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B.S.L.N. 29 of 1978

*The Constitution of Bendel State of Nigeria*

CUSTOMARY COURTS EDICT, 1978

Customary Courts Rules 1978

ORDER I ó PRELIMINARY

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|--|---|
| <p>1. These Rules may be cited as the Customary Court Rules, 1978 and shall come into force On the 1st day of June, 1978.</p>  | <p>Short Title,<br/>and com-<br/>mencement.</p> |
| <p>2. In these Rules, unless the context otherwise requires ó appeal courtö means a High Court Sitting as a court of appeal;</p> <p>ó cause or matterö includes any legal proceeding between a plaintiff and a defendant or between a petitioner and a respondent in a matrimonial proceeding, and any criminal proceeding;</p> <p>ó chargeö means the statement of offence or statement of offences with which a defendant is charge before a court;</p> <p>ó civil proceedingsö means all civil actions triable in a court and all proceedings in relation to the making of an order of the payment of any sum of money or for the doing or abstaining from doing of any act or thing not enforceable by fine or imprisonment in the first instance.;</p> <p>ó claimö means any debt, demand or damage, or relief claimed or any claim for the recovery of any chattel or thing sought to be recovered in a court;</p> <p>ó clerkö means any persons appointed as a clerk for a customary court in accordance with section 14 of the Edict;</p> <p>ó complainantö means any person taking criminal proceedings in a court against any other person or any person on whose behalf such proceedings are taken;</p> <p>ó courtö means a customary court established under or in pursuance of the Edict;</p> <p>ó criminal proceedingsö include all proceedings other than civil proceedings;</p> <p>ó decreeö means an order in a matrimonial cause or matter;</p> <p>ó defendantö means any persons against whom civil or criminal proceedings are taken in a court;</p> <p>ó Edictö means the Customary Courts Edict, 1978;</p> <p>ó judgmentö includes the dismissal of any cause or matter as well any other decision of a court;</p> <p>ó judgment creditorö means any person for the time being entitled to enforce a judgment;</p> | <p>Interpretation.</p>                          |

“judgment debtor” means a person liable under a judgment, and includes every person ordered by a judgment or order in a civil cause or matter to pay money or to do or abstain from doing an act;

“motion” means an application to a court for an order directing something to be done in the applicant’s favour;

“order” means a command or direction by a court in any proceedings before it;

“plaintiff” means any person taking civil proceedings in a court against any other person;

“president” includes a presiding member selected in accordance with section 9 of the Edict;

“process” means formal written authority of a court for the purpose of giving compulsory effect to its jurisdiction and includes a summons, warrant or any other document issuing out of a court for such purpose;

“return day” include any day fixed for any proceeding before the court;

“state” means the Bendel State of Nigeria;

“summons” means a document issued by a court calling upon the persons to whom it is directed to attend before the court or to produce any document or thing to the court at a certain time and place;

“warrant” means a written command issued by a court for the arrest and production of any person before a court as a defendant or witness or otherwise for the purpose of lawfully enforcing any judgment or order of a court;

## ORDER II OF INSTITUTION OF CAUSES AND MATTERS

- |                                   |   |
|-----------------------------------|---|
| Causes and matter when commenced. | 1. (1) A civil cause or matter shall be instituted in such court as has jurisdiction to entertain the particular cause or matter.<br><br>(2) A criminal cause or matter shall be instituted in such court as has jurisdiction to hear the particular cause or matter. |
| Causes and matter: how commenced. | 2. (1) Every civil cause or matter shall be commenced by a summons.<br><br>(2) every criminal cause or matter shall be commenced by a summons.  |
| Application for summons           | 3. (1) Application for a summons may be made by a written complaint or orally in person.  |

(2) If application for summons is made in person the clerk shall record all the particulars of the claim or charge, which are necessary for the completion of the proper summons.

(3) When making an application for a summons in any matter the applicant shall write the value of the select matter to enable such value to be stated in the particulars of claim in the summons.

4. A warrant of arrest shall be issued only where the court or the president is satisfied that there are no grounds for fearing that the person to be arrested may abscond or has willfully refused to appear in answer to the criminal summons served upon him. Issue of warrant of arrest.

5. A person arrested with a warrant shall be brought before the court at the first opportunity and, in any event not later than 48 (forty-eight) hours from the time of arrest. Persons arrested with warrant to be brought before the court without delay.

ORDER III 6 ISSUE, SERVICE AND EXECUTION OF SUMMONSES AND WARRANTS

1. (1) Every civil or criminal summons to a defendant, and every summons to a witness, and every warrant of arrest issued by the court under these Rules or under any other written law shall be as set out in Forms A(i), A(ii) and B respectively set out in the First Schedule to These Rules. Issue of summons or warrant. Forms A(i), A(ii), A(iii) and B. First Schedule.

(2) Every search warrant issued in accordance with the provisions of sub-section (1) of section 42 of the Edict shall be as set out in Form C set out in the First Schedule.

(3) Any fees paid in respect of the issue of any process or other document by the court shall be entered on the process or other document by the clerk or such other persons as the court may authorise in that behalf.

(4) Every process or other document other than a search warrant issued by the court under these Rules or any other written law, shall be signed by the president or such other member or officers of the court as the court may authorize in that behalf.

2. Any process or other document issued by the court and requiring service or execution shall be served or executed upon the person to whom reference is made therein by such officers as are authorized by law in that behalf. Service of process or Execution of warrant.

3. (1) Service shall be effected by handing the process or other document to the person to whom it is addressed. Modes of Service.

(2) In the case of a person employed in the public service of the State Government or a local government service may be effected by posting the process or other document to the head of the department in which the persons is serving or the secretary of the local government which the person is serving as the case may be, and the head of the department or the secretary of the local government shall arrange for service

(3) A written statement from the head of department or the secretary of the Local government, as the case may be, that the person has been served shall be sufficient proof of service, unless the contrary is proved.

(4) For the purpose of paragraph (2) of this Rule the expression "head of department" include any public officer in the administrative, professional or executive grade of the public service who is in charge of a section or division of a department.

Substituted service.

4. Where it appears to a court, either before or after a previous attempt at service in accordance With paragraph (1) or rule 3, that for any reason personal service of any process or other document cannot be effected conveniently, the court, after being satisfied by affidavit or sworn evidence that it is necessary so to do, may order that service be effected.

(a) by delivery of the process or other document to some persons being an agent of the persons to be served or to some other person, on its being proved that there is a reasonable probability that the copy of the process or other document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served; or

(b) by advertisement in some newspaper circulating within the jurisdiction; or

(c) by affixing the process or other document to the usual or last known place of abode or business of the person to be served; or

(d) in such other manner as the court may direct, and upon compliance with such order such service shall be deemed to be good and sufficient service of the process or other document.

Proof of service.

5. (1) Subject to the provisions of paragraphs (2) rule 3 of this Order and paragraph (2) of this Rule, proof of service shall be by evidence on oath.

(2) In all cases where service of any process or other document has been effected by a bailiff or such other person as is appointed by the court, an affidavit of service shall be sufficient proof of service, unless the contrary is proved.

Service on Sunday or public holidays.

6. Service of any process or other document shall not be made on Sunday or public holiday unless the court so directs by order endorsed on the process or other document to be served.

No proceeding without proof of service.

7. The court shall not proceed to adjudicate upon any cause or matter which depends upon any process or other document having been served unless service is admitted by the person concerned or proved or deemed to have been effected.

ORDER IV 6 SERVICE AND EXECUTION OUT OF JURISDICTION BUT WITHIN THE STATE

Process to be forwarded

1. When a court desires any process or other document to be served or a warrant to be executed or a decree or order to be enforced outside the limits of its territorial jurisdiction but within the State, it shall forward such process or other document, warrant or decree or order to the court within whose jurisdiction the process or other document, warrant or decree or order is to be served, executed or enforced, as the case may be.

2. (1) When a court receives any process or other document or warrant forwarded in accordance with the rule 1 of this Order it shall forthwith endorse on the process or other document or warrant an order for its due service or execution, as the case may be, and shall arrange for such service or execution without delay. Procedure process and warrant.

(2) A sum of money sufficient to cover the costs of transport and subsistence expenses in respect of the witness shall be forwarded with every witness summons.

(3) A sum of money sufficient to cover the costs of transport and subsistence expenses in respect of the person to be arrested and of any persons required to escort him in custody of the jurisdiction of the court which issued the warrant, shall be forwarded with every warrant of arrest.

3. (1) When a court receives decree or order forwarded in accordance with the Rule 1 of this Order, it shall - Procedure judgments.

- (a) enter the decree or order as a civil cause in a civil record book to be kept for the purpose;
- (b) on the application of the persons for whose benefit the decree or order exists, enforce it in the same manner as if the decree or order were that of the court so receiving it;
- (c) inform the court which issued the decree or order of any money or property recovered thereunder;
- (d) return the decree or order when satisfied, or if not satisfied, immediately after the expiration of twelve months.

(2) Any court forwarding a decree or order to another court shall note thereon particulars of any payment already made to it in part satisfaction of the decree or order.

4. When a court desires any process or document to be served, or a warrant to be executed, or a decree or order to be enforced, outside the limits of its jurisdiction, but in any area within the State in which no court is established it shall forward such process or other document, warrant or decree or order to the Magistrate's Court having jurisdiction within that area and Magistrate's Court shall proceed in the manner provided by the rule 2 or 3 of this Order. Service and execution in areas where no Customary Court.

5. Any process or other document, warrant, decree or order forwarded under the provisions of this Order shall contain the full address or where about (as the case may be) of the person or property affected thereby. Document to be properly Addressed.

ORDER V 6 PART 1-PROCESS, ETC., FORWARDED FROM THE  
FEDERAL COURT OF APPEAL, FEDERAL REVENUE COURT,  
HIGH COURT AND MAGISTRATE'S COURTS WITHIN THE STATE

Proceed from  
Courts with-  
in the State.

1. When the Federal Court of Appeal, the Federal Revenue Court, the High Court desires any process or other document to be served, or a warrant to be executed or a decree or order to be enforced anywhere within the State, or when any Magistrate's Court desires any process or other document to be served, or a warrant to be executed, or decree or order to be enforced outside its territorial jurisdiction but within the State by a court, the High Court or Magistrate's Court may forward the process or other document, warrant, decree or order, to the Court whose jurisdiction the process or other document, warrant, decree or order, is to be served, executed or enforced, as the case may be, in the same manner as any process or other document, warrant, decree or order is forwarded in accordance with rule 1 of Order IV.

PART 2-PROCESS, ETC., FORWARDED FROM THE SUPREME COURT,  
FEDERAL COURT OF APPEAL AND THE COURTS OUTSIDE THE STATE

Process  
from Courts  
outside the  
State.

2. When any Customary Court or Area Court, (or by whatever name called) or Magistrate's Court or High Court of any State or the Supreme Court, Federal Court of Appeal, Federal Revenue Court, desires any process or other document to be served, or a warrant to be executed, or a decree or order to be enforced within the State by a court, such Customary Court, Magistrate's Court or High Court of another State, or the Supreme Court, Federal Court of Appeal, Federal Revenue Court may adopt the procedure set out in Order IV as if it were a court within the State forwarding such process or other document, warrant or decree or order to be so served, executed or enforced.

ORDER VI 6 BAIL

Bail

1. (1) Any person who has been arrested with a warrant and charge with an offence or who has voluntarily appeared in court in answer to a criminal summons shall be admitted to bail on such terms as the court thinks fit.

Bail Bond  
Form D  
First  
Schedule

(2) A bail bond shall be in the Form D set out in the First Schedule.

(3) Where a court has wrongfully refused to grant bail to a defendant, the High Court to xxxxxx an appeal lies from the decision of the court before which the defendant is charged shall, either of its own motion or on the application of any person, grant bail to the defendant.

Condition  
of bail.

2. The amount of bail to be taken in any case shall be in the discretion of the court and shall be fixed with due regard to the circumstances of the case and shall not exceed ₦100.

Security in  
lieu of bail.

3. When a Court has granted bail, the accused person and his sureties (if any) may instead of entering into a bond, secure bail by the deposit of a sum of money equivalent to the amount for which the bond is ordered.

4. (1) When an accused person or appellant, as the case may be, who has been released on bail fails to surrender to this bail before the court on the proper day, the clerk shall record the fact and the details of the bond; and the court may:

Forfeiture of bail.

(a) in the case of a bond, order the accused person or any of his sureties to pay the amount of the bond or any part thereof or call upon all or any of them to show cause why such amount or part thereof should not be paid; or

(b) in the case of a deposit, order the deposit or any part thereof to be forfeited, or call upon the person who made the deposit to show cause why the deposit or any part thereof should not be forfeited.

(2) Any amount ordered to be paid under this rule may, if unpaid, be recovered as a judgment debt by attachment and sale, under a writ of attachment and sale, of the property of the person ordered to pay.

(3) If upon attachment and sale of any property the amount realized is insufficient to meet the amount ordered to be paid, or if there is no property to attach and sell, the court may order the issued of warrant to imprison the person ordered to pay for a period not exceeding one month in respect of the unpaid amount, unless it be sooner paid.

ORDER VII 6 NON-APPEARANCE OF PARTIES AT THE HEARING

1. (1) If neither party to a cause or matter appears when it is called on the return day, the court unless there is some good reason for keeping it on the list, shall strike out the cause or matter.

Neither party Appearing.

(2) If there is good reason for keeping the cause or matter on the list, the reason shall be recorded and a hearing date fixed.

2. (1) If the plaintiff or the complainant in a cause or matter does not appear when it is called on the return day, the court, unless there is some good reason for keeping the cause or matter on the list, shall strike it out.

Failure of plaintiff or complainant not appearing

(2) If there is good reason for keeping the cause or matter on the list, the reason shall be recorded and a hearing date fixed.

3. If the defendant in a civil cause or matter does not appear on the return day, the court, unless there is some good reason for adjourning the hearing (in which case the reason shall be recorded and a hearing date fixed) shall, on proof of service, process in the absence of the defendant to hear and determine the cause or matter on the evidence of the plaintiff and his witnesses if any.

Failure of defendant to appear in a civil cause or matter.

Provided that if the defendant shall have filed in the court an admission in writing of the plaintiff's claim, the court may give judgment for the plaintiff without further proof of service or the claim.

- Failure of de- 4. (1) If the defendant in a criminal cause or matter fails to appear when the cause or matter is  
fendant to called on the return day (and does not comply with the provisions of paragraph (1)(b) of Rule 9,  
appear in a Order IX), the court shall consider whether it will adjourn the hearing or issue a warrant to arrest  
criminal the defendant and bring him before the court to be dealt with according to law.  
cause or  
matter.
- (2) A warrant to arrest a defendant in a criminal cause or matter shall be issued only where he  
fails to obey a summons without giving any sufficient excuse for his absence, or where he fails to  
surrender himself to the court on the return day after he has been admitted to bail.
- Re-listing 5. Any cause or matter struck out may, by leave of court, upon reasonable cause being shown,  
of cause be replaced on the cause list upon such terms as the court may deem fit.  
Struck out.
- Setting 6. Any judgment or order obtained against any party in the absence of such party may, upon  
aside of reasonable cause being shown, be set aside by the court upon such terms as the court may deem  
judgment fit.  
made in  
absence  
of party.
- Representa- 7. (1) In any cause brought by or against a Government department or a corporation sole, such  
tion of department or corporation may be represented by any of its officials who satisfied the court that  
Govern- he is duly authorized in that behalf by his head of department or the head of his Corporation.  
ment de-  
partment  
and corpo-  
ration sole.
- (2) For the purpose of paragraph (1) above the expression "head of department" includes a  
public officer who is in charge of a section or division of a department.

#### ORDER VIII 6 INTERLOCUTORY APPLICATION

- Definition 1. For the purpose of this Order 6  
"Interlocutory application" means an application made during the course of an action and inci-  
dental to the principal object of the action, namely, the judgment, and interlocutory applications  
include all steps taken for the purpose of assisting either partying the prosecution of his case;  
or of protecting or otherwise dealing with the action, or of executing the judgment when  
obtained.
- Interlocutory 2. Interlocutory applications may be made by way of motion at any stage of the proceedings in a  
application cause.  
when made
- Motion how 3. No motion shall be entertained by the court until the applicant has filed a motion paper, or  
made. made oral application in open court, distinctly stating the terms of the order sought and the  
grounds upon which he relies therefore.

4. Except where the court considers it desirable and not unjust that a motion should be in the absence of any persons likely to be affected, a motion shall be taken only after due notice has been served on other persons likely to be affected, or where the motion is made by oral application in open court in the presence of the person affected. Motions to be on notice.

5. Where an order is made on a motion *ex-parte*, it shall be served on the party affected by it, and he shall have the right to apply to set it aside within seven days of its being served on him. Court may set aside *ex-parte* order.

6. At the hearing of any motion the court may receive oral evidence for or against the motion Oral evidence may be taken.

ORDER IX 6 PROCEEDINGS AT THE HEARING

1. (1) The subject of a charge shall be read out by the clerk to the defendant, who shall be asked how he pleads to it and his answer shall be recorded. Plea in civil and criminal matters.

(2) If, in any criminal cause or matter, the defendant cannot or will not answer directly when called upon to plead to the charge the court shall cause to be entered a plea of not guilty on behalf of the defendant and the plea so entered shall have the same effect as if the defendant actually pleaded the same.

2. Where a defendant wishes to plead -- Plea as to jurisdiction.

(a) that the court has no jurisdiction; or

(b) that the claim or charge does not disclose any cause of action or any offence; or

(c) that the subject-matter or the claim has been previously adjudicated upon; or

(d) that (in the case of a criminal cause or matter) he has been previously acquitted or convicted of the offence, the defendant may make such a plea at any stage after he has been asked to answer to the claim or charge and such plea shall be recorded by the court.

3. (1) The court shall consider whether a plea made under rule 2 of this Order is made out and shall give its decision which shall be recorded. Consideration of plea as to jurisdiction.

(2) If the court is satisfied that the plea has been made out, the claim shall be struck out or the charge dismissed and the defendant discharged.

(3) If the court is not satisfied that the plea has been made out, it shall order the defendant to plead in the ordinary way under rule 1 of this Order, or that the hearing shall continue as the case may be.

(4) Where the defendant admits the claim or the offence, as the case may be, the court shall hear the statements of the parties and give its judgment. Plea of liability of guilty

5. (1) Where the defendant does not admit the claim or the charge as the case may be, the plaintiff or complainant shall adduce evidence in support of his case. Plea of non-liability or of not guilty.

(2) In any criminal cause or matter ó

Case for prosecution and defence.

(a) at the close of the case for the complainant, the court shall consider whether any case has been made out for the defendant to answer.

(b) if no case has been made out, the charge shall be dismissed and the defendant acquitted and discharged;

(c) where there is a case for the defendant to answer, the court shall call upon him to make his defence and he may adduce evidence in support of his case.

Verdict.

6. (1) At the conclusion of the evidence on both sides, the court shall consider the whole evidence and give its judgment thereon and the grounds upon which the judgment is based and it shall issue an order in accordance with Order XI, rule 2.

(2) In every civil cause or matter in which there is a dispute with respect to the appropriate customary law, the court shall clearly state in its judgment the appropriate customary law applicable to the cause or matter.

Amendment of claim or charge.

7. (1) The court may, at any stage before judgment upon application by any party to the proceedings, amend the particulars of a claim or charge if the court is satisfied that no injustice will Result:

Provided that if such amendments is made in the absence of the other party a notice of the amendment shall be served on the other party.

(2) If the facts proved at the trial are substantially the same as the particulars of claim or charge and the court considers that there would be no substantial miscarriage of justice, the court may give judgment and issue an order on the evidence adduced before it without amending the claim or charge.

Adjournment.

8. (1) At any stage in any proceedings the court may of its own motion adjourn the hearing until Such time as may be convenient for the court.

(2) any request by any party to the proceedings for an adjournment shall be considered by the court and, unless there be good reason for granting it, shall be refused.

(3) The court may grant an adjournment of the hearing on such terms as it thinks fit.

Presence of defendant at criminal trial.

9. (1) Every defendant in a criminal trial shall be present in court during the whole of his trial except where;

(a) he misconducts himself by so interrupting the proceedings or otherwise as to make their continuance in his presence impracticable;

(b) he is summoned in respect of an offence with respect to which he pleads guilty in writing or appears and so pleads by a person entitled to represent him before the court as the case may be.

(2) The court may, in any criminal trial in which the defendant has pleaded guilty in writing or has appeared by a person entitled to represent him, at any subsequent stage of the proceedings, direct the personal attendance of the defendant and, if necessary, enforce such attendance by means of a warrant to apprehend the defendant and bring him before the court.

(3) Where a defendant in a criminal trial appears before the court on a summons he may be required to enter the dock or to stand or sit nearby as the court may order.

10. When more persons than one are accused of the same offence or of different offences committed in the course of the same transaction or when a person is accused of committing an offence and another of abetting or being accessory to or attempting to commit such offence, they may be charged and tried together or separately as the court thinks fit. When persons may be charged jointly.

11. (1) When any person who in the opinion of the court has not attained the age of seventeen years is being tried for an offence, or is called as witness in any proceeding in relation to an offence against, or any conduct contrary to, decency or morality, the court may direct that any persons, not being directly concerned in the proceedings, be excluded from the court during the trial or the taking of evidence of such person. Exclusion of public from trial.

(2) The court may in its discretion exclude members of the public from the court at any stage of the proceedings in a cause or matter where the administration of justice so required, provided that in any case an order made under this rule shall not, unless specifically stated by the court, authorities, the exclusion of representative of the press.

#### ORDER X 6 EVIDENCE

1. Every witness giving evidence before the court shall be put on such oath as he declares to be binding on him, but if he objects to the taking of an oath he shall affirm that the evidence he is about to give is the truth, and the fact that a witness has taken an oath or has affirmed shall be recorded. Evidence to be on oath or affirmation.

2. The evidence of a child who in the opinion of the court, does not understand the nature of an oath, but understands the duty of speaking the truth, may be received by the court, although not given on oath. Evidence of a child.

3. (1) Every witness shall first be examined by the party calling him, and the other party shall then be at liberty to cross-examine such witness who may thereafter be re-examined by the party calling him as to matters arising out of the cross-examination. Examination of witnesses.

(2) A witness may be questioned by the court at any stage of the proceedings.

Record of evidence.

4. (1) The President or other member of the Court authorised by the President shall record in the proper record book all oral evidence given before the court.

(2) The fact that other party was given the opportunity to examine, cross-examine or, re-examine, a witness shall be indicated on the record.

Best evidence.

5. (1) In every cause or matter the court shall admit only the best evidence available, having regard to the circumstances of the case.

(2) Hearsay evidence shall not be admitted except for the purpose of providing communal tradition and in all other cases in which such evidence is the best evidence available.

(3) Where a party in a cause or matter desires to rely on the contents of a document, he shall cause the original document to be produced and tendered in evidence except where ó

(a) it appears to the court that the original is in the possession or power of the opposing party or any other person who refuses to produce it when requested to do so;

(b) when the original cannot be produced;

(c) when the contents of the document have been proved to be admitted in writing by the opposing party or his representative in interest or his predecessor in title;

(d) when the original cannot easily be moved to the court;

(e) when the original is a public document and a certified true copy is produced;

(f) where the document is an entry in a banker's book;

(g) where a copy duly certified as true by a person who is competent to do so is produced;

(h) in any other case, where the interest of justice required that secondary evidence be admitted.

(4) Oral evidence shall not be admitted to vary, contradict or add to the contents of a document except where it is in the interests of justice that such evidence be admitted.

Burden of proof.

6. (1) Subject to the provisions of Order IX, the court shall in any civil cause or matter decide in favour of the party in whose favour there is a preponderance of evidence, which is believed by the court.

(2) In any criminal cause or matter, the burden shall lie on the complainant to prove this case beyond reasonable doubt.

(3) Where in any cause or matter before a customary court any party wishes to rely on the customary law of the area of jurisdiction of the court there shall be no need to prove the customary law before the court.

(4) Where in any cause or matter before a customary court any party wishes to rely on the on the customary law of an area which is not the area of jurisdiction of the court, the burden shall lie on him to prove the customary law.

(5) Any customary law which the court in its judgment states to be the appropriate customary law subject to the provisions of section 22(a) of the Edict be presumed to be correct until the contrary is proved except where the stated customary law conflicts with any previous subsisting judgment of the High Court, Federal Court of Appeal or the Supreme Court.

(6) Any appellant aggrieved by the decision of the court with respect to the appropriate customary law may apply to the Appeal Court for leave to adduce evidence of customary law in the special court and such application shall be granted.

(7) Whenever a party is allowed to adduce evidence of customary law in an appeal court, any other party shall be entitled to adduce evidence either in rebuttal or in support of the evidence so adduced.

7. In any criminal cause or matter, the fact that the defendant is of bad character is irrelevant except -

Evidence of character.

- (a) where the bad character of the defendant is a fact in issue, or
- (b) where the defendant has given evidence of his good character.

8. (1) No plaintiff in any action for adultery or breach of promise of marriage may recover a verdict in his favour unless his evidence is corroborated by some other material evidence in proof of the adultery promise.

Corroboration.

(2) No defendant in a criminal cause shall be convicted on the evidence of an accomplice unless such evidence is corroborated by some material evidence implicating the defendant.

9. Where a court on the application of any party to the proceedings before it, directs that any person shall be summoned to give evidence or produce any document in his possession the court may order a deposit of such amount of money before the issue of summons as will cover the expenses of such person in so attending.

Court may order deposit of witnesses expenses.

10. If a witness does not appear to a summon, the court, upon proof of service of the summons, a note of which shall be recorded in the proper record book, may order the issue of a warrant to bring such witness before the Court at such time and place as may be convenient.

Non-appearance of witness.

11. A court may, on the application of any party to a cause or matter, or of its own motion, order witnesses on any side to be kept out of court:

Witnesses may be excluded from court.

Provided that the parties themselves shall not be so ordered, although it is intended that that should be called as witnesses.

Exhibits and documents to be kept by court.

12. (1) All documents and other exhibits admitted in evidence by the court shall be marked and retained by the clerk until appeal is lodged or the time which appeal should be lodged has elapsed, whichever is the earlier.

(2) Where no appeal is lodged within time the clerk shall return the documents and other exhibits to the parties who have tendered them in evidence, unless the court otherwise directs.

Witnesses allowances and fees.

13. (1) Witnesses allowances and fees shall not be paid to them until they have given evidence:

Provided that a witness in a civil cause or matter shall be entitled to be paid in advance through the court the cost of transport from his ordinary place of abode to the place where he is to give evidence and for his return journey.

Second schedule.

(2) At the conclusion of the proceedings the court may order allowances and fees in accordance with the Second Schedule to be paid to the witnesses and these allowances and fees shall be paid by the party calling the witnesses and shall be included in any costs awarded to him.

#### ORDER XI 6 COURT ORDERS

Orders.

1. Court may in its discretion make any order within its powers and jurisdiction which it considers the justice of the case demands whether or not the order has been asked for by the party who is entitled to the benefit thereof:

Provided that in a civil cause or matter judgment shall not be given, except as to costs, for a greater sum of money than that claimed in the particulars of claim.

Record of verdict

2. Orders of a court shall be issued in open court by the president and shall be recorded and signed by the president and the members in the proper record book.

Time within which to carry out orders.

3. When a court is making an order it may fix the time within which the order shall be carried out and in particular may direct that any sum of money ordered to be paid may be paid by installments.

Notice of court orders.

4. (1) When a party affected by an order of a court has appeared in the proceedings it shall not be necessary to bring the terms of the order to his notice before execution.

(2) When a party affected by an order of a court has not appeared in the proceedings the terms of such order shall be brought to his notice by the service upon him of a certified true copy of such order before execution.

ORDER XII 6 INJUNCTION AND OTHER ORDERS  
AND THEIR ENFORCEMENT

1. Where a court has power to required any person to do or abstain from doing any act or thing, other than the payment of money, and no other mode is provided by these rules for enforcing the requirement, the court may exercise the power by an order and may annex to the order such conditions as to the court may seem fit, and may suspend or rescind any such order on terms and may make such arrangements for carrying out such order as to the court may seem expedient. Enforcement of interlocutory orders.
2. (1) I any person fails to comply with an order made in accordance with the provisions of rule 1 for the space of fourteen days after the date by which he has been required by the court to do or abstain from doing the act or thing the court may, upon the application of any party to the proceedings, issue a summons calling upon the person in default to show cause why the he should not be punished for failure to comply with the order of the court. Enforcement.
- (2) Upon hearing of the summons the court may, upon being satisfied of the failure of the person in default to comply with the order, order him -
- (a) to pay into court a sum not exceeding N2 for each day during which such default is made;
- (b) to be imprisoned for an indefinite period until he has remedied his default.
- (3)Where the court orders a person to be imprisoned under the provisions of this rule, the court shall review its order at intervals of not more than one month.
- (4) Any sum ordered to be paid under the provisions of this rule may be recoverable summarily as a judgment debt.

ORDER XIII 6 EXECUTION AGAINST PROPERTY

1. Any sum of money payable under a judgment of a court may, in a case of default or default of payment thereon at the times directed or, if no time is directed, within three days of the judgment, be recovered by execution against the goods and chattels of the of the judgment debtor. Recovery of money payable under judgment.
2. Any clerk, on the application of the judgment creditor, shall cause to be issued a writ of attachment and sale whereby the bailiff of the court shall be empowered to attach and sell Goods and chattels belonging to the judgment debtor, wherever they may be found within the State, in respect of the money payable under the judgment and the costs of the execution. Where the goods and chattels to be attached are outside the area of jurisdiction of the court the warrant shall be forwarded to another court in accordance with rule 1 or Order IV for execution. Writ of attachment.
3. The precise time of the making of an application to the clerk for the issue of the writ shall be entered by him in the book of prescribed for the purpose and on the writ, and when two or more writs are issued against the same goods and chattels they shall be executed in the order of the times so entered. Details of application to be recorded.

Writ not to issue until default made in payment of installment.

4. Where a court has made an order for payment of any sum of money by installments, no writ of execution for the enforcement of the judgment shall be issued until after the default in payment of some installment according to the order.

Sums of recoverable and fess to be endorsed on Writ.

5. In or upon every writ of execution against the goods and chattels of any person, the clerk shall cause to be inserted or endorsed, the sum of money and costs adjudged, and the fees for the execution of the writ.

Where debt paid before execution.

6. If the judgment debtor, before the actual sale of his goods and chattels, pay or causes to be paid to the bailiff of the court from which the writ issue, or to the bailiff of the court holding the writ, the sum of money and costs endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction together with the fees inserted as aforesaid, the execution shall be superseded and the goods and chattels of the judgment debtor shall be discharged and returned to him

Powers of bailiff.

7. The bailiff of a court executing any writ of execution issued by the court against the goods and chattels of that person may by virtue thereof seize any of the goods and chattels of that person, except the wearing apparel and bedding of that person or of his family and implements of his trade to the value of N10 which shall be protected from seizure.

Custody of goods seized.

8. Goods and chattels seized in execution under the process of the court shall until sale Thereof ó  
(a) be deposited by the bailiff of the court in some fit place, or  
(b) remain in the custody of a fit person approved by the president of the court from which the writ was issued.

Goods not to be sold before expiration of ten days unless perishable.

9. No goods and chattels seized in execution under process of a court shall be sold until the expiration of a period of at least ten days next following the day on which the goods are seized unless the goods are of a perishable nature.

Sale of goods seized.

10. (1) Subject to the provisions of paragraphs (2) and (3) of this rule, the goods and Rule, the goods and chattels seized shall be set up for sale by auction by the bailiff in the in the court house where the writ was issued, or in such other place as the president may direct.

(2) No goods and chattels shall be set out for sale on a Sunday.

(3) The bailiff shall, prior to the sale, inform the judgment debtor in writing of the date, place and time of the sale.

Bailiff to issue receipts.

11. The court shall supply every bailiff with a receipt book, which shall be furnished with counterfoils with successive numbers printed thereon; and when a bailiff by virtue of his office, receives any money, he shall give to the person paying the same a receipt on one of the printed forms contained in such book, and shall note on the corresponding counterfoil of such book, the name and date of the process, the title of the proceeding in which it was issued and the amount for which the receipt is given.

12. When goods and chattels are attached by the bailiff and removed, the bailiff shall give to the judgment debtor a sufficient inventory thereof, at the time of removal. Bailiff to give inventory.
13. Every bailiff shall pay to the clerk at the close of the day all moneys for the time being on his hands. Bailiff to pay over all money received to clerk.
14. At the close of every month the clerk shall ó
- (a) make a full return to the president of all writs, orders and warrants which have not been fully executed by the bailiff at the end of the preceding months and of all writs, orders, and Warrants as have been entrusted to the bailiff for execution during the past month, and shall set against each such process a statement of what has been done there under. Return by the clerk.
- (c) make a return of all moneys receives by him during the past month.
15. The clerk shall submit to the president the receipt book used by the bailiff during the past month, and the president shall examine the counterfoils of the receipts used by the bailiff during the past month and see that there is an entry on a counterfoil to denote that a receipt from The said book has been given for each sum acknowledged to have been received and that all sums for which receipts appear from the counterfoils to have been given have been duly entered and accounted for; and the president, if satisfied with the entries shall certify accordingly. Inspection of bailiffs receipt books.
16. No money realized by any process shall be paid by the bailiff direct to the judgment creditor or to his agent. Bailiff not to pay money direct to judgment creditor or his agent.
17. Where property is sold under writ of execution the proceeds, less the expenses of the sale, shall be disposed of as follows - Proceeds of sale.
- (a) the amount to be levied together with costs paid by the judgment creditor subsequent to the issue of the writ shall be paid to the judgment creditor, and
- (b) the balance shall be paid to the judgment debtor.
18. (1) Where the proceeds of the sale of the goods and chattels attached in execution of a writ issued in accordance with rule 2 are insufficient to satisfy the judgment or order, the judgment creditor may, by application on notice to the judgment debtor, apply for the issue of a writ of attachment and sale of the immovable property of the judgment debtor to the court within whose territorial limits of jurisdiction any immovable property of the debtor is situated. Attachment of immovable property.
- (2) if the judgment or order was not given or made in the court to which application is made the application shall be supported by a certificate from the court making the judgment or order stating.

(a) the sum that remains due under the judgment or order, and

(b) that movable property of the judgment debtor sufficient to satisfy the judgment or order cannot with diligence be found within the State.

(3) If on the hearing of the application the court is satisfied, sufficient movable property of the judgment debtor cannot with diligence be found, then a writ of attachment and sale may lawfully issue against the immovable property, and the court shall order its issue accordingly.

19. (1) Upon receipt of a writ issued under rule 18 the bailiff or messenger executing the same may attach lands, buildings or other immovable property belonging to the judgment debtor by serving the judgment debtor with a written order of the court forbidding the judgment debtor to alienate and any other person to accept the property in any way.

(2) Copies of the written order shall be posted upon all items of the immovable property which have been attached.

Sale of attached immovable property.

20. When the attachment has been completed the bailiff or messenger executing the writ shall report the same to the clerk of the Court, who shall thereupon arrange for the sale of the attached property by auction in such manner and under such conditions as the court may direct.

Setting aside sale.

21. At any time within twenty-one days from the date of sale of any immovable property application may be made to the court for an order to set aside the sale on the ground of material irregularity in the conduct of the sale:

Provided that the court may refrain from making any such order if it is satisfied that no substantial damage has resulted to the applicant by reason of such irregularity.

Effect of setting aside sale.

22. If a sale of immovable property is set aside, the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, such money to be paid by such parties and in such manner as the court may direct.

Absolute sale.

23. (1) If no application to set aside the sale is made within twenty-one days from the date of sale, the sale shall be absolute.

(2) If an application to set aside is made and is not allowed by the court, the court shall (unless there be pending other applications to set aside the same sale) make an order confirming the sale, and such an order shall make the sale absolute.

Certificate of purchase.

24. After a sale of immovable property has become absolute the court shall grant a certificate to the purchaser to the effect he has purchased the right, title and interest of the judgment debtor in the property sold, and such certificate shall be a valid transfer of such right, title and interest.

25. The proceeds of sale immovable property shall be disposed by the clerk of the court in the manner provided in rule 17. Disposal of proceeds of sale.

26. The party enforcing a judgment or order may levy the costs of execution over and above the judgment debt and costs mentioned in such judgment or order unless the court shall otherwise order in cases where costs have been unreasonably incurred. Costs of execution.

#### ORDER XIV 6 INTERPLEADER PROCEEDINGS

1. Any person who claims that any property, whether movable or immovable which has been attached is not liable to be sold in execution of a judgment or order against the judgment debtor may apply to the court which issued the writ of attachment and sale for the issue of a summons calling upon the judgment creditor to appear before the court on a date and at an hour specified in the summons to show cause why the property should not be released from the attachment. Interpleader summons

2. (1) When the claim is investigated by the court it shall have the same powers as if the claimant had been originally a party to the suit: Proceedings at hearing.

Provided that if it appears to the court that owing to the value of the property attached it would not have been within its jurisdiction to determine the claim in an original suit, it shall -

(a) order the claimant to institute proceedings in a court of competent jurisdiction within thirty days for the purpose of establishing his claim; and

(b) stay the proceedings on the writ of attachment and sale until the issue between the judgment creditor and the claimant has been determined by a tribunal of competent jurisdiction.

(2) If it appears that the property attached is not liable to be sold the execution of the judgment or order the court shall make an order releasing the property from attachment.

(3) If it appears that the property attached is the property of the judgment debtor, the court shall disallow the claim and dismiss the summons.

3. (1) A claim must be made to the court at the earliest opportunity and if the attached property has been advertised for sale, the sale shall be postponed until the claim has been investigated. Time for making claim.

(2) When it appears to the court that there has been deliberate delay, or when the sale has taken place before the claim was made, the Interpleader proceedings shall be dismissed.

4. (1) Every application by a claimant for an Interpleader summons shall be supported by a declaration by the claimant, which may be on oath at the discretion of the court, specifying the property claimed and setting out the grounds upon which it is claimed. Evidence in support of claim.

(2) A copy of such declaration certified by the clerk of the court, shall be provided for each person against whom the relief is sought and a copy shall be attached to each summons issued by the court.

(3) The court may call for oral evidence of the facts if it so wishes when the claim is investigated.

Procedure where damages claimed.

5. Where in any Interpleader proceedings the claimant claims damages from the judgment creditor or from the bailiff or messenger of the court in respect of any misfeasance occurring during the course of the attachment, he shall in the declaration under paragraph (1) of rule 4 state the amount which he claims for damages and the grounds upon which he claims such damages.

Payment into court.

6. Where in the Interpleader proceedings a claim for damages is made, the person from whom damages are claimed may pay money into the court in satisfaction of that claim, and the payment shall be made in the same manner and have the same effect as if the proceedings were plaintiff and the person from whom damages are claimed were defendant.

Damage by bailiff or messenger.

7. Where damages are ordered to be paid to the claimant in respect of any act done or omitted to be done by the bailiff or messenger of the court in execution of the writ, the court may, in proper case, order that payment of such damages shall be made by the bailiff or messenger.

Costs.

8. Costs in any Interpleader proceedings may be ordered to be paid in such manner as shall appear to the court to be just.

#### ORDER XV ó WRIT OF POSSESSION

Writ of possession.

1. The executioner any judgment or order relating to land or other immovable property may be carried out by a writ of possession whereby the judgment creditor is placed in possession of the land or immovable property as the case may be.

Claim to possession by third party.

2. (1) If any person (other than the judgment debtor) is dispossessed and such person Disputes the right of the judgment creditor to dispossess him on the ground that ó

(a) the property was bona fide in his possession on his own account or on the account of some person other than the judgment debtor; or

(b) the property was not included in the judgment or order; or

(c) if included in the judgment or order he was not a party to the suit, homey by an ex-parte motion apply to the court within twenty-eight days of dispossession making claim to such land or other immovable property as has been attached or for such other relief as may be appropriate.

(2) If, after examining the applicant, it appears to the court that the applicant has good ground for making the application, the application shall be numbered and entered in the Civil Record Book as a writ between the applicant and the judgment creditor on whom shall be served a writ and copies of the motion papers and order of court; thereafter, the

court shall investigate the matter in dispute in the same manner and with the same powers as if a claim for the property had been made in a suit by the applicant against the judgment creditor.

(3) If an application made in accordance with the provisions of this rule is entertained by the court it shall operate as a stay of execution of the writ of attachment and sale of the land or other immovable property in question pending a decision of the court in accordance with the next rule.

3. The decision of a court given consequent upon an investigation in accordance with rule 2 shall have the same force and effect as a decision in an ordinary civil suit, and no fresh suit arising out of the same facts may subsequently be entertained between the same parties or any persons claiming under them in respect of same property.

Effect of decision.

ORDER XVI 6 EXECUTION AGAINST THE PERSON

1. (1) A judgment or order of a court for the payment of money in a civil cause or matter may be enforced by the arrest and imprisonment of the judgment debtor which shall be carried out in accordance with the following rules.

Execution against the Person.

(2) No judgment debtor shall be arrested and imprisoned for default in the payment of money in a civil cause or matter unless a judgment summons shall have been issued and an investigation shall have been made in accordance with the provisions of these rules.

2. On the application of a judgment creditor for the enforcement of any order for the payment of money by the imprisonment of the judgment debtor, the court shall issue a summons calling Upon the judgment debtor, to appear before the court on a day at an hour specified in the summons to show cause why he should not be committed to prison.

Summons to show cause.

3. (1) Where appearance is not made in obedience to the summons the court shall, if the judgment creditor so requires, issue a warrant for the arrest of the judgment debtor.

Non - appearance to summons.

(2) Every such warrant shall direct that the judgment debtor be brought before the court with all convenient speed, unless the amount which he has been ordered to pay, and the fees (if any) for which he is liable, be sooner paid.

4. No judgment debtor shall be arrested in pursuance of rule 3 unless and until the judgment creditor has paid to the court such sum as, in the opinion of such court, is sufficient for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the court.

Subsistence of judgment debtor.

5. (1) When a judgment debtor appears before the court in obedience to a summons issued under rule 2 or is brought before the court after being arrested under the provision of rule 3, he may be examined by or on behalf of the judgment creditor and by the court respecting -

Examination of judgment debtor.

(a) his ability to pay the money directed to be paid and for the discovery of property applicable to such payment and as to what debts are owing by him, and as to the disposal which he may have made of any property; and

(b) the circumstances in which he contracted or incurred the debt or liability in respect of which the judgment was given and respecting the means or expectation he then had of paying or discharging the debt or liability and he shall be bound to produce all books, papers and documents in his possession or power relating to any of such matters.

(2) Whether the judgment debtor appears or not the judgment creditor and all other witnesses whom the court thinks requisite may be examined respecting the said matters.

Detention or release during examination.

6. (1) While any investigation mentioned in rule 5 is pending, the court may in its discretion either order the judgment debtor to be detained in prison, or release him on his furnishing security to the satisfaction of the court for his appearance when required by the court.

(2) Where the court orders a judgment debtor to be detained in prison in accordance with the provisions of this rule, payment for the subsistence of the judgment debt shall be made by the judgment creditor in accordance with the provisions of rule 11.

Protection of property.

7. The court may upon any such investigation as aforesaid make an interim order for the protection of any property applicable or available in discharge of the judgment debt as it shall think expedient.

Orders Court may make.

8. At the conclusion of the investigation the court may make such one or more of the following orders as the case may require

(a) an order for the committal of the judgment debtor to prison in accordance with the provisions of rule 10 of this order;

(b) an order for the attachment and sale of the judgment debtor's property;

(c) an order for the payment of money by installments or otherwise by the judgment debtor.

(d) an order for the discharge of the judgment debtor from prison.

Committal orders.

9. Subject to the provisions hereinafter the court may at the conclusion of any such investigation as aforesaid but not otherwise commit the judgment debtor to prison for default in payment of any debt on installment of any debt due from him:

Provided that such jurisdiction shall only be exercised where it proved, to the satisfaction of the court, that the person making default either has, or has had since the date of the judgment or order, the means to pay the sum in respect of which he has made default.

10. No person shall be imprisoned in pursuance of the provisions of this Order for a longer period than four weeks. Limit on imprisonment.
11. (1) When a judgment debtor is committed to prison in execution of a judgment or order the court shall fix whatever weekly allowance it may think sufficient not exceeding N1.00K per day. Subsistence of judgment Debtor.
- (2) Such allowance shall be paid to the court by weekly payments in advance by the judgment creditor.
- (3) Sums disbursed by the judgment creditor for the subsistence of the judgment debtor in prison shall be added to the costs of the judgment or order and shall be recoverable by the attachment and sale of the property of the judgment debtor made in accordance with the provisions of Order XIII but the judgment debtor shall not be detained in custody or arrested on account of any sums so disbursed.
12. A judgment debtor shall be released at any time - Release of debtor.
- (a) on the judgment or order being fully satisfied; or
- (b) at the request of the judgment creditor; or
- (c) on the failure of the judgment creditor to pay an allowance as provided by rule 11.
13. A judgment debtor released under rule 12 of this order may be re-arrested but, subject as aforesaid a judgment debtor who has once been released from imprisonment upon an order made under these rules shall not be imprisoned again in pursuance of the same judgment or order. Effect of imprisonment.
14. (1) Imprisonment shall not in any case operate as satisfaction or extinguishments of the debt, nor deprive the judgment creditor of any right of execution against the movable or immovable property of the judgment debtor. Imprisonment not satisfaction.
- (2) Where a judgment debtor has been arrested and is detained in custody, or where a warrant has been issued for the arrest of a judgment debtor no sale of any of his property shall, except with his written consent, be made until ó
- (a) one week has elapsed from the date of his arrest; and
- (b) at least fifteen days notice has been given to the judgment debtor specifying the property which has been seized and is intended to be sold.
- Provided that this rule shall not apply to perishable articles, which may be sold at once.

#### ORDER XVII ó EXECUTION OF SENTENCES

1. (1) When any person is sentenced to imprisonment the court which sentenced him shall issue a warrant of committal ordering that the sentence be carried out in a prison to which the customary court has power to commit any person, such prison to be named in the warrant. Sentences of imprisonment.

(2) Any such warrant shall be sufficient authority to the bailiffs, messengers of the court or members of the Nigeria Police Force to convene the person named in the warrant to the said prison and there deliver to the officer in charge thereof and for the said officer to keep the person committed for the period prescribed in the warrant.

Commencement of term.

2. A sentence of imprisonment shall commence and include the week of the day of the date on which it was ordered.

Consecutive sentences.

3. Where a sentence of imprisonment is passed on any person by court, the court may Order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences passed by a court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed the limit of jurisdiction of the court.

### ORDER XVIII 6 APPEALS

Appeals: how commenced.  
Form E(i) or E(ii) First Schedule.

1. (1) An appeal from any court to an appeal court shall be commenced by the appellant giving oral notice of appeal in open court or filing duplicate in the court whose judgment or order is being appealed from a notice of appeal in the Form E(i) or E(ii) set in the First Schedule hereto within the time prescribed by the Edict.

Form F(i) or F(ii) First Schedule.

(2) Where a notice of appeal is given orally in open court, the appellant shall, as soon as may be thereafter file in duplicate a notice of appeal in the Form E(i) or E(ii) set out in the First Schedule in the court whose judgment or order is being appealed from, within the time prescribed by the Edict.

Court to specify conditions of appeal.

2. Upon receiving the notice of appeal the clerk of the court shall file the same, and the court shall order as the circumstances of the case may require 6

(a) a deposit of a sum of money not exceeding twenty Naira to be made by the appellant to cover the costs of making up and transmitting the record of appeal;

(b) a deposit or the entering into a recognizance with or without sureties, for a sum of money to cover any costs may have been awarded in the court or which may be awarded in the appeal court;

(c) where the appellant is appealing against a conviction for willful failure to pay the amount due in respect of a rate, the deposit of the amount which he has been ordered to pay pending the determination of the appeal.

Appellant to be admitted to bail and execution stayed.

3. (1) The court, upon being satisfied that the defendant in a criminal cause has given notice of appeal shall admit him to bail on such term as it thinks fit:

Provided that if the appellant fails to comply with the conditions of appeal within thirty days from the specifying thereof, the appeal shall be deemed to have lapsed and the sentence shall be enforced.

(2) The court, having made an order under rule 2 in respect of a civil cause or matter and being satisfied by the appellant that the order has been complied with shall order a stay of execution upon such terms as it thinks fit.

4. The clerk of court shall within 10 days from the date of receipt of the notice and ground of appeal in the cause or matter serve same on the respondent.

Procedure on Receipt of notice of appeal.

5. The clerk of court shall within three months from the date of receipt of notice and grounds of appeal in the cause or matter prepare and forward the record of appeal in the cause or matter to the appeal court and shall deduct the costs of preparing the record thereof from any deposit made by the appellant for that purpose and shall pay to the appellant the balance (if any).

Lower court to supply record.

(1) The clerk of court shall type and incorporate in the record of appeal immediately after the notice and grounds of appeal all the documentary exhibits tendered in the cause or matter except very bulky documentary exhibits.

(2) The president or other member of the court authorised by the president shall immediately after the judgment certify under his hand that all proceedings up to judgment are the true entries of the cause or matter as contained in the Record Book.

(3) The clerk of court shall certify as correct the exhibits typed and incorporated in the record of appeal.

6. The clerk of court shall forward all exhibit retained by the court together with record of proceedings to the appeal court.

Clerk of court to forward exhibits.

7. The appeal court shall, as soon as may be after the receipt of the record of the appeal fix a date for the hearing of the appeal, and shall notify the parties directly affected by the appeal of the place and date of the hearing of the appeal by causing notice thereof to be served on them.

Parties to be notified of hearing date.

8. (1) Where the appeal is in a criminal cause or matter in which the prosecution has been conducted in the name of the State, any public officer, a local government or any officer of the Police force the clerk of the court below shall send a copy of the record of appeal to the Director of Public Prosecutions at the same time as he transmits it to the appeal court.

Sending of record to Director of Public Prosecutions.

(2) In any cause or matter to which paragraph (1) of the rule applies the appeal court shall send a notice of hearing in accordance with rule 6 of this Order to the Director of Public Prosecutions.

9. An order made by the court under rule 2 may be varied or amended by a subsequent order of the appeal court.

Court may vary condition

- Copy of proceeding  
Second Schedule. 10. Any party to a cause or matter shall be entitled, upon payment of the appropriate fee prescribed in the Second Schedule hereto, to receive a copy of the proceeding in the cause or matter.
- Amendment of  
grounds of appeal. 11. The appeal court may upon such terms as it thinks fit, grant leave to the appellant to amend or add to his grounds of appeal at any stage of the proceedings.
- Appearance of  
both parties. 12. Where both parties appeal when an appeal is called on for hearing, each party shall be given the opportunity of a hearing by the appeal court:
- Provided that the appellant or his representative (if any) shall be entitled to be heard first.
- Non-appearance  
of both parties. 13. If, when the appeal is called on for hearing -
- (a) the appellant fails to appear, the appeal may be struck out; or
- (b) the respondent fails to appear, the appeal court may, if satisfied that the hearing date is known to the respondent, proceed to hear and determine the appeal in the absence of the respondent.
- Appeal struck  
out may be re-  
entered. 14. When an appeal has been struck out under rule 11, the appeal court may, upon the application of the appellant made within fourteen days of the striking out order, direct the appeal to be re-entered for hearing upon such terms as it thinks fit.

#### ORDER XIX ó POWER OF REVIEW

1. Every customary court shall send a list containing all criminal cases disposed of every month to the Judge in charge of the area of jurisdiction of the customary court.
2. Upon receipt of such list the Chief Judge or Judge may, if he thinks fit, call for a copy of the record of any case included therein, and, either without seeing such record or after seeing such record as he may determine, and either without hearing argument or after hearing argument as he may determine, may:
  - (a) subject to any enactment fixing a minimum penalty, reduce a sentence or modify an order in such form as he thinks fit; or
  - (b) annul the conviction, in which case the person under detention shall be forthwith set liberty or in the case of a fine such fine, if already paid, shall be refunded to the person fined, or if security has been required and given he shall be freed from such security; or
  - (c) annul the conviction and convict the accused of any offence of which he might have been convicted on the evidence, and sentence him accordingly; or
  - (d) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order the accused to

be confined as a criminal lunatic in a lunatic asylum, prison, or other suitable place of safe custody and shall report the case for the order of the Military Administrator; or

(e) order a new trial before the court which passed sentence or before any other court; or

(f) make any order as justice may require, and give all necessary and consequential directions:

Provided that when a person convicted shall have appealed against such conviction the judge shall not exercise the power by this section conferred until after the conclusion of the proceedings upon such appeal or stated case.

3. When action upon the list as prescribed in rule (1) is complete or if the judge shall decide to take no such action, he shall direct that the list be filed; but such direction shall not have the effect of preventing him or his successor from subsequently taking any action prescribed in rule (1) if he shall think fit:

Provided that three months after the last day of the month to which the list relates he shall become *functus officio* in respect of all cases upon the list in respect of which he shall not up till then have taken any action.

#### ORDER XX 6 RECORDS OF PROCEEDINGS

- |   |                                |
|---|--------------------------------|
| <p>1. (1) All proceedings including notes of evidence given before the court shall be recorded in English in the proper record books by the president or other member authorised by the President.</p>  | <p>Record of proceedings.</p>  |
| <p>(2) The President and members shall sign the record book at the end of the proceedings in each cause or matter and at the end of each day's business.</p>  | <p>Copies of Records.</p>      |
| <p>2. (1) Any person who is not a party to a cause or matter in a court shall not be entitled as of right inspect the record of proceedings relating to such cause or matter, but such person may apply to the court to inspect or obtain a copy of such record; and his application shall state what document it is desired to inspect or copy and the reasons for making the Application.</p> |                                |
| <p>(2) The court may, in its discretion, grant such application on such terms as it thinks fit.</p>   |                                |
| <p>3. (1) Every court shall keep cash books and record books</p>  | <p>Record books.</p>           |
| <p>(2) Every court shall keep receipt books from which receipts shall be issued for all sums paid into court funds.</p>   |                                |
| <p>4. The clerk or such other person duly appointed for the purpose, shall preserve all records of the court.</p>   | <p>Preservation of record.</p> |

Fees for and supervision of records.

5. (1) The fees to be paid in respect of inspection and for copies of records shall not exceed the appropriate fees prescribed in the Second Schedule hereto.

(2) All inspection of records, whether or not by a party to the cause or matter, shall be done under the supervision of the clerk or a member of the court.

#### ORDER XXI ó COSTS

1. The expression "costs" means the expenses necessarily and actually incurred by a party on account of the proceedings in a court, and shall include the expenses of summoning and attendance of parties and witnesses, and allowances and fees payable to any person both during the proceedings and for purposes of enforcing an order.

Costs at discretion of court.

2. (1) A court may in its discretion order full or reduced costs to be awarded to the successful party in a cause or matter.

(2) Where in any cause or matter any costs awarded would be payable to the State Government or its agent or servant who has acted in the course of his duties as such agent or servant, such costs, unless the court sees good and special reason to direct otherwise, shall be ordered to be paid into the State Government Treasury.

Determination of costs.

3. Any court awarding costs shall whenever possible assess the amount of such summarily and shall include such amount in its order.

#### ORDER XXII ó FEES AND FINES

Fees: Second Schedule

1. The fees prescribed in the Second Schedule shall be payable in the circumstances specified therein and lists of such fees be exhibited to the public in suitable parts of the court offices, provided that ó

(a) the court may, with the approval of the Chief Judge direct from time to time that such other fees, not exceeding the fees prescribed in the First Schedule, as it considers suitable in a particular class of cases, shall be payable; and where the courts has so directed that such other fees shall be payable only such fees shall be payable;

Second Schedule.

(b) the court may remit all or part of fees payable in particular cases where the court has reason to believe that a person has just cause for complaint and that he is unable, by reason of poverty or other sufficient cause, to bring the same before the court;

(c) no fees shall be payable in respect of any class of cases or by any persons, body or authority stated in the Second Schedule to be exempt from payment of fees;

(d) no additional fee shall be payable on the issue of a summons or warrant by reason only of the names of more than one defendant appearing on such summons or warrant.

Time of payment of fees.

2. The fee payable upon the issue of any process or order of the court or upon the doing of any act by the court, shall be paid into the court funds before the process or order is issued or the act is done.















Cause/Matter No. 19í ..  
í ..Complainant/Respondent/Appellant

and

í Defendant/Appellant/Respondent

Take Notice that the Complainant/Defendant appeals against the conviction/sentence by the court pronounced on the í í í í í í í í í í í í í ..day of í í í í í í í í í í í í 19í í í í í í í í .. in the above-mentioned proceedings, upon the following grounds:

- (1) í .  
í í
- (2) í ...  
í í
- (3) í ...  
í í
- (4) í ...  
í í

This notice of appeal is given by í í í í í í í í í í í í í í í í . off í í í í í í í í í í í í (who wishes to be present at the hearing).

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

Fees paidí í

í  
*Appellant or the Legal Practitioner acting for him*

To the Clerk of the Court

í í í í í í í í í í í í í í í í í í í í

*Notes:-*This notice must be filed with the clerk of the court within thirty days of the decree or order appeal from and served on all parties affected by the appeal.







\*Delete whichever is not applicable.

- <sup>1</sup> Insert names of person or persons to whom summons is issued.
- <sup>2</sup> Insert full names of all persons in whose favour judgment or order was made.
- <sup>3</sup> Insert full names of all persons against whom judgment or order was made.
- <sup>4</sup> Insert place where Court was sitting when judgment/order was made.
- <sup>5</sup> Insert week, month or as the case may be.
- <sup>6</sup> Insert full names of judgment debtor or debtors who are in default.
- <sup>7</sup> Insert place at which Court will sit to hear application.

FORM 1

CUSTOMARY COURTS, BENDEL STATE OF NIGERIA

Noí í í í í í í í í í í í í í í í

WARRANT TO ARREST A JUDGMENT DEBTOR

IN the Customary Court of í ...

BETWEENí .Plaintiff (if more than one, all should be named).

and

í ...Defendant (if more than one, all should be named)

To all bailiffs and messengers of this Court.

WHEREAS the above-namedí .<sup>1</sup> has failed to answer to a judgment summons issued by this Court on the í í í í í í í í í .day of í í í í í í í í í , 19í í í í í í í í í

AND WHEREAS it has been proved that the said í .<sup>1</sup> was duly served with the summons:

You are hereby commanded to arrest to arrest the saidí ..<sup>1</sup> and to bring him before the Court to be examined as to the means he has or has had since the date of the judgment/order\* to testify the sum payable in pursuance of the said judgment/order\* and to show cause why he should not be committed to prison for such default.

Dated this í .., 19í í í í í í í í í í í í í í í í

(Signature).....  
President

\*Delete whichever is not applicable.

<sup>1</sup> Insert name of person or persons to be arrested.





\*Delete whichever is not applicable.

<sup>1</sup>Insert full names of all persons in whose favour judgment or order was made.

<sup>2</sup>Insert full names of all persons against whom judgment or order was made

<sup>3</sup>Insert place where Court was sitting when judgment/order was made.

<sup>4</sup>Insert week, month or as the case may be.

<sup>5</sup>Insert name of defaulting judgment debtor.

FORM L

CUSTOMARY COURTS, BENDEL STATE OF NIGERIA

Noí í í í í í í í í í í í í í í í

WRIT OF ATTACHMENT  
(Immovable Property)

In the Customary Court of í

BETWEENí .Plaintiff (if more than one, all should be named).

and

í ...Defendant (if more than one, all should be named)

To all bailiffs and messengers of this Court.

WHEREAS the above-named í . í í í í ..<sup>1</sup> obtained a judgment/order\* against the above-namedí ....<sup>2</sup> in this Court sitting at í <sup>3</sup> on the í í í í í .day of í í í í í í í í í í í í . 19í í í í í í í í í í í .for the payment of ₦ K for debt/damages\* and costs to be paid\* forthwith\* on the í í í í í í ..day of í í í í í í í í í í í í 19í í í í í í í í í í í .. by installments of ₦ K for every í .<sup>4</sup> and subsequent costs have been incurred and allowed by the Court amounting to ₦ K

AND WHEREAS default has been made in payment of the sum of ₦ K payable by the above-namedí <sup>5</sup>

AND WHEREAS a writ has been issued by the Court for the attachment and sale of the movable property of the said í ..<sup>5</sup> but the execution of such writ has failed to realize the full amount due from the saidí ..<sup>5</sup> in pursuance of the said judgment/order\*;

You are hereby commanded forthwith to levy the sum of N K still remaining due to the above-namedí ..<sup>1</sup> under the said judgment/order\* together with the costs of this writ and the costs of executing the same attachment of the immovable property of the said í ..<sup>5</sup> wheresoever such property may be found within the area of jurisdiction of this Court, and to make a report of what you have done under this writ immediately upon execution thereof.











## SECOND SCHEDULE (ORDER XXII)

## FEES

## A 6 CIVIL CAUSE OR MATTER

	N	K
1. On issue of summons, where claim does not exceed ₦20 .. .. .	2	00
On issue of summons, where claim exceed ₦20 but does not exceed ₦100 .. ..	6	00
On issue of summons, where claim exceeds ₦100, for each ₦100.00 or part thereof in excess of the first ₦150.00 .. .. .	2	00
2. On issue of summons, where the claim is not for the recovery of money or goods but some other relief or assistance .. .. .	6	00
3. If the claim arose more than five years before the application for summons the fee in the case of each of items above will be double of the fee specified in the item .. .. .		
3A On filing a written admission of a claim .. .. .	-	50
4. On issue of judgment Debtor Summons .. .. .	4	00
5. On issue of Writ of Attachment and Sale .. .. .	3	00
6. On issue or Writ of imprison a judgment debt .. .. .	2	00
7. On issue of Interpleader Summons .. .. .	2	00
8. On grant of Certificate of Title .. .. .	2	00
9. On drawing up of formal decree .. .. .	1	00
10. Land Inspection Fees .. .. .	12	00
11. On issue of Writ of Possession .. .. .	4	00

## B 6 CRIMINAL CAUSES OR MATTERS

1. On issue of summons or warrant unless issued by the court of its own motion .. ..	4	00
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## C 6 CIVIL AND CRIMINAL CAUSES OR MATTERS

1. On filing a security bond .. .. .	2	00
2. On issue of summons for witness .. .. .	1	00
3. On filing an interlocutory application .. .. .	2	00
4. On granting an adjournment of hearing of application of a party .. .. .	3	00
5. Service fees initial fee (Cost of transport to be charged at the rate of 5K per mile return journey) per day or part thereof plus of transport .. .. .	2	00
6. Inspection of record of proceedings .. .. .	1	00
7. On supply of copy of proceedings per 100 records or part thereof .. .. .	-	30
8. Witness fees and allowance:		
(a) Professional men, mercantile agents, bank manger, surveyors and public officers whose salary is not below ₦1,248 per annum as evidence by his income tax except ..	2	80
(b) Merchants, captains of ships, mercantile assistants and public officers whose salary is above ₦600 but less than ₦1,248 per annum .. .. .	2	80