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## THE COURT OF APPEAL RULES, 2011

In exercise of the powers conferred upon me by Section 248 of the Constitution of the federal Republic of Nigeria, 1999, and by virtue of all powers enabling me in that behalf, I, ISA AYO SALAMI (O.F.R), President, - Court of Appeal, hereby make the following Rules.

### PART 1

#### ORDER 1

##### GENERAL

1 These Rules may be cited as the Court of Appeal Rules, 2007 and shall come into force on the 1<sup>st</sup> day of April, 2011.

2 The Court of Appeal Rules, 2007 is hereby repealed.

3 The practice and procedure of the Court shall be as prescribed by these Rules notwithstanding any written law or rule of practice to the contrary obtaining in any of the states.

4 The forms set out in the First and Second Schedules to these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

5 In these Rules, unless it is otherwise expressly provided or required by the context.

**The Act** means the Court of Appeal Act; **appeal** means the filing of notice of appeal. **appellant** means any person who appeals from a decision of the court below and includes a legal practitioner representing such a person in that behalf; **cause** includes any action, suit or other proceedings between an appellant and a respondent or any applicant and a respondent in any criminal proceedings; **Chief Registrar** means the Chief Registrar of the Court; **CAMP** means the Court of Appeal Mediation Programme; **The Committee** means the Rules of Court Advisory Committee established under these Rules; **The Constitution** means the Constitution of the Federal Republic of Nigeria; **the Court** means the Court of Appeal; **court below** or **lower court** means any court or tribunal from which appeal is brought:

**High Court** means the Federal High Court, the High Court of the Federal Capital territory, Abuja or any High Court established for a State under the Constitution; **Justice** means Justice of the Court of Appeal including the President; **Legal representative** means a person admitted to practice in the Supreme Court who has been retained by or assigned to a party to represent him in the proceedings before the Court; **Non-Contentious motion** means a motion against which the respondent has filed a notice of intention not to contest. **President** means the President of the Court; **Presiding Justice** means any Justice of the Court duly designated by the President to take charge of a Judicial Division of the Court; **Record** means the aggregate of papers relating to an appeal including the pleadings, proceedings, evidence and judgments proper to be laid before the Court on the hearing of the appeal; **Registrar** means the Chief Registrar, Deputy Registrar, Assistant Chief Registrar, Senior Registrar, or Registrar of

the Court, or any other officer of the Court by whatever title called exercising functions analogous to those of a Registrar of the Court; *Respondent* in a civil appeal means, any party (other than the appellant) directly affected by the appeal; and in a criminal appeal means the person who undertakes the defence of the judgment appealed against; *Rules* means these Rules or any amendment thereto or any other additional Rules made under the Constitution of the Federal Republic of Nigeria, and include the Fees and Forms as contained in the Schedules to these Rules; *Supreme Court* means the Supreme Court of Nigeria.

ORDER 2

## **SERVICE**

1(a). Every Notice of Appeal shall, subject to the provisions of order 2 Rules 7 and 8 and 9 served personally, provided that if the court is satisfied that the notice of appeal has in fact been communicated to the respondent, on objection to the hearing of the appeal shall lie on the ground that the notice of appeal shall lie on the ground that the notice of appeal was not served personally.

(b) Except as may be otherwise provided in these rules or in any other written Law, it shall not be mandatory for notices, orders summonses, warrants or other processes of the court to be served personally.

2. Any reference in these rules to an address for service means a physical or postal address within the Federal Republic of Nigeria or an electronic mail address or a facsimile number or telephone number or any other mode of communication as may become available where notices and other processes which are not required to be served personally may be left or sent or posted or transmitted.

3. Where under these rules, any notice or other process is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such address is endorsed on it.

4. Where under these Rules, any person has given an address for service, any notice or other which is not required to be served personally shall be sufficiently served upon him if:

(a) Left at that address, or

(b) Sent by registered post to that address and in which if the data of service by post is material, section 26 of the interpretation Act 2004 shall apply, or

(c) Transmitted by electronic means to the electronic mail address or facsimile number or telephone number or any other mode of electronic communication

5. Any person desiring to change his address for service shall notify the Registrar and shall also communicate the new address to all other parties to the appeal.

6. Where any person has given the address of a Legal Practitioner as his address for service and the Legal Practitioner is not, or has ceased to be instructed by him for the purpose of the proceedings concerned, it shall be the duty of the Legal Practitioner to inform the Registrar as soon as may be practicable that he is not or longer authorized to accept service on behalf of such person, and if he omits to do so he may be ordered to personally pay any cost occasioned thereby.

## **Ex-officio**

7. Where a Minister or Commissioner, or the Attorney-General, or the Director of Public Prosecutions, or any other public officer of the Federal Republic of Nigeria or of a State thereof is a party ex-officio or as representing the Federal or a State Government, as the case may be, in any proceedings in the Court, whether civil or criminal, any notice or other document may be served on him by leaving it at or by sending it by registered post to his chambers or office and service in this manner shall be as effective as if it were personal service.

#### **Service in accordance with**

8. Where any document is required by these Rules to be served personally, it shall be sufficiently served if it is served in the manner prescribed by law for the personal service of a writ of summons issued by the High Court having jurisdiction in the State in which service is to be effected and if it appears to the Court that for any reason personal service cannot be conveniently effected, the Court shall have the same power as that High Court to direct that service be effected in some other way.

#### **Service outside**

9. Where any person out of the jurisdiction of the Court is a Ex-officio Service in accordance with Service outside necessary or proper party to an appeal before the Court and it is necessary to serve him with the notice of appeal or other document relating to the appeal, the Court may allow service of the notice of appeal or such other document out of the jurisdiction.

a. Every application for an order for leave to serve a notice of appeal or other document on a person out of the jurisdiction shall be supported by evidence by affidavit or otherwise showing in what place or country such a person is or probably may be found, and the grounds upon which the application is made.

b. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time within which such party may acknowledge such a service, such a time to depend on the place or country where or within which the notice or documents is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

### **ORDER 3**

#### **REGISTRARS, REGISTRIES AND SESSIONS**

##### **Chief Registrar**

1. The Chief Registrar shall have the Chief Registrar custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules and by such directions as the President may give from time to time.

### **Other Registrar**

2. The President may assign, and the Chief Registrar may, with the approval of the President, delegate to the Deputy Chief Registrar or to any Registrar of the Court any functions required by these rules to be exercised by the Chief Registrar

### **Seal of the Court**

3. The Seal of the Court shall be kept in the custody of the President who may entrust same or a duplicate thereof to such officers of the Court as he may think fit.

### **Power of Chief Registrar**

4. Except as may be otherwise provided in the Constitution, or in any other enactment, the Chief Registrar shall have powers and duties as are given him by these Rules or such further powers and duties as the President may direct.

### **Books to be kept by Registrar**

5.-(1) The Registrar shall keep

(a) a Criminal Appeal Book;

(b) a Civil Appeal Book; each of which shall contain an index in alphabetical order.

(2) The following particulars shall be entered in the Criminal Appeal Book and the Civil Appeal Book

(a) the number of the appeal or application;

(b) the names of the appellant or applicant and the respondent;

(c) the court from which the appeal is brought;

(d) the date and place of hearing of the appeal;

(e) the names of counsel;

(f) the subject matter of the appeal or application;

- (g) the judgment of the Court;
- (h) any subsequent proceedings and remarks.

### **Files for documents**

6. As soon as notice of appeal is delivered the Registrar shall, prepare a file in which documents relating to the appeal shall be filed and on the front page thereof shall be recorded particulars of such documents and the dates on which they are received.

### **Setting aside or varying order of Registrar**

7. Any person aggrieved by anything done by the Registrar may apply to Registrar the Court to have the act or order complained of set aside or varied and the Court may give such directions or make such order thereon as the Court thinks fit. Such applications shall be made by notice of motion supported by affidavits setting out the complaint, the ground for the complaint and the relief sought.

### **Registries and filing of process**

7. (1)The Registries of the Court shall be situate at Lagos, Kaduna, Enugu, Ibadan, Benin City, Jos, Port Harcourt, Abuja, Ilorin and Calabar, and at the seat of such other Judicial Division of the Court as may be established.

### **Hours of opening of Registry**

(2). Except when otherwise expressly provided, all documents and proceedings shall be filed in the appropriate Registry, provided that whilst the Court is sitting in any Judicial Division or other place of session any documents or proceedings in connection with a matter to be dealt with at such branch or other place of session may be filed with the Registrar of the Court at such a place.

(3) A document may be filed in the appropriate Registry of the Court or such other place of session either by being delivered thereby the party or his legal representative or agent in person or by being sent there by registered post.

9. The registries of the Court shall, subject to the directions of the President, be open to the public everyday in the year from eight o'clock in the forenoon to one o'clock in the afternoon, except on Saturdays and Sundays or on any day declared a public holiday under any written law.

#### Sessions

10. Sessions of the Court may be convened and constituted, and the time, venue and forum for all sessions and for hearing interlocutory applications shall be settled in accordance with general or specific directions to be given by the President.

#### Publication of cause list

11. The Registrar may post up every Friday a Weekly cause list, which shall set out the arrangement of fixture of causes for hearing on each day during the following week: Provided that not more than 25 Causes may be fixed for hearing each day.

#### **Reservation of days for judgment**

12. The Presiding Justice of a Division of the Court may direct that a certain day of the week be reserved in the weekly cause list for rulings and judgments.

#### Notification of sittings

13. The sittings of the Court and the matters to be disposed of at such sittings shall be advertised and notified in such manner as the President may direct: Provided that the Court may in its discretion hear any appeal and deal with any other matter whether or not the same has been advertised.

#### **Adjournment**

14. The Court may, at any time on application or of its own motion, adjourn any proceedings pending before it from time to time and from place to place.



## ORDER 4

### **POWERS OF THE COURT**

#### **General**

1. In relation to an appeal, the Court General shall have all the powers and duties as to amendment and otherwise of the High Court, including without prejudice to the generality of the foregoing words, in civil matters, the powers of the High Court in civil matters to refer any question or issue of fact arising on the appeal for trial before, or inquiry and report by, an official or special referee. In relation to a reference made to an official or special referee, anything, which can be required or authorised to be done by, to, or before the High Court, shall be done by, to, or before the Court.

#### Further evidence

2. The Court shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit or by deposition taken before an examiner or commissioner as the Court may direct, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

#### **Inference of court**

3. The Court shall have power to draw inferences of fact and to give any judgment and make any order, which ought to have been given or made, and to make such further or other order as the case may require, including any order as to costs.

#### **Powers not limited by notice of appeal**

4. The powers of the Court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondents notice has been given in respect of any particular part of the decision of the court below, or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court may make any order, on such terms as the Court thinks just, to ensure the determination of the merits of the real question in controversy between the parties.

#### **Powers not limited by interlocutory order**

5. The powers of the Court in respect of an appeal shall not be restricted by each reason of any interlocutory order from which there has been no appeal.

6. The Court shall have power to make orders by way of injunctions of the appointment of a receiver or manager, and such other necessary orders for the protection of property or person, pending the determination of an appeal to it even though no Implication for such an order was made in the court below.

### **Impounded documents**

7. Documents impounded by order of the Court shall not be delivered out of the custody of the Court, except in compliance with an order of the Court:

Provided that where the Attorney-General of the Federation or of a State or the Director of Public Prosecutions of the Federation or of a State makes a written request in that behalf, documents so impounded shall be delivered into his custody.

### **Inspection impounded documents**

8. Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorized to do so by an order of the Court.

9- (1) On the hearing of any appeal, the Court may, if it thinks fit, make any such orders as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage of justice has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the court that any such wrong or miscarriage of justice as is mentioned in Paragraph (2) of this Rule affects part only of the matter in controversy one or some only of the parties, the Court may order a new trial as to the party only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court has power to order a new trial on the ground that damages awarded by the court below are excessive or inadequate, the Court may in lieu of ordering a new trial

(a) substitute for the sum awarded by the court below such sum as appears to the Court to be proper;

(b) reduce or increase the sum awarded by the court below by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included or excluded from the sum so awarded.

But except as aforesaid, the Court shall not have power to reduce or increase the damages awarded by the court below.

(5) A new trial shall not be ordered by reason of the ruling of any judge of the court below that a document insufficiently stamped or does not require to be stamped.

### **Control of proceeding.**

10. An appeal shall be deemed to have been entered in the Court when the record of proceedings in the court below has been received in the Registry of the Court.

11. After an appeal has been entered and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties thereto, except as may be otherwise provided in these Rules, every application therein shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court

ORDER 5

### **REFERENCES AS TO CONSTITUTION AND RESERVED POINTS OF LAW**

#### **Stating a case (Forms 1 and 2)**

1. When a lower Court refers any question as to the interpretation of the Constitution under the relevant provisions of the Constitution, or reserves any question of law for the consideration of the Court in accordance with any written law, the lower court referring or reserving the question of law, as the case may be, shall state a case in Form 1 or 2 in the First Schedule to these Rules, whichever may be appropriate, and the registrar of the lower court shall forward ten copies direct to the Registrar.

#### **Signature of case stated.**

2-(1) When

2 (1) When a lower Court making an application consists of three or more judges, the case shall be stated on behalf of the lower court by a majority of those judges.

(2) Where a question is referred or reserved by the lower court, the question shall be signed by all or by a majority of the judges of the lower court referring or reserving the questions.

#### **Content of case stated.**

under this Order 3.(a) A case stated under A case stated under this Order shall be divided into paragraphs, which, as near as may be, shall be confined to distinct portions of the subject whether facts, point of law, or document and every paragraph shall be numbered consecutively.

(b) It shall state such of the findings of fact as are necessary to explain the question on which the decision of the Court is sought but except where in a criminal matter, the question is whether there is any evidence to support any decision, or whether the evidence for the prosecution disclosed a case for the defendant to answer, it shall not contain a statement of the evidence.

(c) It shall also state the contentions of the parties, the opinions or decision (if any) of the court stating the case and the questions of law for the determination of the Court.

(d) In cases to which section 243A of the Criminal Procedure Act.(or similar provision in any State law) applies, the case shall, state whether the hearing has been adjourned or the verdict has been postponed or sentence has been passed and whether the person accused or convicted has been committed to prison or admitted to bail.

### **Right of audience**

4.-(1) Subject to the provisions of this Rule, the following persons shall be entitled as of right to appear in person or by a legal practitioner at the hearing of any case stated under this Order;

(a) the parties to the proceedings in which the question of law arose;

(b) in any case stated involving a substantial question of law as to the validity of any law enacted by the National Assembly, the Attorney General of the Federation; and

(c) where the case involves the validity or constitutionality of a law within the competence of a State, the Attorney-General of the particular State where the law is or purport to be in force.

(2) The following persons may by leave of the Court, appear in person or by a legal practitioner at the hearing of any case stated on the reference to the Court of any question as to the interpretation of the Constitution or any section of the Constitution pertaining to a State as the case may be

(a) where he is not entitled to appear as of right under paragraph (1)(b) of this rule, the Attorney-General of the Federation; and

(b) the Attorney-General of the State.

(3) The Registrar shall forward to the Attorney General of the Federation or of a State, as the case may be, a copy of any case stated to which this Rule applies. Any other person who is entitled as of right to

appear, and any person who may appear by leave of the Court, may obtain a copy of the case stated from the Registrar of the lower court on payment of such fee as may be prescribed.

## **PART 2 CIVIL APPEALS**

### **ORDER 6**

#### **NOTICE AND GROUNDS OF CIVIL APPEALS Application**

1. Part 2 of this Rule shall apply to appeals to the Court from any court or tribunal acting either in its original or its appellate jurisdiction in civil cases, and to matters related thereto.

#### **Contents and requirements of Notice of Appeal (Form 3).**

2 (1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called the notice of appeal) to be filed in the registry of the court below which shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) And shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, which shall be accompanied by a sufficient number of copies for service on all such parties; and it shall also have endorsed on it an address for service.

(2) Where a ground of appeal alleges misdirection or error in law, the particulars and the nature of the misdirection or error shall be clearly stated.

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

#### **Vague grounds**

3. Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted, save the general ground that the judgment is against the weight of the evidence, and ground of appeal or any part thereof which is not permitted under this Rule may be struck out by the Court of its own motion or on application by the respondent.

#### **Grounds outside notice**

5. The appellant shall not without the leave of the Court urge or be heard in support of any ground of appeal not mentioned in the notice of appeal, but the Court may in its discretion allow the appellant to amend the grounds of appeal upon payment of the fees prescribed for making such amendment and upon such terms as the Court may deem just.

**Court not restricted by grounds.**

5. Notwithstanding the foregoing provisions the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant Provided that the Court shall not if it allows the appeal, rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

**Striking out of notice.**

6. The Court shall have the power to strike out a notice of appeal when an appeal is not competent or for any other sufficient reason.

**Endorsement as to fees**

7. The registrar of the court below shall endorse on the notice of appeal or application the fees paid thereon, receipt number and the date of payment.

**Service of Notice on parties mentioned**

8. The Registry of the court below shall after the notice of appeal has been filed, cause to be served a true copy thereof upon each of the parties mentioned in the notice of appeal but it shall not be necessary to serve any party not directly affected: Provided that the Court may, of its own motion, or on the application of any person claiming to be affected, direct notice to be served on all or any parties to the action or other proceeding or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just and make such orders as might have been made if the persons served with such notice had been originally parties to the appeal.

**Notice of Appeal and address of service**

9. Notwithstanding anything in Order 2 Rule 6, where in any proceeding in the court below a party has given an address for service, notice of appeal from any decision made under such proceeding may be served on such party at such address for service, and notice of any application preparatory or incidental to any such appeal, may be served in like manner at anytime before the date on which the respondent gives notice of his address for service in accordance with the immediately following Rule.

**Respondents Notice of service on him of a notice of address for service**

10-(1) Every person who by virtue of appeal becomes a respondent to any appeal or intended appeal shall within thirty days after service on him of the notice of appeal file twenty copies with the registrar of the court below notice of a full and sufficient address for service in such number of copies as the said registrar shall require. The registrar of the court below shall forthwith send a copy of the notice of address to the Registrar and shall cause a copy thereof to be served on the appellant.

(2) Such notice may be signed by the respondent or his legal representative.

(3) If any respondent fails or omits to file such notice of address for service it shall not be necessary to serve on him any other proceeding in the appeal or any notice of hearing thereof.

**Change of address by party.**

11. Any party to an appeal or intended appeal may change his address for service at any time, by filing and serving on all other parties to the appeal or intended appeal, notice of such change.

**Directions as to service of Notice of Appeal.**

12. The Court may in any case direct that the notice of appeal be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.

**Direction as to service of respondents notice.**

13. In any case in which the Court directs that the notice of appeal shall be served on any party or person, the Court may also direct that any respondents notice shall be served on him.

### **Effect of direction as to service**

14. The Court may in any appeal where it gives a direction under Rules 12 and 13 of this Order-

(a) postpone or adjourn hearing of the appeal for such period and on such terms as may be just; and

(b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

### **Amendment of Notice Appeal**

15. A notice of appeal may be amended by or with the leave of the Court at any time.

ORDER 7

### **APPLICATIONS TO COURT.**

#### **Form of applications (Form 4)**

1 Every application to the Court shall be by notice of motion supported by affidavit and shall state the Rule under which it is brought and the ground for the relief sought.

#### **Application for leave**

2 Any application to the Court for leave to appeal (other than an application made after the expiration of the time for appealing) shall be by notice of motion, which shall be served on the party or parties affected.

#### **Application refused in the lower court, time to file**



3 Where an application has been refused by the court below, an application for a similar purpose may be made to the Court within Court of Appeal Handbook fifteen days after the date of the refusal.

**Application where first make.**

4 Wherever under these Rules an application may be made either to the court below or to the Court it shall not be made in the first instance to the Court except where there are special circumstances, which make it impossible or impracticable to apply to the court below.

**Filing of Notice of Appeal after leave**

5 If leave to appeal is granted by the Court or by the court below, the appellant shall file a notice of appeal within the time prescribed by Section 24 of the Court of Appeal Act, 2004.

**Extension of time for timely application.**

6. Where an application for leave to appeal from a decision of the court below has been brought within the time specified by section 24 of the Court of Appeal Act but has not been heard within that period, the Court, if satisfied that there has not been an unreasonable delay in bringing the application, may extend time to appeal and in proper case grant leave to appeal.

**Requirement of Application for leave.**

7. The application for leave to appeal from a decision of a lower court shall contain copies of the following items, namely-

- (a) notice of motion for leave to appeal(form 5);
- (b) a certified true copy of the decision of the court below sought to be appealed against;
- (c) a copy of the proposed grounds of appeal; and
- (d) where leave has been refused by the lower court, a copy of the order refusing leave.

**Non-contentious application (Form 6).**

8. Upon the service of any application on the respondent, he may within seven days file a notice of intention not to contest the application and upon such notice the application may be heard by the Justices in chambers without oral argument.

#### **Time to argue motion**

9. Except with the leave of the Court, a maximum of thirty minutes on each side will be allowed for oral argument on any application.

10.(1) The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply except the filing of notice of intention not to contest an application under Rule 8 above.

#### **Enlargement of time.**

(2) Every application for an enlargement of time within which to appeal, shall be supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period, and by grounds of appeal which prima facie show good cause why the appeal should be heard. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal

#### **Appeal when brought.**

11. An appeal shall be deemed to have been brought when the notice of appeal has been filed in the Registry of the court below.

#### **ORDER 8**

#### **COMPILATION AND TRANSMISSION OF RECORDS.**

#### **Compilation by registrar**

1. The Registrar of the court below shall within sixty days after the filing of a notice of appeal compile and transmit the record of appeal to the Court.

### **Summons to settle record (Form 7)**

2. In pursuit of Rule 1 above, the registrar shall within a reasonable time summon the parties before him to-

(a) settle the documents to be included in the record of appeal and

(b) fix the amount to be deposited by the appellant to cover the estimated cost of making up and forwarding the record of appeal

### **Settlement of records**

3. The said registrar shall whether any of the parties attend or not, provided the notice has been duly served on the parties to the appeal, proceed to settle and determine those matters in accordance with the provisions of Rules 2 (a) & (b) of this Order.

### **Mandatory compilation by appellant.**

4. Whereat the expiration of 60 days after the filing of the notice of appeal the registrar has failed and or neglected to compile and transmit the records of appeal in accordance with the preceding provisions of this Rule, it shall become mandatory for the Appellant to compile the records of all documents and exhibits necessary for his appeal and transmit to the Court within 30 days after the registrars failure or neglect.

### **Service of record on respondent.**

5. Such records compiled by the appellant, shall be served on the respondent or respondents within the time stipulated for transmitting such records to the Court, which is 30 days.

### **Respondents additional record.**

6. Where the respondent considers that there are additional records which may be necessary in disposing of the appeal, he shall be at liberty, within 15 days of the service on him of the records, to compile and transmit to the Court such records to be known as the additional records of appeal.

### **Contents of Record of Appeal.**

7. Every record of appeal shall contain the following documents in the order set out-
- (a) the index;
  - (b) a statement giving brief particulars of the case and including a schedule of the fees paid;
  - (c) copies of the documents settled and compiled for inclusion in the record of appeal;
  - (d) a copy of the notice of appeal and other relevant, documents filed in connection with the appeal.

### **Exclusion irrelevant records.**

8. The registrar or the appellant in compiling the record shall endeavor to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable, taking special care to avoid duplications of documents and unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied shall be enumerated in a list at the end of the record, but where part or parts only of any lengthy document are directly relevant to the subject matter of the appeal it shall be permissible to omit to copy such part of the document as are irrelevant to the subject matter of the appeal nor necessary for the proper understanding of the part or parts that are so relevant.

### **Exclusion irrelevant records.**

9. Every record or additional record of appeal compiled by a party to an appeal must be certified by the registrar of the lower court.

Provided that it shall not be necessary for copies of individual documents to be separately certified but the registrar of the court below shall certify as correct each copy of the record transmitted in accordance with these Rules.

### **Transmission of records (Form 8)**

10.-(1) Where the record is compiled by the registrar under Rule 1 of this order, he shall transmit the record within the time stipulated for compilation and transmission under Rule 1. The record shall be transmitted together with

(a) a certificate of service of the notice of appeal;

(b) twenty copies of the record.

(c) the docket or file of the case in the court below containing all papers or documents filed by the parties in connection therewith, to the Registrar of the Court.

(2). Where the record is compiled by the appellant under Rule 4 of this order, he shall transmit the record within the time stipulated for compilation and transmission by an appellant under Rule 4. The record shall be transmitted in compliance with Rule.10(1).

(3)The registrar of the court below or the appellant as the case may be shall also cause to be served on all parties mentioned in the notice of appeal, a notice that the record has been forwarded to the Registrar of the Court who shall in due course enter the appeal in the cause list.

### **Deposit against costs**

11(a). Upon the transmission of the record of appeal, whether by the registrar or by the appellant, the appellant shall within such time as the Registrar of the Court shall direct, deposit such sum as I shall be determined by the Registrar for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant; Provided that no deposit shall be required where the deposit would be payable by the Government of the Federal Republic of Nigeria or of a State, or by any Government department,

(b) Where the sum deposited in accordance with the preceding paragraph is depleted in the course of the prosecution of the appeal, the registrar shall summon the appellant to replenish the deposit.

### **Additional deposit against costs.**

12. (a) Where the Registrar fails to direct any deposit against costs or where the sum he directed is inadequate or for any other reason the Court upon application may order that deposit or additional deposit be made.

(b) Where the Court deems appropriate, it may upon application order deposit against cost to be made by a respondent.

### **Production of documentary exhibit**

13. Subject as hereinafter provided, each party shall, immediately after an appeal becomes pending before the Court, deliver to the Court, all documents (being exhibits in the case or which were tendered as exhibits and rejected) which are in his custody or were produced or put in by him at the trial.

**Production of non documentary exhibit**

14. Subject as hereinafter provided, each party to an appeal shall be prepared to produce at the hearing of the appeal all exhibits, other than documents, which are in his custody or were produced or put in by him at the trial.

**Registrars directive where exhibit not produced.**

15. In case any party finds it difficult to comply with the provisions of Rules 13 and 14 of this Order, owing to the nature of documents or other exhibit or owing to its being in the possession of a third party or for any other reason; he may apply to the Registrar of the Court for directions.

**Directive of registrar in respect of exhibit**

16. The Registrar of the Court may, either of his own motion or upon application, give any directions he sees fit, whether dispensing with the provisions of Rules 13 and 14 or modifying its application in any way or for securing compliance with it.

**Custody of exhibits.**

17 All original documents delivered to the Court under this Rule shall remain in the custody of the Court until the determination of the appeal: Provided that the Court or Registrar may allow the return of any document to any party pending hearing of the appeal and subject to such conditions as it or he may impose.

**Failure to compile and transmit record.**

18. If the registrar has failed to compile and transmit the records under Rule 1 and the appellant has also failed to compile and transmit the records in accordance with Rule 4, the respondent may by notice of motion move the Court to dismiss the appeal.

#### **Respondents notice after dismissal**

19. Where an appeal has been dismissed under Rule 18 of this order, a respondent who has given notice under Order 9 may give notice of appeal and the provisions of Order 11 Rule 6 shall apply as if the appeal were brought under that Rule,

#### **Restoration of appeal.**

20. An appellant whose appeal has been dismissed under this Rule may apply by notice of motion that this appeal be restored and any such application may be made to the Court, who may in its discretion for good and sufficient cause order that such appeal be restored upon such terms as it may think fit.

### [ORDER 9](#)

#### **RESPONDENTS NOTICE OF CONTENTION**

##### **Respondents Notice vary judgment (Form)**

1. A respondent who not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying the grounds of that contention and the precise form of the order which he proposes to ask the Court to make, or to make in that event, as the case maybe.

##### **Respondents Notice to judgment (Form)**

2 A respondent who desires to contend on the appeal that the decision of the court below should be affirmed on grounds, other than those relied upon by that court, must give notice to that effect specifying the grounds of that contention.

### **Respondents Notice limited by**

3 Except with the leave of the Court, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.

### **Time within which to file Respondents Notice**

4. Any notice given by a respondent under this Order must be served on the appellant and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent and must be served-

(a) in the case of an appeal against an interlocutory order, within fifteen days; and

(b) in any other case within thirty days, after the service of the notice of appeal on the respondent.

### **Copies of Respondents Notice**

5. A party by whom a respondents notice is given shall file with the registry twenty copies of such notice of which one shall be included in the record and the other copies provided for the use of the Justices.

### **Powers of Court not restricted by absence of notice**

6. Omission to give such notice shall not diminish any powers of the Court but may in the discretion of the Court be a ground for postponement or adjournment of the appeal upon such terms as to cost or otherwise as may be just.

### **Amendment of Respondents Notice**

7. A respondents notice may be amended by or with the leave of the Court at any time.



## ORDER 10

### **NOTICE OF PRELIMINARY OBJECTION**

#### **Filing of preliminary objection (Form 11).**

1 A respondent intending to rely upon a preliminary objection to the hearing of the appeal, shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with twenty copies thereof with the Registrar within the same time.

#### **Matters exempted from objection.**

2 No objection shall be taken to the hearing of an appeal on the ground that the amounts fixed by the Registrar of the court below under Order 8 Rule 2(b) of these Rules were incorrectly assessed.

#### **Effect of non compliance.**

3 If the respondent fails to comply with this Rule, the Court may refuse to entertain the objection or may adjourn the hearing thereof at the costs of the respondent or may make such other order as it thinks fit.

## ORDER 11

### **WITHDRAWAL OF APPEAL**

#### **Unilateral withdrawal of appeal (Form 12).**

1. An appellant may at any time before the appeal is called on for hearing, serve on the parties to the appeal and file with the Registrar, a notice to the effect that he does not intend to prosecute the appeal any further.

**Withdrawal of appeal by consent (Form 13).**

2. If all parties to the appeal consent to the withdrawal of the appeal without an order of the Court, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their legal representatives and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar and in such event any sum deposited against costs shall be paid out to the appellant.

**Effect of withdrawal by consent.**

3. The withdrawal of an appeal with the consent of the parties under Rule 2 of this Order shall be a bar to further proceedings on application made by the respondent under Order 9.

**Effect of withdrawal without consent**

4. If all the parties do not consent to the withdrawal of an appeal as aforesaid, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, including any application made by the respondent under Order 9, and for the making of an order as to the disposal of any sum deposited against cost.

**Effect of withdrawal without consent**

5. An appeal which has been withdrawn under this Rule, whether with or without an order of the Court, shall be deemed to have been dismissed.

**Appeal withdrawn deemed dismissed**

6. Where an appeal is withdrawn under this Order, any respondent who has not given a notice under Order 9, may give notice of appeal and proceed therewith in the manner prescribed by the foregoing Rules, and in such case the time limited for giving notice of appeal, for depositing the sum estimated to cover the cost of the record and for making deposit against costs may, on application to the Court, be extended so far as is reasonably necessary in all the circumstances of the case.

## ORDER 12

### FEES

**Appeal by respondent after appellants appeal is withdrawn.**

#### **Schedule of fees.**

1. Save as hereinafter provided, the fees prescribed in the Third Schedule hereto shall be charged in respect of the matters which they are respectively assigned and shall be paid to the Registrar of the court below or of the Court as the case maybe.

#### **Exemption from fees for government**

2. No fee shall be payable in respect of any matter where such fee would be payable by the Government of the Federal Republic of Nigeria or of a State or any Government Department: Provided that when any person is ordered to pay the costs of the Government of the Federal Republic of Nigeria or of a State or of any Government Department in any case all fees which would have been payable but for the provisions of this paragraph shall be taken as having been paid and shall be recoverable from such person.

#### **Exemption from fees for poor persons.**

3. The court below or the Court may, on account of the want of means of any party (although such party may not have been formally permitted to proceed as a person without means under Order 13) or for other sufficient reason, dispense if it seems fit with payment of any fees if the circumstances of the case so require:

Provided that if such party succeeds in any appeal which results in an order for payment to him of any costs the Court may order that such fees shall be a first charge on any moneys recovered or to be recovered under such order.

## ORDER 13

### PROCEEDINGS BY PERSONS WITHOUT MEANS.

### **Application for leave**

1. Any party may apply to the Court Application for leave to prosecute or defend an appeal as a person without means. Such application shall be by notice of motion, supported by affidavit, and shall be served on the other parties to the proceedings. No fee shall be payable on filing any such order.

### **Conditions for leave.**

2. No party shall be permitted to proceed as a person without means unless he satisfies the Court that he has reasonable probability of success.

### **Effect of leave.**

3. A person permitted to proceed as a person without means shall not be liable to pay any of the Court fees prescribed by these Rule or be required to make the deposit against costs as prescribed by Order 8 Rule 11.

### **Review of leave.**

4. The Court may for good cause Review of leave shown, review, rescind or vary an order permitting any person to proceed as a person without means.

### **Costs in proceedings by persons without means.**

5. (1) Leave to proceed as a person without means shall not exempt such person from liability to an order for costs in favour of his opponent.

(2) Where a person without means is not awarded costs in proceedings, no fees shall be taken from him by a legal representative assigned to him.

(3) Where a person without means is awarded costs against his opponent he shall be entitled to include and receive in such costs the fees of any legal representative assigned to him and all other fees and costs remitted by his admission to proceed as a person without means.

ORDER 14

## **SERVICE OF RECORD OF APPEAL TO THE SUPREME COURT**

### **Duties of registrar in respect of service**

1. Where there is a further appeal to the Supreme Court, the Registrar shall as soon as possible after the compilation of the Record of Appeal serve upon every appellant who was duly given a notice of appeal and paid the fees fixed by the Registrar to cover the cost of record of appeal, a copy of the record.

### **Manner of service**

2. Such record of Appeal may be served upon the appellant in any manner prescribed by these Rules for the service of notice or other documents relating to the appeal.

### **Notice of compilation**

3. The registrar shall thereafter cause to be served upon every respondent in the appeal who has filed an address for service a notice that the record has been compiled. It shall be the duty of each respondent to pay for and collect a copy of the record.

### **Certificate of service of record to appellant (Form 14A)**

4. (1) Within fourteen days after a record has been served upon an appellant, the Registrar shall certify under hand that he served the record of appeal upon every such appellant. The certificate of service shall be in Form 14, or to like effect.

### **Certificate of service of record to appellant(Form 14A)**

(2) In addition to the requirements of order 7 Rule 4 of the Supreme Court Rules, 1985, the Registrar shall as soon as the record and notice of compilation of the record of Appeal to the Supreme Court have been served on the appellant and the respondent, as the case may be, transmit to the Supreme Court-

(a) a certificate that a copy of the Record of Appeal to the Supreme Court has been served on the appellant(s); and

(b) a certificate that notice of compilation of the Record of Appeal to the Supreme Court has been given to the respondent. (Form 14B)

#### ORDER 15

##### **DEATH OF PARTY TO AN APPEAL.**

1. It shall be the duty of counsel representing a party to an appeal to give immediate notice of the death of that party, to the registrar of the court below or to the Registrar of the Court (as the case may require) and to all other parties affected by the appeal as soon as he becomes aware of the fact.

2. Where it is necessary to add or substitute a new party for the deceased, an application shall, subject to the provisions of Order 4 Rule 10, be made in that behalf to the court below or to the Court either by any existing party to the appeal or by any person who wishes to be added or substituted.

3. Where an appeal has been set down for hearing and the Court is or becomes aware that a necessary party to the appeal is dead the appeal shall be struck off the hearing list.

#### ORDER 16

##### **COURT OF APPEAL MEDIATION PROGRAMME**

1. (1) At any time before an appeal is set down for hearing, the court may in appropriate circumstances upon the request of any of the parties refer the appeal to the Court of Appeal Mediation Programme (CAMP); provided that such appeal is of a purely civil nature and relates to liquidated money demand, matrimonial causes, child custody or such other matters as may be mutually agreed by the parties.

(2) The request for Alternative Dispute Resolution shall be made in Form 15 in the first schedule to these Rules.

2. When the Court refers an appeal to the Court of Appeal Mediation Programme, the appeal shall be adjourned to a definite date for the out come of the mediation between the parties.

3. Without prejudice to the provisions of the foregoing, the parties shall-

(a) be at liberty, at any time during the course of the hearing of an appeal, to explore mediation or any other Alternative Dispute Resolution mechanism as considered appropriate in the circumstance towards the resolution of there dispute;

(b) take joint responsibility for all administrative, including mediation or arbitration fees associated with the resolution of the dispute: Provided always that such fees shall be equally shared between the parties unless otherwise agreed by parties or directed by the court;

(c) co-operate and give due regard to the court of Appeal Mediation Programme at all times.

4. Where any of the Alternative Dispute Resolution mechanism adopted is successful, the court shall adopt the agreement reached by the parties as the judgment of the court, but where such Alternative Dispute Resolution mechanism fails, the appeal shall be set down for hearing.

### **PART 3**

#### **ORDER 17**

#### **CRIMINAL APPEALS**

1 This Order shall apply to appeals to the Court from any Court or tribunal acting either in its original or in its appellate jurisdiction in criminal cases, other than a court-martial, and to matters related thereto.

2 Except where otherwise provided in these Rules any application to the Court may be made by the appellant or respondent or by a legal representative on his behalf orally or in writing, but in regard to such applications if the appellant is unrepresented and in custody and is not entitled or has not obtained leave to be present before the Court, he shall make any such application by forwarding the same in writing to the Registrar who shall take the appropriate steps to obtain the decision of the Court thereon.

3.- (1) A person desiring to appeal to the Court against any judgment, sentence or order of the court below, whether in the exercise of its original or of its appellate jurisdiction, shall commence his appeal by sending to the Registrar of the court below a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notice respectively set forth as forms 1 ,2,3,4,5,or 7 in the Second Schedule to these Rules.

**Amendments thereto and criminal forms.**

(2) A person sending any notice or notices under this Rule shall answer the questions and comply with the requirements set forth therein.

(3) The Court may of its own motion or on the application of the appellant amend the notice or grounds of appeal and may grant leave to the appellant to argue additional or amended grounds of appeal:

Provided that, if, in the opinion of the Court, due notice of such amended or additional grounds of appeal to the respondent is necessary but had not been given, the Court may adjourn the appeal or make such order as it may deem fit in the circumstance.

### **Notice of Appeal etc.**

4.-(1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the appellant himself, except under the provision of paragraphs (5) and (6) of this Rule.

### **Who should sign**

(2) Any other notice required or authorised to be given shall be in writing and signed by the person giving the same or by his legal representative. All notices required or authorised to be given shall be addressed to the Registrar of the court below to be forwarded by him to the Registrar: Provided that, notwithstanding that the provisions of Rules 3(1) and (2) and 4(1) of this Order have not been strictly complied with, the Court may, in the interest of justice and for good and sufficient cause shown, entertain an appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the Court against the decision of the lower court.

(3) Any notice or other document which is required or authorised to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorised to be given or sent.

(4) Where an appellant or any other person authorised or required to give or send any notice of appeal or notice of any application is unable to write, he may affix his mark thereto in the presence of a witness who shall attest the same, and thereupon such notice shall be deemed to be duly signed by such appellant.

### **Application for extension of time(Criminal Form 7)**



(5) Where on the trial of a person entitled to appeal it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or the omission made by him or that at the time of the trial he was of unsound mind and consequently incapable of making his defence, any notice required to be given and signed by the appellant himself may be given and signed by his legal representative.

6. In the case of a body corporate where any notice or other document is required to be signed by the appellant himself, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager, or legal representative, of such body corporate.

7. An appeal shall be deemed to have been brought when the notice of appeal has been filed in the Registry of the court below.

#### **Application for extension of time**

##### **(Criminal Form 7)**

5. Every person making an application for such extension of time shall send to the Registrar of the court below, together with the proper form of such application, a form duly filled up, of notice of appeal, or of notice of application for leave to appeal, appropriate to the ground or grounds upon which he desires to question his conviction or sentence, as the case may be.

#### **Notice of Application for leave to appeal (Criminal Form 6).**

6.-(1) Where the court or the court below has on a notice of application for leave to appeal duly sent and in the form provided under these Rules, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal but the notice of application for leave to appeal shall in such a case be deemed to be a notice of appeal.

(2) Where an application for leave to appeal has been made to the court below, the Registrar of that court shall send to the Registrar of the Court notification of the result of the application in Form 6 in the Second Schedule to these Rules together with the original of the application for leave to appeal and the case shall thereafter be dealt with by the Court.

7.-(1) When-

### **Forwarding of proceedings of court below to Registrar.**

(a) the Registrar of the court below has received a notice of appeal or a notice of application to the court for leave to appeal or for extension of the time within which such notice shall be given; or (b) the court below has granted leave to appeal, the registrar of the court below shall prepare the record of appeal in the manner herein after prescribed and forward to the Registrar either seven copies thereof together with, where stencils were used for the production of the record, copies of such stencils duly and carefully preserved, or twenty copies of the record- He shall also forward the original exhibits in the case as far as practicable and any original depositions, information, inquisition, plea, or other documents usually kept by him, or forming part of the record of the court below together with the originals of any recognizances entered into or any other documents filed in connection with the appeal or application.

(2) Subject to the provisions of Rule 9 of this Order, the Registrar of the court below shall forward to the appellant and to the Director of Public Prosecutions of the State from which the appeal emanated a copy of the record. Provided that if the appellant is not in custody a copy of the record shall only be supplied to him on request.

(3) The court may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it may impose.

### **Fees**

8.-(1) The fees set out in the Third Fees Schedule shall be taken and paid upon every appeal under this order.

(2) The court or the court below may waive in whole or in part the payment of any fees or the making of any deposit.

(3) Fees shall not be payable in appeals in capital cases or where an appellant is granted legal aid.

### **Record in criminal appeals from court below in original jurisdiction.**

9-(1) The Record of Appeal in appeals or Record in criminal appeals applications relating to appeals from court below from the court below acting in its original jurisdiction in criminal cases shall contain legible typed, stenciled and cyclostyled, or printed, copies of the following items arranged in this order-

(a) the index;

(b) the charge or information;

(c) the judges notes of the evidence and minutes of the proceedings provided that if a shorthand note of the hearing has been taken, a copy of the transcript thereof may be included, either in addition to or in substitution of the judges notes, as he may direct;

(d) the judgment or any additional ground or explanation thereof;

(e) the proceedings on or after sentence in so far as not included in the notes of hearing or minutes of proceedings;

(f) all documentary exhibits put in at the trial including depositions read in consequence of the absence of a witness: Provided that in the cases of books of accounts or other documents of great length, extracts of the relevant portions thereof only shall be included;

(g) the notice of appeal or notice of application for leave to appeal, or notice of application for extension of time in which such notice shall be given.

(2) It shall not be necessary for the Record of Appeal to contain copies of any recognizances entered into or documents filed in connection with the appeal or application other than those set out in paragraph

(1) of this rule unless the court or a judge of the court below shall otherwise direct.

#### **Record in criminal appeals from the court below in its appellate jurisdiction.**

10.(1) The Record of Appeal in appeals or applications relating to appeals from the court below acting in its appellate jurisdiction in criminal matters shall contain legible typed, stenciled and cyclostyled, or printed copies of the following items arranged in this order:

(a) the index which shall include the particulars of the record of proceedings from the lower court;

(b) the record of proceedings from the lower court as submitted to the court below;

(c) the notice of appeal and all other relevant documents filed in connection with the appeal in the court below;

(d) the notes of the judges on the hearing of the appeal and minutes of the proceedings

(e) the judgment of the court below;

(f) the notice of appeal to the Court or notice of application for leave to appeal to the court, or notice of application to the court for extension of time in which such notice shall be given;

(g) where leave to appeal has been granted by the court below, a copy of the order granting leave.

(2) It shall not be necessary for the Record of Appeal to contain copies of any recognizances entered into for the purposes of the appeal in the court below or of the appeal or application to the court, unless the court or a judge of the court below shall otherwise direct.

(3) In this Rule lower court includes the court of trial and any court, other than the court below which may have heard the matter on appeal.

### **Report of the judge of court of trial**

11-(1) The Registrar shall, if in relation to any appeal the court directs him so to do, request the trial judge to furnish him with a report in writing giving his opinion upon the case generally or upon any point arising upon the case of the appellant, and the trial judge shall furnish the same to the Registrar.

(2) The report of the judge shall be made to the Court and, the Registrar shall on request, furnish a copy thereof to the appellant and respondent.

### **Furnishing judge of court of trial with materials for report.**

12. When a Registrar request the trial Judge to furnish a report under these Rules, he shall send to such Judge a copy of the notice of appeal or notice of application for leave to appeal or any other document or information which he shall consider material, or which the Court at any time shall direct him to send or with which such judge may request to be furnished by the Registrar to enable such Judge to deal in his reports with the appellants case generally or with any point arising thereon.

### **Bail**

13.-(1) Where the Court or the court below admits an appellant to bail pending the determination of his appeal on an application by him duly made, such court shall specify the amounts in which the appellant and his surety or sureties (unless such Court directs that no surety is required) shall be bound by recognizances, and shall direct, if it thinks fit so to do, before whom the recognizances of the appellant and his surety or sureties(if any) may be taken.

(2) In the event of the court below not making any special order or giving any special directions under this Rule, the recognizances of the appellant and of his surety (or sureties) (if any) may be taken before the Registrar.

(3) The recognizances provided for in this Rule shall be in Forms 8 and 9 in this Second Schedule to these Rules.

(4) The Registrar of the court below shall forward the recognizances of the appellant and his surety or sureties to the Registrar.

(5) An appellant who has been admitted to bail shall be personally present at each and every hearing of his appeal and at the final determination thereof. The Court may in the event of such appellant not being present at any hearing of his appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant in Form 10 in the Second Schedule:

Provided that the Court may consider the appeal in his absence, or make such other order as it thinks fit.

(6) When an appellant is present before the Court, the Court may, on an application, made by any person or, if it thinks right so to do without any application, make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time, the recognizances of the appellant or of his sureties or substitute any other surety for surety previously bound as it thinks right.

(7) At any time after an appellant has been on bail, the Court or where the appellant was released on bail by the court below that court may, if satisfied that it is in the interest of justice so to do, revoke the order admitting to bail, and issue a warrant in Form 10 in the Second Schedule of these Rules.

## **Fines**

14-(1) Where a person has, on his Fines conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, and such person remains in custody in default of payment of the fine, he shall be deemed, for purposes of appeal, to be a person sentenced to imprisonment.

(2) An appellant who has been sentenced to payment of a fine, and has paid the same or part thereof in accordance with sentence, shall, in the event of his appeal being successful, be entitled, subject to any order of the Court, to the return of the sum or any part thereof so paid by him.

## **Varying order of restitution of property.**

15. Where, upon, the trial of a person entitled to appeal against his conviction, an order of restitution of any property to any person has been made by the Court, the person in whose favour or against

whom the order of restitution has been made, and with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against his conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

#### **Non-suspension of order of restitution.**

16. Where the judge of the court below is of opinion that the title to any property the subject of an order of restitution made on conviction of a person before him is not in dispute, he, if he is of opinion that such property or a sample or portion or facsimile representation thereof is reasonably necessary to be produced for use at the hearing of any appeal shall give such direction to or impose such terms upon the person in whose favour the order of restitution is made, as he shall think right in order to secure the production of such sample, portion or facsimile representation for use at the hearing of any such appeal.

#### **Non-issuance of certificate of conviction.**

17. The Registrar of the court below shall not issue, under any law authorising him so to do, a certificate of conviction of any person convicted in the court below if notice of appeal or notice of application for leave to appeal is given, until the determination or abandonment thereof.

#### **Notice of abatement of appeal**

18- (1) An appellant at any time after he has duly served notice of appeal or application for leave to appeal, or of application for extension of time within which such notice shall be given, may abandon his appeal by giving notice of abandonment thereof to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the court. Notice of abandonment of an appeal shall be in Criminal Form 11 or 11A, as the case may be.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or the party authorised to sign notice under Rule 4 of this Order, the Registrar shall give notice thereof in Form 12 in the Second Schedule to the respondent, the prison authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death, shall in like manner give notice to the Permanent Secretary to the appropriate Federal or State Ministry, for the information of the authority responsible for advising the President of the Federal Republic of Nigeria or the Governor of a State (as the case may be) on the exercise of the prerogative of mercy, and the Registrar shall also return to the Registrar of the court below any original documents and exhibits received from him.

### **Withdrawal of notice of abandonment (Criminal forms 13 & 13A)**

19. An appellant who has abandoned his appeal may, in special cases, with the leave of the Court, withdraw his notice of abandonment by duly completing Form 13 or 13A, as the case may be, in the Second Schedule together with Form 7 (Notice of Application for extension of time within which to appeal) and sending them to the Registrar.

### **Attendance of witness before the court.**

20- (1)Where the Court has ordered any witness to attend and be examined before the Court an order in Form 14 in the Second Schedule hereto shall be served upon such witness specifying the time and place at which to attend for such purpose.

(2)Such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made by him in Form 15 in the Second Schedule.

(3)Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take and the place of taking such examination and the witness or witnesses to be examined thereat.

(4)The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested to do so. Such documents exhibits and other material shall after examination has been concluded be returned by the examiner, together with any deposition taken by him under this Rule to the Registrar.

(5)When the examiner has appointed the day and time for the examination he shall request the Registrar to give notice thereof to the appellant and respondent and their legal representatives, if any, and when the appellant is in prison, to the prison authority. The Registrar shall cause to be served on every witness to be examined a notice in Form 16 in the Second Schedule.

(6)Every witness examined before an examiner under this Rule shall give his evidence upon oath or affirmation to be administered by such examiner, except where any such witness, if giving evidence as a witness at a trial on information need not be sworn.

(7)The examination of every such witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private. The caption in Form 17 in the Second Schedule shall be attached to any such deposition.

(8)Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him necessary so to do pay to such witness a reasonable sum for his expenses.

(9)The appellant and respondent, or their legal representatives, shall, unless the Court otherwise directs, been titled to be present at and take part in any examination of any witness to which this Rule relates.

#### **Proceeding on reference.**

21. When an order of reference is made by the Court to a special commissioner, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order. The Court may in such order or by giving directions as and when they from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered, and specify any and what powers of the Court may be delegated to such special commissioner, and may require him from time to time to make interim reports to the Court upon the question referred to him, and may, if the appellant is in custody, give leave to him to be present at any stage of such examination or investigation and give the necessary directions to the prison authority accordingly, and may give directions to the Registrar that copies of any report made by such special commissioner shall be furnished to the appellant and respondent.

#### **Notification of final determination of appeal (Criminal Forms 18,19, 20 and 21**

22.- (1)On the final determination of any appeal or of any application to the Court the Registrar shall give to the appellant, if he be in custody and has not been present at such final determination, and to the respondent and the prison authority, notice of such determination in Forms. 18,19,20 or 21in the Second Schedule, as the case may be.

(2)In any case of an appeal in relation to a conviction involving sentence of death, the Registrar shall on receiving notice of appeal, send copies thereof to the Permanent Secretary to the appropriate Federal or State Ministry, for the information of the authority responsible for advising the President or the Governor of a State (as the case may be) on the exercise of the prerogative of mercy, to the respondent and to the prison authority.



**Notification of results of appeal to court below.**

23- (1)The Registrar at the final determination of an appeal shall notify in such manner as he thinks most convenient to the Registrar of the court below the decision of the Court in relation thereto, and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

(2)The Registrar of the Court below shall on receiving notification referred to in this Rule, enter the particulars thereof on the records of such Court.

**Return of original deposition, etc.**

24. Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the Registrar of the Court below any original depositions, original exhibits, information, inquisition, plea or other documents, usually kept by the said Registrar, or forming part of the record of the Court below, the Registrar shall, where practicable, cause the same to be returned to the Registrar of the Court below.

**Enforcement of orders.**

25. Any order given or made by the Court may be enforced by the Court or by the Court below as may be most expedient.

26- (1)Where there is a further appeal to the Supreme Court, the Registrar shall as soon as possible after the compilation of the Record of Appeal serve upon every appellant who has duly given a notice of appeal and paid the fees fixed by the Registrar to cover the cost of record of the appeal, a copy of the record.

(2)The record of Appeal may be served upon the appellant in any manner prescribed by these Rules for the service of notice or other documents relating to an appeal.

(3)The registrar shall thereafter cause to be served upon every respondent in the appeal who has filed an address for service a notice that the record has been compiled.

27- (1)Within fourteen days after a record had been served upon an appellant, the Registrar shall certify under his hand that he has served the Record of Appeal upon every such appellant. The certificate of service shall be in Criminal Form 22, or to like effect.

(2) In addition to the requirements of Order 7, Rule 4 of the Supreme Court Rules, the Registrar shall as soon as the record and notice of compilation of the record for appeal to the Supreme Court have been served on the appellant and the respondent, as the case may be, transmit to the Supreme Court:

(a) a certificate that a copy of the record for appeal to the Supreme Court has been served on the appellant(s);

(b) a certificate that notice of compilation of the record for appeal to the Supreme Court has been given to the respondent

PART4

ORDER 18

BRIEFS OF ARGUMENT

1. This Order shall apply to all appeals coming from any court or tribunal from which an appeal lies to this Court.

2. The appellant shall within forty-five days of the receipt of the Record of Appeal from the court below file in the Court a written brief, being a succinct statement of his argument in appeal.

### **Application**

3- (1)The brief, which may be settled by counsel, shall contain an address or addresses for service Application and shall contain what are, in the appellants view, the issues arising in the appeal as well as amended or additional grounds of appeal.

### **Filing of appellants brief**

(2) Where possible or necessary, the reasons in the brief shall also be supported by particulars of the titles, dates and pages of cases reported in the Law Reports or elsewhere including the summary content of a of the decisions in such cases, which the parties propose to rely upon. Where it is necessary, reference shall also be made to relevant statutory instruments, law books, and other legal journals.

#### **Forms and content of a brief.**

(3) The parties shall assume that briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the court below, and, wherever necessary, reference shall also be made to all relevant documents or exhibits on which they propose to rely in argument.

(4) All briefs shall be concluded with a numbered summary of the points to be raised and the reasons upon which the argument is founded.

(5) Except to such extent as may be necessary to the development of the argument, briefs need not set out or summarise judgments of the lower court, nor set out statutory provisions, nor contain an account of the proceedings below nor of the facts of the case.

4- (1) The respondent shall also within thirty days of the service of the brief for the appellant on him file the respondents brief which shall be duly endorsed with an address or addresses for service.

#### **Filing of respondents brief**

(2) The respondents brief shall answer all material points of substance contained in the appellants brief and contain all points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed. It shall mutates mutandis, also conform to Rule 3(1), (2), (3), (4) and (5) of this Order.

5. The appellant may also, if necessary, within fourteen days of the service on him of the respondents brief, file and serve or cause to be served on the respondent a reply brief which shall deal with all new points arising from the respondents brief.

**Filing of reply briefs.**

6. All parties whose interests are identical or joint shall file joint briefs, and separate briefs may be filed only by those parties whose interests are separate or are in conflict.

7. A respondent may, without leave, include arguments in respect of a cross- appeal or a respondents notice in his brief for the original appeal and the cross- appeal or respondents notice.

**Joint and several briefs.**

8. Twenty copies of all briefs in respect of the appeal shall be filed in Court. All such copies shall be duly endorsed for service on the other side, which shall also be duly paid for by the party filing the same.

**Cross appeal or Respondents Notice**

9- (1) Oral argument will be allowed at the hearing of appeal to emphasize and clarify the written argument appearing in the briefs already filed in Court.

**Number and service of documents.**

(2) The appellant shall be entitled to open and conclude the argument. Where there is a cross-appeal or a respondents notice, the appeal and such cross-appeal or respondents notice shall be argued together with the appeal as one case and within the time allotted for one case, and the Court may, having regard to the nature of the appeal, inform the parties which one is to open and close the argument.

**Oral arguments.**

(3) Unless otherwise directed, forty minutes on each side will be allowed for argument.

(4) When an appeal is called and the parties have been duly served with the notice of hearing, but if any party or any legal practitioner appearing for him does not appear to present oral argument even though

briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been duly argued.

10. Where an appellant fails to file his brief within the time provided for in Rule 2 of this Order, or within the time as extended by the Court, the respondent may apply to the Court for the appeal to be dismissed for want of prosecution. If the respondent fails to file his brief, he will not be heard in oral argument. Where an appellant fails to file a reply brief within the time specified in Rule 5, he shall be deemed to have conceded all the new points or issues arising from the respondents brief.

#### **Consequences of failure to file briefs.**

11. The Court may, where it considers the circumstances of an appeal to be exceptional, or where the hearing of an appeal ought to be accelerated in the interest of justice, waive compliance with the provisions of this Order in so far as they relate to the preparation and filing of briefs of arguments; either wholly or in part or reduce the time limits specified in this Order, to such extent as the Court may deem reasonable in the circumstances of the case.

ORDER 19

#### **JUDGMENT**

#### **Power of Court to accelerate hearing in exceptional circumstances.**

1. The judgment of the Court shall be pronounced in open court either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

#### **Delivery of judgment.**

2. Whenever a reserved judgment is to be given and the counsel concerned are duly notified in that behalf the presence of such counsel or of their juniors is required in Court when judgment is being delivered. Failure to observe this will be regarded as an act of disrespect to the Court.

3. (1) Every judgment of the Court shall be embodied in an order.

(2) A sealed or certified copy of the order shall be sent by the Registrar to the court below

(3) Interlocutory order shall be prepared in like manner.

**Notice to counsel of reserved judgment.**

4. The Court shall not review any judgment once given and delivered by it, save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the Court decided nor shall the operative substantive part of it be varied and a different form substituted.

**Enrolment of judgment.**

5. Any judgment given by the Court may be enforced by the Court or by the court below or by any other court, which has been seized of the matter, as the Court may direct.

**Review of judgment**

6. When the Court directs any judgment to be enforced by another court, a certificate under the seal of the Court and the hand of the Presiding Justice setting forth the judgment shall be transmitted by the Registrar to such other court, and the latter shall enforce such judgment in terms of the certificate.

**Enforcement of judgment.**

7. Where the costs of an appeal are allowed, they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

**Execution of judgment by court below (Form 15).**

8.- (1) The Registrar at the final determination of an appeal shall notify, in such manner as he thinks most convenient to the Registrar of the court below, the decision of the Court in relation thereto, and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

**Costs.**

(2) The Registrar of the court below shall on receiving the notification referred to in this Rule, enter the particulars thereof on the records of such court.

**Notification of judgment.**

9. Upon the final determination of an appeal for the purposes of which the Registrar has obtained, from the Registrar of the court below any original depositions, exhibits, information, inquisition, plea or other documents usually kept by the said Registrar, or forming part of the record of the court below, the Registrar, shall, where practicable, cause the same to be returned to the Registrar of the court below.

**Final disposal of exhibits, Documents etc**

10. No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the Court from giving such decision upon the appeal as may seem just.

11. (1) The Court shall have power to give any judgment or make any order that ought to have been made, and to make such further order as the case may require including any order as to costs.

**Interlocutory judgment not to prejudice appeal.**

(2)The powers contained in paragraph (1) of this Rule may be exercised by the Court, notwithstanding that the appellant may have asked that part only of a decision may be reversed or varied, and may also he exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

ORDER 20

**MISCELLANEOUS**

1. (1)Records of Appeal from the Sharia Court of Appeal or the Customary Court of Appeal intended for use in the Court, shall be compiled in English language as well as the language used in the proceedings before the court.

(2) Twenty certified true copies in English and three only in the other language shall be forwarded to the Court.

2. The Court may direct a departure from these Rules in any way this is required in the interest of justice.

Records of Appeal from Customary Court of Appeal or Sharia Court of Appeal.

3. (1) The Court may, in an exceptional circumstance, and where it considers it in the interest of justice so to do, waive compliance by the parties with these Rules or any part thereof.

#### **Departure from Rules**

(2) Where there is such waiver of compliance with the Rules, the Court may, in such manner as it thinks right, direct the appellant or the respondent as the case may be, to remedy such non-compliance or may, notwithstanding, order the appeal to proceed or give such directions as it considers necessary in the circumstance.

#### **Waiver of non-Compliance**

(3) The Registrar shall forthwith notify the appellant or the respondent as the case may be of such order or directions given by the Court under this Rule where the appellant or the respondent was not present at the time when such order was made or directions were given.

4. As early as possible before the date set down for hearing of any appeal before the Court and in any event not later than two clear days before such date, all the parties or the legal practitioners representing them shall forward to the Registrar a list of the law reports, text books, and other authorities which parties or legal practitioners representing them intend to cite at the hearing of the appeal.

#### **List of Law Reports Textbooks, etc.**

5- (1) An application to strike out or set aside for non-compliance with these Rules, or any other irregularity arising from the Rules of Practice and Procedure in this Court, any proceedings or any document, judgment or order therein shall only be entertained by the Court if it is made within a



reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

**Application to strike out, etc.**

(2) An application under this Rule may be made by motion on notice and the grounds of objection must be stated therein.

6.- (1) There shall be constituted a body to be known as the Rules of Court Advisory Committee comprising of-

(a) Five Justices of the Court one of whom shall be the Chairman; and

(b) One member each of the inner and outer Bar to be appointed by the President.

**Roles of Court Advisory Committee.**

(2) It shall be the duty of the Committee to advise the President from time to time in the exercise of the powers conferred upon him by the Constitution or by or under any law, to make Rules for regulation or making provision with respect to practice and procedure in the Court.

(3) Every member of the Committee shall remain a member thereof for such period as the President may in his discretion prescribe, either at the time of the appointment of the member or at any time thereafter,

7. The President may at any time, by notice, declare a practice of the Court as practice direction, and whenever the declaration is made;