where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the Will were

invalid;

(b) in the case of a citation under sub-rule 2 of Rule 73 of this Order apply by summons to the Registrar for an order

striking out the appearance and for endorsement on the grant of such a note as mentioned in paragraph (b) of sub-rule 5 of

Rule 73 of this Order;

(c) in the case of a citation under sub-rule 3 of Rule 73 of this Order apply by summons to the Registrar for an order

requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified

in the summons;

And the summons shall be served on the person cited in each case.

75. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

76.-(1) An application for an order requiring a person to bring in a Will or to attend for examination may, unless a probate

action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar of a subpoena to bring in a Will shall be supported by an affidavit setting

out the grounds for the application, and if any person served with the subpoena denies that the Will is in his possession or

control he may file an affidavit to that effect.

77. An application for an order for a grant limited to part of an Estate may be made to the Registrar and shall be supported

by an affidavit stating:

(a) Whether the application is made in respect of the real Estate only or any part thereof, or real estate together with

personal Estate, or in respect of a trust estate only;

(b) Whether the estate of the deceased is known to be insolvent;

(c) That the persons entitled to a grant in respect of the whole estate in priority to the applicant have been considered and

excluded.

78. An application for an order for grant of administration where the goods in the estate are of perishable nature may be

made to the Registrar, and shall be supported by an affidavit setting out the grounds of the application.

79. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar

and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies

of insurance effected on the life of the presumed deceased.

80.(1) An application for an order admitting to proof a Codicil or a Will contained in a copy, a completed draft, a

reconstruction or other evidence of its contents where the original Will is not available may be made to the Registrar:

Provided that where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly

certified copy of the Will may be admitted to proof without any such order as aforesaid.

(2)The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on

affidavit as the applicant can adduce as to:

(a)the due execution of the Will;

(b)its existence after the death of the testator; and

(c)the accuracy of the copy or other evidence of the contents of the Will, together with any consent in writing to the

application given by any person not under disability who would be prejudiced by the grant.

81.An application for an order for a grant of special administration where a personal representative resides outside the

State shall be made to the Judge by a motion.

82.(1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in

part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the

Registrar by filing a notice in Probate Form 7 with such variations as circumstances may require.

(2) A notice filed under this Rule shall be noted on the grant and the record shall be open to inspection.

83.- (1) Where copies are required of original Wills or other documents deposited under the provisions of any written law

such copies may be photocopies sealed with the seal of the Registry and issued as office copies and where such office copies

are available, copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that

the seal of the Court be affixed thereto.

(2) Copies, not being photocopies of original Wills or other documents deposited as aforesaid shall be examined against the

documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall

be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

84. The Registrar may require any application under this Order to be made by motion on summons.

85.- (1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision

is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Whereby the provisions of this Order or by any direction given under the sub-rule 1 of this Rule a notice of motion or

summons is required to be served on any person, it shall be served not less than 5 days, before the hearing of the motion or

summons.

86. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served

on any person may be given or served by leaving it at, or by, sending it by courier to that person's address for service, or

if he has no address for service, his last known address.

87. Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 33.

88. The provisions of Order 44 shall apply to the computation, Time enlargement and abridgement of time under this Order.

89. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is

pending on the date on which these Rules come into operation as well as to any proceedings commenced on or after that date:

Provided that where the deceased died before the commencement of these Rules, the right to a grant shall, subject to the

provisions of any enactment, be determined by the principles and Rules in accordance with which the Court would have acted at

the date of the death.

90. Suits in respect of probate shall be instituted and carried on as nearly as possible in the like manner and subject to the

same Rules of procedure as suits in respect of civil claims.

91. In probate actions, the originating process shall state whether the claimant claims as creditor, executor, administrator,

beneficiary, next of kin or in any other capacity.

92. In probate actions service of a writ of summons may by leave of a Judge be allowed out of Nigeria,

93. In probate actions a party shall state with regard to every defence which is pleaded, what is the substance of the case on

which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and

understanding, particulars or any specific instances of delusion shall be delivered before the case is set down for trial and

except by leave of a Judge no evidence shall be given of any other instances at the trial

94. In probate actions where the claimant disputes the interest of the defendant, he shall allege in his statement of claim

that he denies the defendant's interest.

95. In probate actions the party opposing a Will may, with his defence, give notice to the party setting up the Will that he

merely insists upon the Will being proved in solemn form of law and only intends to cross-examine the witnesses produced in

support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of

the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

96. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction

for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise

direct.

97. Where a person is or has been a party to any proceedings in the capacity of Trustee, Personal Representative or mortgagee,

he shall, unless the Judge otherwise orders, be entitled to the costs of such proceedings in so far as they are not recovered

from or paid by any other person out of the fund held by the Trustee or Personal Representative or the mortgaged property, as

the case may be; and the Judge may otherwise order only on the ground that the Trustee, or Personal Representative or

mortgagee, has acted unreasonably or, in the case of a Trustee or Personal Representative, has in substance acted for his own

benefit rather than for the benefit of the fund.

98. The Executors or Administrators of a deceased person's estate or any of them, and the Trustees under any deed or

instrument or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next of

kin, heir-at-law of a deceased person, or as Cestui que trust under the trust of any deed or instrument, or as claiming by

assignment or administration otherwise under such creditor or other person as aforesaid, may take out an originating summons

for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that

is, the determination without an administration of the Estate or Trust, of any of the following questions or matters:

(a) any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next of kin, or heir-

at-law or cestui que trust;

- (b) the ascertainment of any class of creditors, beneficiary, next of kin, or others;
- (c) the furnishing of any particular accounts by the Executors or Administrators or Trustees and the vouching, when necessary, of such accounts;
- (d) the payment into Court of any money in the hands of the Executors or Administrators or Trustees;
- (e) directing the Executors or Administrators or Trustees to do or abstain from doing any particular act in their character as such Executors or Administrators or Trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the Administration of the Estate or Trust.

99. Any of the persons named in Rule 98 of this Order may in like manner apply for and obtain an order for:

- (a) the administration of the personal or real estate of the deceased;
- (b) the Administration of the Trust;
- (c) any act to be done or step to be taken which the Judge could have ordered to be done or taken if any such administration order as aforesaid had previously been made.

100. The persons to be served with the summons under Rule 98 and 99 of this Order in the first instance shall be the

following:

- (a) for the determination of any question, under paragraph (a), (c), (f) or (g) of Rule 98 of this Order, the persons, or one of the persons, whose rights or interests, are sought to be affected;
- (b) for the determination of any question, under paragraph (b) of Rule 98 of this Order any member or alleged member of the class;
- (c) for the determination of any question under paragraph (c) of Rule 98 of this Order, any person interested in taking such accounts;
- (d) for the determination of any question under Paragraph (d) of Rule 98 of this Order, any person interested in taking such money;

(e) For relief under paragraph (a) of Rule 99 of this Order, the residuary legatees, or next of kin, or some of them, or the

residuary devisees, or heirs, or some of them, as the case may be;

(f) for relief under paragraph (b) of Rule 99 of this Order, the cestui que trust or some of them;

(g) if there are more than one Executor or Administrator or Trustee and they do not concur in taking out the summons, those

who do concur;

(h) where the summons is taken out by any person other than the executors, administrator or trustees and they do not concur

in taking out the Executors, Administrators or Trustees, or some of them must be served.

101. It shall not be obligatory on the Judge to pronounce or make judgment or order, whether on summons or otherwise for the

Administration of any Trust or of the Estate of any deceased person if the questions between the parties can be properly

determined without such judgment or order.

102. Upon an application for Administration or Execution of Trusts by a creditor or beneficiary under a Will, intestacy, or

Deed of Trust, where no accounts or insufficient accounts have been rendered, the Judge may, in addition to the powers

already existing:

(a) order that the application shall stand over for a certain time, and that the Executors, Administrators or Trustees in the

meantime shall render to the applicant proper statement of their accounts, with an intimation that if this is not done they

may be made to pay the costs of the proceedings;

(b) when necessary, to prevent proceeding by other creditors, or by persons beneficially interested, make the usual judgment

or order for administration with the proviso that no proceedings are to be taken under such judgment or order without leave

of the Judge.

103. The issue of a summons under Rule 98 of this Order shall not interfere with or control any power or discretion vested in

any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the

particular relief sought.

104. Any of the following application may be made by summons:

(a) an application for the appointment of a new Trustee with or without a vesting or other consequential order;

(b) an application for a vesting order or other order consequential on the appointment of a new trustee where the appointment

is made by a Judge;

(c) an application for vesting or other consequential order in any case where a judgment or order has been given or made for

the sale, conveyance, or transfer of any land or stock or the suing for or recovering of any chose in action;

(d) an application relating to a fund paid into Court in any case coming within the provisions of this Order.

105.(1) The provisions of the Interpretation Act shall apply to the Interpretation. interpretation of this Order.

(2) In this Order, unless the context otherwise requires:

"authorised officer" means any officer of the Registry who is for the time being authorised by law to administer any oath or

to take any affidavit required or for any purpose connected with his duties;

"gross value" in relation to any Estate means the value of the Estate without deduction for debts, encumbrances, funeral

expenses or Estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a Trust Corporation who seeks to obtain a grant without employing a . Legal

Practitioner, and

"personal application" has a corresponding meaning;

"Registry" or "Probate Registry" means the Probate Registry of the Court;

"Will" includes a Codicil and any testamentary document or copy or reconstruction of it;

(3) Unless the context otherwise requires, any reference in this Order to any Rule or enactment shall be construed as a

reference to that Rule or enactment as amended, extended or applied by any other Rule or enactment.

ORDER 57

FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders-

(a) the fees set out in the First, Second, Third, Fourth and Fifth Schedules hereunder shall be payable by any person

commencing the respective proceedings or desiring the respective services or which they are specified in those Schedules:

(b) the allowances set out in Part II of the Fifth Schedule shall be payable to the various categories of witnesses mentioned

therein by any person at whose instance they testify.

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 Sixth Schedule shall be observed by all officers of Court concerned with the rendering of

services, and or collection of fees payable, under the provisions of the foregoing Orders.

3. The fees set out in the Seventh Schedule relate to fees payable or the services specified therein.