

HIGH COURT RULES OF ENUGU STATE 2006

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COMMENCEMENT: 1ST January, 2007

ORDERS

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APPLICATION AND INTERPRETATION

1. (1) Subject to any other Laws or Rules specifically made to govern certain proceedings, these Rules shall apply to all proceedings before the court including those commenced before the coming into effect of these rules; provided that in the case of proceedings commenced before the coming into force of these rules and which are part-heard, the proceedings shall be conducted and determined in accordance with the Procedural Rules in force in the court immediately before the commencement of these Rules.

(2) Subject to the proviso to sub-rule 1 of this rule, the High Court (Civil Procedure) Rules of Enugu State 2004, shall cease to have effect at the commencement of these Rules.

◆(3) In respect of actions already pending as at the commencement of these rules, but which are not part-heard, a Judge may make order(s), requiring any party, to file such further processes and or take such further steps as may be necessary to bring the proceedings in substantial conformity with these Rules.

◆(4) Application of these Rules shall be directed towards the achievement of a just efficient and speedy dispensation of justice.

◆2. (1) Words or expression not mentioned under this rule or not defined elsewhere in these rules, shall have the meaning assigned to them under the definition section of the High Court Law of Enugu State 2004 (Cap 92), failing which, the word or expression shall have the meaning assigned to it under the Interpretation Law of Enugu State (Cap 98), and in default, the meaning generally assigned to it in Law.

◆(2) In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

"Action" means every legal proceeding in the court;

"Cause" means a civil action in original proceedings;

"Civil Proceedings" means an action other than a criminal proceeding;

"Criminal Proceedings" means an action which may affect the person prosecuted at once, by imprisonment or fine or any other criminal sanction in the event of a verdict of guilty;

"Court" means the High Court of Enugu State;

"Court Process" or "Process" includes writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication whether or not service of such document is required in any legal proceedings;

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

◆Defendant◆ shall include a defendant to a counter claim;

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

"Law" means the High Court Law, Cap. 92 Laws of Enugu State of Nigeria 2004 or any re-enactment thereof;

"Judicial Division" means the division into which the State has been divided for the convenient disposition of actions pursuant to the provisions of section 35 of the High Court Law (Cap 92), or the equivalent section of any succeeding High Court Law;

"Legal Practitioner" has the same meaning as in the Legal Practitioners' Act;

◆Matter◆ means an action other than a cause;◆

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

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

"Person Under Legal Disability" means persons who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"plaintiff◆ shall include a claimant in a counter claim;

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

"Registrar" means the Chief Registrar, Deputy Chief Registrar(s), Assistant Chief Registrar, Principal Registrar, Senior Registrar, Higher Registrar, or any other officer acting or performing the functions of a Registrar;

"Proceeding" includes pre-trial proceedings under Order 25.

"Registry" means the Registry of the High Court of Enugu State in the appropriate judicial division;

"Solicitor" means a legal practitioner; "State" means the Enugu State of Nigeria;

"Suit" means a case in which there is a plaintiff who sues, and a defendant who is sued, in respect of some cause of action; and shall include a counter-claim, an interpleader, a claim for a prerogative order of mandamus, certiorari, prohibition, habeas corpus and quo warranto.

"Taxing Officer" means the Chief Registrar or such other officer of the court as the Chief Judge may appoint to tax (i.e. assess) costs.

ORDER 2

PLACE OF INSTITUTING AND TRIAL OF SUITS

1. Subject to the provisions of the Law on transfer of suits, the place for trial of any suit shall be regulated as follows:
2. All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated, or the distraint or seizure took place.
3. All suits for specific performance, or upon the breach of any contract, may be commenced and determined in the Judicial Division in which such contract was entered into or ought to have been performed or in which the defendant resides or carries on business.
4. (1) All other suits may be commenced and determined in the Judicial Division in which the cause of action arose or where the defendant resides or carries on business.
(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in anyone of those Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.
5. If any suit is commenced in the wrong Judicial Division, the presiding Judge shall transfer it to the appropriate division.

ORDER 3

FORM AND COMMENCEMENT OF ACTION

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all civil proceedings to wit;

a. where a plaintiff claims:

(i) any relief or remedy for any civil wrong; or

(ii) damages for breach of duty, whether contractual, tortious, statutory or otherwise; or

(iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

b. Where the claim is based on or includes an allegation of fraud, or

c. where an interested person claims a declaration.

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

◆(a) statement of claim;

◆(b) copies of every document to be relied on at the trial; provided that dispute survey plans need not be filed at the commencement of the suit, but shall be filed within such time as may be ordered by the court upon any application made under sub-rule 3 of this rule.

◆(c) list of non-documentary exhibits.

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

◆(e) written statements on oath of the witnesses; provided that the statement on oath of witnesses requiring subpoena from the court need not be filed at the commencement of the suit.

Such witnesses who require subpoena or summons shall at the instance of the party calling him be served with special Form 1 before the filing of the suit.

(2) Where a plaintiff fails to comply with sub-rule 1 of this rule, his originating process shall not be accepted for filing by the Registry.

(3) In land matters a plaintiff may file a motion on notice along with the originating process, for leave to enter the land in dispute for the purpose of making dispute survey plan for the suit.

(4) Notwithstanding sub-rule (1) of this rule,

◆(a) where before commencement of a suit, a person reasonably perceives that the subject matter of an intended suit is in danger of being alienated wasted or damaged, such an intending plaintiff may apply for injunction before the suit is commenced to restrain the act being complained of.

(b) The application shall be by motion on notice, or in appropriate cases by motion ex parte supported by an affidavit and a written address.

(c) Such an application shall be struck out if the applicant fails to file the substantive suit within 14 days of filing the application.

◆(d) Any order made under sub rule (3) (a) of this rule shall stand discharged if the applicant fails to file the substantive suit within 14 days of filing the application.

◆(e) Any order of injunction made pursuant to this sub-rule shall not last longer than the filing of the prospective suit.

(f) A motion for injunction filed pursuant to rule 3(a) of this Order shall be merged with the substantive suit when filed, and the motion shall thenceforth, as far as is practicable, be treated as if it were filed after the commencement of the substantive suit.

3. Except in cases for which different forms are provided in these Rules, the writ of summons shall be in form 2 with such modifications or variations as circumstances may require.

4. A writ of summons to be served out of Nigeria shall be in Form 3 with such modifications or variations as circumstances may require.

5. Any person claiming to be interested under a deed, Will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

7. A judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such orders as he deems fit.

8. (1) An originating summons shall be in the Forms 4, 5, or 6 to these rules, with such variations as circumstances may require. It shall be prepared by the plaintiff or his Legal Practitioner and filed in the Registry. It shall be sealed and signed by the Registrar and when so sealed and signed shall be deemed to be issued.

◆(2) An originating summons shall be accompanied by:

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

(b) Copies of all documentary exhibits to be relied upon;

(c) written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof for the use of the court and for service on the defendant(s).

◆◆ 9. A suit may be commenced by originating motion where;

(a) it is so expressly provided, by these rules;

(b) it is so expressly provided by any written law, in force in the state from time to time.

◆◆ 10. Subject to the provisions of the Sherriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Enugu State shall be endorsed by the Registrar of the Court with the following notice-◆

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

◆ 11. (1) The Registrar shall indicate the date of presentation for filing of every originating process presented to him, and shall arrange for it ◆ service where service is required.

(2) An originating process shall not be altered after it is sealed except by leave of a Judge.

ORDER 4

◆ INDORSEMENT OF CLAIM AND OF ADDRESS

1. Every originating process shall contain the claim, and / or the relief or remedy sought and the names of the plaintiff or applicant as the case may be.

2. Where a plaintiff sues, or the defendant or any of several defendants is sued in a representative capacity, the originating process shall state that capacity.

3. In probate actions the originating process shall state whether a plaintiff or applicant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity.

4. Where the claim is for debt or liquidated demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs and shall further state that the defendant may pay the amount with costs to the plaintiff ◆ Legal Practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

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

6. (1) A plaintiff suing in person, shall state on the originating process his residential or business address as his address for service. If he lives and carries on business outside the jurisdiction he shall state an address within the jurisdiction as his address for service.

◆ (2) Where a plaintiff sues through a Legal Practitioner, the Legal Practitioner shall state on the originating process, his chamber's address as the address for service. If the Legal Practitioner is based outside the jurisdiction he shall state a chamber's address within the jurisdiction as his address for service.

7. Where an originating process is to be served on a defendant outside the jurisdiction the process shall state the address required in rule 6.

8. If the originating process does not state an address for service, it shall not be accepted and if any such address is illusory, fictitious or misleading the process may be set aside by a Judge.

ORDER 5

EFFECT OF NON-COMPLIANCE

1. Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.
2. The court may on the ground that there has been such a failure as mentioned in rule 1, and on such terms as to costs or otherwise as it, thinks just, set aside either wholly or in part, the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may make an order to rectify or regularize the proceedings, and may allow such amendments to be made and to make such order dealing with the proceeding generally as it thinks fit.
3. An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings after becoming aware of the irregularity.
4. Any application under the forgoing paragraph may be made by motion on notice, and the grounds of objection shall be stated in the notice of motion.
5. No proceedings in the court, and no process, order, ruling, judgment issued or made by the court shall thereafter be declared void solely by reason of any defect in procedure or writ or form, as prescribed by these rule; rather the court shall decide all issues, according to substantial justice without undue regard to technicalities.❖

ORDER 6

ISSUE OF ORIGINATING PROCESS

1. Originating process shall be prepared by the plaintiff or his Legal Practitioner, and shall be clearly printed on good quality paper.
2. (1) The Registrar shall seal every originating process, whereupon it shall be deemed to be issued.

(2) A plaintiff or his Legal Practitioner shall, on presenting any originating process for sealing, leave with the Registrar as many copies of the process as there are defendants to be served plus extra copies for the court and registry use.

(3) Each copy shall be signed by the Legal Practitioner or by a plaintiff where, if a natural person, he sues in person, and shall be certified after verification by the registrar, as being a true copy of the original process filed.

3. The Registrar shall after sealing an originating process, note on it the date of filing and the number of copies supplied by a plaintiff or his Legal Practitioner. The Registrar shall then make an entry of the filing in the cause book and identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

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

5. The originating process in probate actions shall be accompanied by an affidavit sworn to by a plaintiff or applicant or one of the several plaintiffs verifying the contents of the process.

6. (1) In case service of an originating process shall not have been effected within one year from the date of its issue, the process shall cease to have effect for purposes of service unless at any time before or after the expiration of the current period, the court, on the application of the plaintiff, renews the process for a further period not exceeding six months at a time. Such a process not served after two years of its issue, shall become void altogether and the suit shall be struck out.

◆(2) Before an originating process, the validity of which has been extended under this provision is served, it shall be marked with an official stamp showing the period for which the validity of the process, has been so extended.

◆(3) Where the validity of an originating process is extended by order made under this rule, the order shall operate in relation to any other process (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other process until the expiration of the period specified in the order.

7. Where an originating process is lost after issue, a Judge, upon being satisfied of the loss and of the correctness of the process, may order the copy to be filed and sealed in place of the lost originating process.

8. A plaintiff may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concurrent originating processes each to bear the same date as the initial process marked **CONCURRENT** and have stated on it the date of issue.

9. An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction and an originating process for service out of the jurisdiction may be issued and marked as a concurrent originating process with one for service within jurisdiction.



ORDER 7

SERVICE OF PROCESS

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1. (1) Service of originating and other processes shall be made by a Sherriff, Deputy Sherriff, Bailiff, Special Marshal or other officer of the court. The Chief Judge may also appoint and register any Courier Company or any other person to serve court processes and such person shall be called process server.

(2) Where a party is represented by a Legal Practitioner, service of court process of which personal service is not required, may be made on such Legal Practitioner or any Legal Practitioner in his chambers or on the clerk or secretary of such chambers.

2. The process server shall serve an originating process by delivering to the party to be served, a copy of the process duly certified as prescribed by Order 6 Rule 2

(3).

3. No personal service of an originating process shall be required where the defendant has authorized his Legal Practitioner in writing to accept service and such Legal practitioner accepts service.

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

4. All processes in respect of which personal service is not expressly required by these rules or any applicable law shall be sufficiently served, if left with any of the following;

- (a) an adult family member;
- (b) an adult person under the employment;
- (c) an adult person under the control;

◆ of the person, the process is meant for.

5. Where it appears to the court (either after or without an attempt at personal service) that for any reason, personal service cannot be conveniently effected, the court may order that service be effected in any manner by which it appears to the court that the document is likely to come to knowledge of the person to be served.

6. (1) where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless a Judge otherwise orders; Provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.

◆(2) When a party to be served is in the service of the government of the state or of a local government council, the registry may transmit the document to be served to the senior officer of the department of government in the judicial division or place where the party to be served works or resides or the local government council in whose employment the party to be served is, and such officer shall cause the same to be delivered to the person accordingly.

7. Service on a limited liability company shall be effected as prescribed in the Companies and Allied Matters Act; Provided that in default of such provision, service may be effected on the company by a registered post addressed to its principal office in the state or by delivery to the principal officer wherever he may be found in the state or by delivery at the company's office in the state, to any one apparently in charge of such office. Provided further that where the company has no office in the state, service shall be effected by registered post.

8. Where partners are sued in the name of their firm, the process shall be served either upon any one or more of the partners, or at the principal place within the judicial division of the business of the partnership upon any person having at the time of the service, the control or management of the partnership business there.

9. Service on local government councils shall be effected in accordance with the provisions of the Local Government Law.

10. Service on a statutory corporation shall be in accordance with the law constituting the corporation.

11. In default of any provisions as prescribed in rules 9 and 10 of this Order, service may be effected by registered post addressed to the principal officer of the local government or the corporation as the case may be, or by giving the process to the principal officer thereof wherever he may be found in the state, or by delivery of the process at the office of the council or the corporation, to anyone found therein apparently in charge of the office, at the material time.

12. When the suit is against a corporation or a company authorized to sue and be sued in the name of an officer or trustee, the process may be served by giving the same to any director, secretary, or other principal officer or by leaving it at the office of the corporation or company.

13. When the suit is against a foreign corporation or company, having an office and carrying on business within the country, and such suit is limited to a cause of action which arose within the country, the writ or document may be served by giving the same to the principal officer of such foreign corporation or company, in the country.

14. Where the person on whom service is to be effected is living or serving on board any ship, it shall be sufficient service to deliver the process to the person on board whom is at the time of such service, apparently in charge of such ship.

15. (1) Where the person on whom service is to be effected is a prisoner in a prison, or a lunatic in an asylum, it shall be sufficient service to deliver the process at the prison or asylum to the superintendent or person appearing to be the head officer in charge thereof.

◆(2) Where an infant is a party to a suit, service of any process on the infant may be effected by the delivery of the process to his father or guardian, or if none, to the person with whom the infant resides or under whose care he is.

Provided that the court may order that service made or to be made on an infant personally shall be deemed good service.

16. Where the suit is against a defendant residing out of, but carrying on business within the country in his own name or under the name of a firm through an authorized agent, and such suit is limited to a cause of action which arose within the country, the process may be served by giving it to such agent.

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

18. Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to the process server, the process server may leave the process within the reach of the person to be served, and this shall be deemed good and sufficient service, for all purposes.

19. (1) After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and shall exhibit the acknowledgement of service, if any.

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

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

◆ (2) Notwithstanding sub-rule (1) of this rule, where a party requires service of a process to be effected by a courier company or any other person specially appointed by the Chief Judge under rule 1 of this Order, the cost of such service shall be directly borne by the person requiring the service.

21.◆ (1) Service of originating and other processes whatsoever shall be effected between the hours of 6.00am in the morning and 6.00pm in the evening.

◆◆ (2) Save in exceptional circumstances and as may be authorized by a Judge, service shall not be effected on a Sunday.

22.◆ (1) A register shall be kept at the Registry in such form as the Chief Judge may direct for recording service of processes by any process server. The Registrar shall record therein the names of the plaintiff

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

◆ (2) Where any process was not served, the cause of failure shall be recorded in the register. Every entry in such register or certified copy thereof shall be prima facie evidence of the matters stated therein.

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ORDER 8

SERVICE OUT OF NIGERIA AND SERVICE OF FOREIGN PROCESS

1. ◆◆◆◆◆◆◆ Subject to the Sheriff and Civil Process Act or any other Federal Legislation, a Judge may allow any originating or other process to be served outside Nigeria where;

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

(b) ◆ any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within jurisdiction, is sought to be construed, rectified, set aside or enforced;

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

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

(e) ◆ the claim is brought against the defendant to enforce, rescind, dissolve, annul or otherwise effect a contract or to recover damages or other relief for or in respect of a contract:

◆(i) made within jurisdiction, or

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

◆(iii) which by its terms or by implication is to be governed by the applicable law in Enugu State, or the parties have agreed that the court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the defendant in respect of a breach committed which by its terms or by implication is to be governed by the applicable law in Enugu State, or the parties have agreed that the

court shall have jurisdiction to entertain any claim in respect of such contract, or is brought against the defendant in respect of a breach committed within jurisdiction, of a contract wherever made, notwithstanding that such breach was preceded or accompanied by a breach out of jurisdiction which rendered impossible the performance of the contract, which ought to have been performed within jurisdiction.

◆(f)◆ the claim is founded on a tort committed within jurisdiction, or

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

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

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

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

◆(k)◆ the proceedings relate to probate matters, or

◆(l)◆ where any proceeding under any law or rule of court has been instituted by any originating process.

2. Where leave is granted to serve an originating process in any foreign country the process shall be served either;

◆◆◆ (a) by a courier company appointed by the Chief Judge under◆ Order 7 Rule 1 (j); or

◆◆◆ (b) by the Chief Registrar transmitting the process to the Minister of Foreign Affairs for onward transmission through appropriate channels, to the person the process is meant for. The forwarding letter to the request may be as in Form 8 and

◆9 with such modifications or variations as circumstances may require;

(c) a party wishing to serve a process under (b) above shall file a praecipe in Form 10 with such modifications or variations as circumstances may require;

(d) an acknowledgement of delivery in the courier company's form shall be sufficient proof of a service effected under (a) above.

(e) a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country, to the Court, shall be deemed good and sufficient proof of service for service effected under (b) above.

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

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

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

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

(d) the Chief Registrar shall examine and verify the process server's particulars of charges and may approve it or approve some lesser figure, whereupon the Chief Registrar shall forward to the Attorney-General, for onward transmission to the Court from which the foreign process originated, together with the following:

(i) a statement or note of the approved amount for the service;

(ii) evidence of service; and

(iii) certificate relating to the service.

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

ORDER 9

APPEARANCE

1. (1) A defendant served with an originating process shall, within 42 days of the service of the originating process and the accompanying documents on him, file in the registry;

(a) the original and copies of duly completed and signed memorandum of appearance as in form 11, with such modifications or variations as circumstances may require;

(b) The statement of defence;

(c) Copies of every documents to be relied on at the trial, provided that dispute survey plans need not be filed with the statement of defence, but shall be filed within 3 months of the receipt of the plaintiff's dispute survey plan or where the plaintiff is not interested in filing a dispute survey plan within 5 months of the service of the originating process on him;

(d) List of non-documentary exhibits;

(e) List of witnesses to be called at the trial;

(f) Written statement on oath of the witnesses, provided that the statement on oath of witnesses requiring subpoena from the court need not be filed with the statement of defence;

Such witnesses who require subpoena or summons shall at the instance of the defendant be served Form 1 in Appendix.

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Such written statement of witnesses requiring subpoena shall be filed within the time to be ordered by the court.

◆◆◆◆ (2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp all the copies and cause copy thereof to be served on the plaintiff or the plaintiff's Legal Practitioner.

2. (1) A defendant, if a natural person, may appear in person and shall state in the memorandum of appearance, an address for service, which shall be within Enugu State.

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

3. ♦ The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If any such address is illusory, fictitious, or misleading, the appearance may be set aside by a Judge on the application of a plaintiff.
4. If two or more defendants in the same action appear through the same Legal Practitioner, the memorandum of appearance shall include the names of all defendants so appearing.
5. If a defendant enters an appearance after the time prescribed in the originating process, he shall pay to the Court such additional fee as may from time to time be prescribed by the Chief Judge, for each day of default.
6. In probate matters, any person not named in the originating process, may intervene and appear in the matter, on filing an affidavit showing his interest in the estate of the deceased.
7. A person under legal disability, shall enter an appearance by his guardian.

ORDER 10

DEFAULT OF APPEARANCE

1. Where no appearance has been entered for a person under legal disability, a plaintiff shall apply to a Judge, for an order, that some person be appointed guardian for such defendant, and when appointed, the person may appear and defend. The application shall be made after service of the originating process. Notice of the application shall be served on the person intended to be appointed the guardian of the defendant.
2. Where any defendant fails to appear, a plaintiff may proceed upon default of appearance under the appropriate provisions of these rules, upon proof of service of the originating process.
3. Where the claim in the originating process is a liquidated demand and the defendant or all of several defendants fail to appear, a plaintiff may apply to a Judge, for judgment for the claim on the originating process or such lesser sum and interest as a Judge may order.
4. (1) Where the claim in the originating process is a liquidated demand and there are several defendants, of whom one or more appear to the process and another or others fail to appear, a plaintiff may apply to a Judge, for judgment against those who have not appeared, provided that the liability of such a defaulting defendant or defendants is ascertainable and severable from those who entered appearance.

(2) Notwithstanding a judgment entered under sub-rule (1) of this rule, the plaintiff may proceed with the action against those who have appeared, for the remainder of his claim.

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

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

7. (1) Where the claim in the originating process is for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any of the defendants fail to appear, a plaintiff may apply to a judge for judgment against any such defaulting defendant(s) as the claim affects him or them. The value of the goods and the damages, or the damages only, as the case may be, shall be ascertained in such manner and subject to the filing of such particulars, as a Judge may direct before judgment, in respect of that part of the claim.

(2) Notwithstanding judgment entered under rule (1) above, the plaintiff may proceed with the action against those who have appeared for the remainder of his claim.

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

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

9. (1) Where judgment is entered pursuant to any of the preceding rules of this Order, a Judge may on application of the defendant against whom the judgment was entered, set aside or vary such judgment, on such terms as he deems fit. The application shall be made within a reasonable time of the judgment and shall show a good defence to the claim and a good reason for the default.

(2) Where such judgment is set aside, the court shall require the defendant to file all the processes required, within 30 days thereof.

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

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

ORDER 11

SUMMARY JUDGMENT

1. (1) This Order shall apply only to liquidated money demands.
- ◆(2) The provisions of Order 3 Rule 2 shall not apply to any proceedings brought under this order.
2. Where a plaintiff believes that there is no defence to his claim, he shall file with his writ of summons, a Motion on Notice for Summary Judgment which shall be accompanied by an affidavit stating the grounds for his belief.
3. A plaintiff shall in addition to the court's copy, deliver to the Registrar as many copies of the processes referred to in rule 2 of this Order, as there are defendants.
4. Where a defendant served with the process referred to in rule 2 of this Order intends to defend the suit, he shall within 5 days of service on him (or in the case of a person served outside Enugu State within 30 days) of the service, file notice in writing of his intention to defend the suit together with an affidavit setting out the grounds of his defence.
5. The parties that is to say both plaintiff and defendant shall each within 14 days of filing of the defendant's notice of his intention to defend, file a written brief articulating their respective cases.
6. The parties or their Legal Practitioners shall not be required to exchange the written briefs referred to in rule 5 above.
7. Where upon going through the documents filed by or on behalf of the parties under the preceding rules of this order, it appears to a Judge that the defendant has no good defence to the claim, the Judge shall on the date fixed on the motion paper for hearing or any other date the case is adjourned, enter Judgment for the plaintiff without requiring further evidence.
8. Where it appears to a Judge, that a defendant has a good defence and ought to be permitted to defend the claim, the Judge shall grant the defendant leave to defend the suit and the suit shall subject to rules 9 and 10 of this Order, be adjourned for trial.
9. Where a Judge grants the defendant leave to defend the suit the plaintiff shall within 30 days thereof file in the registry his statement of claim, along with the list of his witnesses, their written statements on Oath, and the documentary exhibits and list of non documentary exhibits he intends to at the trial.
10. The defendant shall within 21 days of the service on him of the plaintiff's statement of claim and other processes referred to in Rule 9 of this Order file his statement of defence along with a list of his witnesses their written statements on oath, written documentary exhibits and list of non documentary exhibits he intends to use at the trial.
- 11.(1) Where the defendant admits part of the claim or where it appears to a Judge that the defendant has a good defence to part of the claim but no defence to other parts of the claim, the Judge may enter judgment for that admitted part or for the part of the claim to which there is no defence and shall

thereupon grant leave to the defendant to defend that part to which there is a defence and shall then adjourn it for trial subject to rules 9 and 10 of this Order for trial.

◆◆◆◆ (2) Where a judgment for part of the claim under rule 11(1) of this rule is entered, the provision of rules 9 and 10 of this Order as to filing of pleadings and other papers shall be complied with by the parties in relation to that part of the claim for which Judgment is not entered.

12. (1) Where there are several defendants whose liabilities to the claim are severable from one another and it appears to a Judge that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend, the former may be permitted to defend and the Judge shall enter judgment against the later.

◆◆◆◆◆◆ (2) Where the Judge grants leave to some of the defendants to defend, he shall adjourn the matter subject to rules 9 and 10 of this Order for trial.

ORDER 12

APPLICATION FOR ACCOUNT

1. Where in an originating process a plaintiff seeks an account under Order 4 rule 5 or where the claim involves taking an account, if the defendant either fails to appear, or after appearance fails to satisfy the Judge that there is a preliminary question to be tried, the Judge shall, on application make an Order for the proper accounts with all necessary inquiries and directions.

2. An application for account shall be supported by an affidavit, stating concisely the grounds of the plaintiff's claim to an account. The application may be made at any time after the time prescribed for defence.

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

ORDER 13

PART 1

PARTIES GENERALLY

1. All persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such plaintiff(s) as may be found to be entitled to relief and for such relief, as he or they may be entitled to, without any amendment.
2. Where an action has been commenced in the name of the wrong person as plaintiff or where it is doubtful whether it has been commenced in the name of the right plaintiff, a Judge may order the correction of any such name or the substitution or addition of any other person as plaintiff on such terms as may be just.
3. Where in commencing an action any person has been wrongly or improperly included as a plaintiff and a defendant has set up a counterclaim or set off, such defendant may establish his set off or counterclaim as against the parties other than a plaintiff so included, notwithstanding the inclusion of such plaintiff or any proceeding based thereon.
4. Any person may be joined as defendant against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.
5. Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated, a Judge may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just.
6. (1) It shall not be necessary that every defendant shall be interested as to all the reliefs prayed for, or as to every cause of action included in any proceeding against him.
◆◆◆◆ (2) A Judge upon considering the defence filed by any defendant may on application by that defendant make such order as may appear just to prevent him from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.
7. A plaintiff may at his option join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any contract including parties to bills of exchange and promissory notes.
8. Where a plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable and to what extent, may be determined as between all parties.
9. (1) Persons under legal disability may sue or defend by their guardians.
◆◆ (2) (i) Where a person is sued as a guardian of a person under Legal disability he shall if he objects to being so sued, be at liberty to apply to Court within 14 days of the service of the originating process on him for his name to be struck out from the suit. The application shall be on notice to the plaintiff.

(ii) An application under the proceeding rule shall show good cause why the person so sued, is not the appropriate person to stand as guardian to the person under legal disability.

(iii) On hearing the application the Court may either grant or refuse the application.

(iv) Where the court strikes out the name of the person applying to be struck out under sub rule (i) above, the court may appoint any person appearing to it to be the appropriate person, to stand as guardian to the person under legal disability.❖

❖❖❖❖❖❖ The person so appointed by the Court shall be served with the requisite processes in the suit.

10. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such person, but a Judge may, at any stage of the proceedings, order any of such persons to be made parties in addition to or in lieu of the previously existing parties.

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

❖12. (1) Where in any proceedings a Judge is satisfied that;

(i)❖❖❖❖ persons, class or members of a class interested in the subject matter of the proceeding cannot be ascertained or cannot readily be ascertained, the Judge may make an order appointing one or more persons to represent the persons, the class or members of the class in the proceedings;

(ii)❖ the persons, class or members of the class interested, if ascertained cannot be found, the Judge may make an order appointing one or more persons to represent the persons, the class or members of the class in the proceedings;

(iii)❖ though the persons, class and members thereof can be ascertained and found, it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent those persons or class or members of the class, the Judge may make an order appointing one or more persons to represent the persons, the class or members of the class in the proceedings;

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

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

(3) Provided that where the subject matter of the suit is a land the notice shall also include an advertisement in a national newspaper widely circulated within jurisdiction of the court, as well as a

notice on sign-boards, posted on the land. When these are done they shall constitute sufficient notice to the class of persons so represented.

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

(5) In this Rule, the word "class" includes the persons recognized by the Customary Law as members of a family or as members of a land owning community.

13. Where in any proceedings mentioned in sub-rule (1) of rule 12 of this Order, a compromise is proposed and some of the absent persons who are interested in or may be affected by the compromise are not parties to the proceedings (including unascertained persons) but where:

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

❖❖❖❖ (ii) the absent persons are represented by a person under rule 12 of this Order, who so assents:

a Judge if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approved the compromise and order that such compromise shall be binding on the absent persons, and they shall be bound accordingly, except where the order had been obtained by fraud or non-disclosure of material facts.

14. ❖ (1) ❖ If in any proceedings it appears to a Judge that any deceased person who was interested in the proceedings has no legal personal representative, the Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for the purpose of the proceeding, on such notice to such persons (if any) as the Judge shall deem fit, either specifically or generally by public advertisement, and the order so made and any order consequent thereon, shall bind the estate of the deceased person in the same manner, in every respect, as if a duly constituted legal personal representative of the deceased had been a party to the proceedings. ❖

(2) ❖ Where a sole or sole surviving plaintiff or defendant in a proceedings dies and the cause of action survives, a Judge may on the application of either the deceased's Legal Practitioner or the opposing party order any person to take the place of the said deceased and proceed with the suit.

❖(3)❖ In default of such application or where the person substituted fails to proceed, the court may proceed with the case and enter judgment as the justice of the case demands or as the case may be, for the person against whom the proceedings might have been continued.

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

(2) A Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Judge to be just, order that the names of any parties improperly joined be struck out.

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

(4) Every person whose name is added as defendant shall be served with the originating processes or notice in the manner prescribed in these rules or in such manner as may be prescribed by a Judge and the proceedings against such person shall be deemed to have begun on the service of such originating processes or notice.

16. Any application to add or strike out or substitute or vary the name of a plaintiff or defendant may be made to a Judge by motion.

17. (1) Where a defendant is added or substituted, the originating process shall be amended accordingly and the plaintiff shall unless otherwise ordered by a Judge file an amended originating process and cause the new defendant to be served in the same manner as the original defendant.

◆◆◆◆ (2) The newly joined defendant shall within 30 days file his statement of defence, the documentary exhibits intended to be tendered at the trial, list of non documentary exhibits, list of his witnesses and their statements on oath.

18. (1) Where it appears to a Judge that any person not a party in the proceedings may bear eventual liability either in whole or in part, the Judge may upon an application allow that person to be joined as a third party by any of the defendants. The application shall state the grounds for the applicant's belief that such third party may bear eventual liability.

(2) The order and existing processes shall be served on the third party.

19. Where a party is joined to any proceeding as a third party he shall enter appearance within 30 days of service of the order of joinder on him.

20. If a third party duly served with the order and all existing processes does not enter an appearance or makes default in filing any pleading, he shall be deemed to admit the claim against him and shall be bound by any judgment given in the action, whether by consent or otherwise.

21. A party joined as a third party in any proceedings may join any other party in the same manner as he was joined and the expression "third party" shall apply to and include every person so joined.

PART II - ACTIONS AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

22. Any two or more persons claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firms, if any, of which they were partners when the cause of action arose and any party to an action may in such case, apply to the Judge for a statement of the names and addresses of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the Judge may direct.

23. (1) When an originating process is issued by partners in the name of their firm, the plaintiffs or their Legal Practitioners shall, on demand in writing by or on behalf of any defendant declare in writing the names and residential addresses of all the persons constituting the firm on whose behalf the action is brought.

(2) Where the plaintiff or their Legal Practitioners fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as a Judge may direct.

(3) Where the names of the partners are so declared, the suit shall proceed in the same manner and the same consequences in all respects, shall follow, as if they had been named as plaintiff in the originating process, provided that the proceedings may continue in the name of the firm.

24. (1) where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall continue in the name of the firm.

(2) Where an originating process is served upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm.

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

PART III CHANGE OF PARTIES BY DEATH OR OTHERWISE, ETC.

26. No proceedings shall abate by reason of death or bankruptcy of any of the parties, if the cause of action survives and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party after defence has closed its case.



(1) Where by reason of death or bankruptcy, or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the proceeding, it becomes necessary or desirable that any person not already a party should be made a party or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex parte upon an allegation of such change, or transmission of interest or liability, or of any such person interested having come into existence.

(2) An order obtained under this rule shall be served upon the continuing party or parties, or their Legal Practitioner(s) and also upon such new party unless the person making the application is the new party.

(3) Every person served who is not already a party to the proceedings shall where applicable enter an appearance thereto within the same time and in the same manner as if he had been served with the originating process. He shall thereupon be served with the originating and all existing processes.

(4) Any party served under this rule who was not already a party to the proceedings shall file his pleadings and other documents as if he had been an original party in the proceedings.

28. In case of an assignment, creation or devolution of any estate or title pendente lite, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

29. Where any person who is under no legal disability or being under any legal disability but having a guardian in the proceedings, is served with an order under rule 27, such person may apply to a Judge to discharge or vary such order at any time within 14 days from the service of the order.

30. Where any person under any legal disability and not having a guardian in the proceedings is served with an order under Rule 27, such a person may apply to a Judge to discharge or vary such order at anytime within 14 days from the appointment of a guardian for such party, and until such period of 14 days has expired, such order shall have no force or effect as against the person under legal disability.

PART IV - LEGAL PRACTITIONERS OR AGENTS

31. Where by these rules any act may be done by any party in any proceedings, such act may be done either by the party in person if a natural person, or by his Legal Practitioner, provided that a legal practitioner shall not give evidence in place of his client.

ORDER 14

JOINDER OF CAUSES OF ACTION

1. Subject to the following rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appears that they cannot be conveniently tried or disposed of together, a Judge may order separate trials of any such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

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

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

3. Claims by or against an executor or administrator as such, may be joined with claims by or against him personally, provided that in the latter they are alleged to arise, with reference to the estate, in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

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

ORDER 15

PLEADINGS

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

(2) A defendant shall file his statement of defence, set off or counter-claim if any, not later than 42 days after service on him of the writ of summons and accompanying documents. A counterclaim shall have the same effect as a cross action, so as to enable the court pronounce a final judgment in the same proceedings. A set-off must be specifically pleaded.

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

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

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

3.◆ (1) In all cases in which the party pleading, relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases, in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings.

◆◆◆◆◆ (2) In an action for libel or slander if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

4.◆ An application for a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading requiring particulars may be made to a Judge at the first pre-trial proceedings. The Judge may grant such application upon such terms as may be just.

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

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

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

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

◆◆ (a) all grounds of defence or reply, which make an action or counter-claim, not maintainable.

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

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

◆◆◆◆◆ (2) Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, Limitation Law, release, payment, performance, facts showing insufficiency in contract or illegality either by any enactment or by common law, he shall specifically plead same.

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

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

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

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

12. Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. If in such case the person so pleading desires to rely in the

alternative, upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

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

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

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

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

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

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

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

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

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

(b) it is scandalous, frivolous or vexatious;
or

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

(d) it is otherwise an abuse of the process of the Court;

◆ and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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

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

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

◆◆◆◆ (2) Where a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to file the same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited the pleadings shall be deemed closed:

◆◆◆ Provided that this rule shall not apply to a defence to counterclaim and unless the plaintiff files a defence to counterclaim, the statements of fact contained in such counterclaim shall at the expiration of 14 days from the service thereof or of such time (if any) as may by order be allowed for filing of a defence thereto, be deemed to be admitted, but the Judge may at any subsequent time, give leave to the plaintiff to file a defence to counterclaim.

ORDER 16

STATEMENT OF CLAIM

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

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

2.◆ A statement of claim may be amended without amending the indorsement on the writ.

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

ORDER 17

DEFENCE AND COUNTER-CLAIM

1. The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath.
2. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but answer the point of substance. If an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.
3. (1) In an action for debt or liquidated demand in money, a mere denial of the debt shall not be sufficient defence.
(2) In an action for money had and received a defence in denial, must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant, a receipt to the use of the plaintiff.
(3) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed.
(4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, e.g. the drawing, making, indorsing, accepting, presenting or notice of dishonor of the bill or note.
4. If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.
5. No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.
6. Where any defendant seeks to rely upon any ground as supporting a right of set-off or counter claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counterclaim.
7. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, along with any other persons, he shall add to the title of his defence, a further title, similar to the title in a statement of claim, setting forth the names of all persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action and shall deliver his defence to such of them as are parties to the action within the period which he is required to deliver it to the plaintiff
8. Where any such person as in rule 7 of this Order, is not a party to the action he shall be summoned to appear, by being served with a copy of the defence and counterclaim, and such service shall be regulated by the same rules as those governing the service of the originating process, and every defence and counter claim so served, shall be indorsed in Form 12 with such modifications or variations as circumstances may require.

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

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

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

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

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

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

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

15. Whenever any defendant in his defence or in any further defence pursuant to rule 14 of this Order, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may concede to such defence (which concession may be in Form 13 with such modification as circumstances may require) and may thereupon obtain judgment up to the time of the pleading of such defence, unless the Judge either before or after the delivery of such concession otherwise orders.

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

ORDER 18

REPLY

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

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

ORDER 19

ADMISSIONS

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

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

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

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

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

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

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

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

ORDER 20

DEFAULT OF PLEADING

1. If the claim is only for a debt and the defendant does not within the time allowed for the purpose, file a defence, the plaintiff may, at the expiration of such time, apply for final judgment for the amount claimed with costs.
2. When in any such action as in rule 1 of this Order, there are several defendants, if one of them makes default as mentioned in rule 1 of this Order, the plaintiff may apply for final judgment against the defendants making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.
3. If the plaintiff's claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary damages only, and the defendant or all the defendants, if more than one, make default as mentioned in rule 1 of this Order, the plaintiff may apply to a Judge for judgment. The Judge before giving such judgment shall require evidence only as to the quantum of damages and/or value of the goods.
4. When in any such action as in rule 3 of this Order, there are several defendants and any of them defaults in filing the statement of defence, the plaintiff may if the claim against the defendant(s) are severable, apply to a Judge for judgment to be entered against the defaulting defendant(s) and the Judge may proceed to enter such Judgment as the justice of the case demands, and shall proceed with the case against the remaining defendants in respect of reliefs, being sought against them.
5. Where the claim is for debt and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and any defendant makes default as mentioned in rule 1, the plaintiff may apply to a Judge for final judgment for the debt and may also apply for interlocutory judgment for the value of the goods and damages, or the damages only as the case may be, and proceed as mentioned in rules 3 and 4.
6. In an action for the recovery of land, if the defendant makes default as mentioned in rule 1, the plaintiff may apply for a judgment that the person whose title is asserted in the writ of summons, shall recover possession of the land with his costs.
7. Where the plaintiff has indorsed a claim for mesne profits or arrears of rent in respect of the premises claimed, or any part of profits, rent, or damages for breach of contract or wrong or injury to the

premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 1, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in rules 3 and 4.

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

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

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

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

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

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

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

ORDER 21

PAYMENT INTO AND OUT OF COURT

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

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

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

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

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

◆◆ (6) The notice shall be in Form 14 with such modifications or variations as circumstances may require. The plaintiff shall acknowledge the receipt of the notice in writing within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

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

2. (1) Where money is paid into Court, under rule 1, the plaintiff may within 14 days of the receipt of the notice of payment into Court or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or anyone or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate by giving notice to the defendant in Form 15 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

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

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

◆◆ (4) Where in an action for libel or slander, the plaintiff accepts money paid into court, either party may apply to a Judge for leave for the parties or either of them to make a statement in open Court in terms approved by the Judge.

3. If the whole of the money in court is not taken out under rule 2, the money remaining in court, shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of

which it was paid in pursuance of an order of a Judge, which may be made at any time before, at or after trial.

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

◆◆ (2) If the plaintiff elects within 14 days after receipt of notice of payment into court to accept the sum or sums paid into court, he shall give notice as in Form 16 with such modifications or variations as circumstances may require, to each defendant, and thereupon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

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

◆◆◆ (4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into court, the plaintiff may within 14 days elect to accept the sum paid into court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 15 with such modifications or variations as circumstances may require. The plaintiff may tax his costs against the defendant who has made such payment in accordance with rule 2(3) of this Order and the action shall abate against that defendant.

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

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

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

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

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

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

ORDER 22

PROCEEDING IN LIEU OF DEMURRER

1. No demurrer shall be allowed.

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

(2) If in the opinion of the Judge, the decision on such point of law substantially disposes of the whole proceedings or of any distinct part thereof, the Judge may make such decision, as may be just.

ORDER 23

DISCONTINUANCE

1. (1) The plaintiff may at any time before receipt of the defence or after the receipt thereof, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

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

(3) Where a defence has been filed, the plaintiff may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order.









(4) Where proceedings have been stayed or struck out upon a plaintiff withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the Judge have been fully complied with.

(5) The Judge may in like manner and like discretion as to terms upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter claim to be withdrawn or struck out.

2. When a cause is ready for trial, it may be withdrawn by either plaintiff or defendant upon producing to the Registrar consent in writing signed by the parties and thereupon a Judge shall strike out the matter without the necessity of attendance of the parties or their Legal Practitioner.

ORDER 24

AMENDMENT

1. A party may amend his originating process and/or pleadings with leave of the Judge at any time before the close of pre-trial proceedings and not more than twice during the trial.
2. Application to amend may be made to a Judge. Such application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.
3. Where any originating process and or a pleading is to be amended except for clerical errors, a list of any additional witness to be called together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment shall be filed with the application.
4. If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within 7 days from the date of the order, such party shall pay an additional fee of N200.00 (two hundred Naira) for each day of default: 
5. Whenever any originating process or pleading is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.
6. Whenever any endorsement or pleading is amended, it shall be marked in the following manner:
"Amended this .day of 20pursuant to Order of 
 (name of Judge) dated the . day of 
7. A Judge may at anytime correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission upon application, without an appeal being filed.
8. Subject to the provisions of rule I of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings.

ORDER 25

PRE-TRIAL PROCEEDINGS AND SCHEDULING

1. (1) Within 14 days after close of pleadings, the plaintiff shall apply for the issuance of a pre-trial proceedings notice as in Civil Form 17 in Appendix.

(2) Upon application by a plaintiff under sub-rule 1 above, the Judge shall cause to be issued to the parties or their Legal Practitioners (if any) a pre-trial proceedings notice as in Civil Form 17 in Appendix accompanied by a pre-trial information sheet as in Form 18 for the purposes set out hereunder:

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

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

(c) promoting amicable settlement of the case.

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

2.◆ At the pre-trial proceedings, the Judge shall enter a Scheduling Order for:

(a) joining other parties;

(b) amending pleadings or any other processes;

(c) filing motions;

(d)◆ further pre-trial proceedings;

(e)◆◆ any other matters appropriate in the circumstances of the case.

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

(a) formulation and settlement of issues;

(b) amendments and further and better particulars;

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

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

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

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

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

(h) settlement of issues, inquiries and accounts under Order 27;

(i) securing statement of special case of law or facts under Order 28;

(j) determining form and substances of the pre-trial order;

(k) determining the time limit for filing and services of any notice to produce not contained in the pleadings;

◆(l) such other matters as may facilitate the just and speedy disposal of the action.

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

5. After a pre-trial proceedings or series of pre-trial proceedings, the Judge shall issue a Report. This Report shall guide the subsequent course of the proceedings unless modified at the trial by the judge hearing the case.

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

(a) in the case of the plaintiff, dismiss the claim;

(b) in the case of a defendant, enter judgment against him.

Any decision made under this rule may be set aside upon an application made within 7 days of the decision or such other period as the Judge may allow, not exceeding the pre-trial proceedings period. The application shall be accompanied by an undertaking to participate effectively in the pre-trial proceedings.

7. The Judge shall direct the pre-trial proceedings with due regard to its purposes and agenda as provided under this order, and shall require parties or their Legal Practitioners to co-operate with him effectively in dealing with the pre-trial proceedings agenda.

ORDER 26

PART I

INTERROGATORIES, DISCOVERY, INSPECTION AND NOTICE TO PRODUCE.

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

2. Interrogatories shall be in Form 19 with such modifications or variations as circumstances may require.

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

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

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

6. An affidavit in answer to interrogatories shall be in Form 20 with such modifications or variations as circumstances may require.

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

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

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

◆◆ (3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 21 with such modifications or variations as circumstance may require.

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

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

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

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

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

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

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

13. Any party may at the trial of a cause or matter, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

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

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

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

PART II - NOTICE TO PRODUCE

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

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

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

19. Fees for notices to produce shall be paid as prescribed by these rules;◆◆◆◆◆

◆◆◆ Provided that where more notices than one are included in the pleadings payment shall be made for only one notice.

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





ORDER 27

ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES.



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



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



2. In any legal proceeding, the Judge may at any time order the whole cause or matter or any question or issue of facts arising therein, to be tried before an official referee or officer of the court, notwithstanding that it may appear that there is a special or other relief sought or some special issue to be tried, as to which, it may be proper that the cause or matter should proceed in the ordinary manner.

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



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





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

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

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

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

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

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

(a) adopt the report in whole or in part;

(b) vary the report;

(c) require an explanation from him;

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

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

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

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

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

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

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

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

11. Where by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that as far as may be, each distinct account and inquiry may be designated by a number and such judgment or order shall be in Form 22 with such modifications or variations as the circumstances of the case may require.

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

13. If it shall appear to the Judge that there is any undue delay in the prosecution of any proceedings, the Judge may require the party having the conduct of the proceedings or any other party, to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may

require; and for the purposes aforesaid, any party may be directed to summon the persons, whose attendance is required, and to conduct any proceeding and carry out any directions, which may be given.

ORDER 28

SPECIAL CASE

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

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

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

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

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

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

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

ORDER 29

CAUSE LISTS

1. The Registrar shall also keep a Weekly Cause List of all actions which are ready for trial or hearing.

2. (1) The Registrar shall post up every Thursday a pre-trial and Weekly Cause List which shall set out the arrangement of causes before each of the Judges sitting in Court, during the following week.

(2) Nothing in this rule shall preclude the Chief Judge from making special arrangements, whenever necessary or convenient, for the disposal of causes and matters included in the list.

3. Where any Thursday is a public holiday, the pre-trial list and the weekly cause list shall be posted up on the day last preceding which is not a public holiday.

4. On any day when a Judge shall be unable to sit in Court and deal with any cause or matter fixed for hearing, a minute, recording the parties present and the step taken by the Registrar, shall be entered on the court file.

5. The Weekly Cause List and other such lists shall be posted up on one or more notice boards set up in such place or places within or near the Court premises as the Chief Judge may designate.

ORDER 30

PROCEEDINGS AT TRIAL

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

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

3. When a cause is called for hearing, if the defendant appears and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but if he has a counterclaim, then he may prove such counterclaim, so far as the burden of proof lies upon him. The Judge shall unless he sees good reason to the contrary strike out the cause. But where there is a counterclaim, the defendant may prove such counter claim in so far as the burden of proof lies on him.❖

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

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

(3) An application to re-list a cause struck out or to set aside a judgment shall be made within 6 days after the order or judgment or such other larger period as the Judge may allow.

5. The Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time and upon such terms as he shall deem fit.

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

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

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

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

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

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

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

(2) Notwithstanding the provisions of sub-rule1 of this rule, the Judge may suo-motu where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.

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

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

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

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

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

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

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

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

16. The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's address.

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

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

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

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

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

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

19. A judge may, suo muto or on application, strike out any proceedings not being prosecuted diligently.

ORDER 31

FILING OF WRITTEN ADDRESS

1. This order shall apply to all applications and final addresses.

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

(i) the claim or application, on which the address is based;

(ii) a brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;

(iii) the issues arising from the evidence;



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

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

4. Oral argument in elucidation or expansion of the written address may be allowed and shall be of such duration as the Judge may allow.

5. Each party shall file sufficient copies of his address for use of the court and service on the other parties in the case.

ORDER 32

EVIDENCE GENERALLY

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

(2) Undisputed documents and objects may be tendered from the bar or by the party where he is not represented by a Legal Practitioner.

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

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

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

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

(b) by the production of documents or entries in books ,

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

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

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

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

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

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

7. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted.

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

(b) such undertaking shall be accompanied by:

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

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

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

8. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been made, the order shall be in Form 25, the form may be modified or varied as may be necessary to meet the circumstances of the Particular case in which it is used.

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

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

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

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

12. ❖ If any person duly summoned by subpoena to attend for examination shall refuse to attend or if having attended, he shall refuse to be sworn or to answer any lawful question he shall be in contempt of court and may be dealt with accordingly by the Judge.

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

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

15. ❖ Any officer of the Court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

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

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

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

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

20. Where it is intended to issue out a subpoena, a praecipe for that purpose in Form 26 containing the name or firm and the place of business or residence of the Legal Practitioner intending to issue out the same, and where such Legal Practitioner is agent only, then also the name or firm and place of business or residence of the principal Legal Practitioner, shall in all cases be delivered and filed at the Registry. No subpoena shall be issued unless all court fees have been paid (including fee for service) and unless sufficient money on the prescribed scale is deposited to cover the first day's attendance.

21. A subpoena shall be in one of Forms 27, 28, or 29 with such variations as circumstances may require.
22. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpoena shall issue from the Registry upon the Judge's directive.
23. In the interval between the issue and service of any subpoena the Legal Practitioner issuing it may correct any error in the names of parties or witnesses, and may have the writ resealed upon leaving a corrected praecipe of the subpoena marked with the words "altered and resealed", with the signature, name and address of the Legal Practitioner.
24. A subpoena shall be served personally unless substituted service has been ordered by a Judge in a case where a person persistently evades service. The provisions of Order 7 shall so far as possible apply to service and proof of service of a subpoena.
25. Any subpoena shall remain in force from the date of issue until the determination of the trial for which it is issued.
26. Any person who would under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any property, real or personal the right or claim to which cannot be brought to trial by him before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.
27. A witness shall not be examined to perpetuate his testimony unless an action has been commenced for that purpose.
28. No action to perpetuate the testimony of a witness shall be set down for trial.

ORDER 33

AFFIDAVITS

1. Upon any motion, petition, summons or other application, evidence may be given by affidavit, but the Judge may, suo motu or on application, order the attendance for cross-examination of the deponent and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence save by special leave.
2. Every affidavit shall bear the title in the cause or matter in which it is sworn but in every case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.
3. The Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other

irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

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

5. Except by leave of the Judge, no order made ex-parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was based was made before the order was applied for, and produced or filed at the time of making the application.

6. Save for ex parte applications, a party intending to use any affidavit in support of any application made by him shall give notice to the other parties concerned.

7. Every alteration in any account verified by affidavit shall be marked with the initials of the commissioner before whom the affidavit is sworn and such alterations shall not be made by erasure.

8. Accounts, extracts from registers, particulars of creditors' debt, and other documents referred to in an affidavit, may be annexed to the affidavit if practicable and shall be referred to as exhibits.

9. Every certificate on an exhibit referred to in an affidavit, shall be signed by the commissioner before whom the affidavit is sworn.

10. The provisions of the Evidence Act which set out provisions governing affidavits shall be applicable under these rules.

ORDER 34

NON-SUIT

1. Where satisfactory evidence is not given entitling the plaintiff or defendant to the judgment of the Court, the Judge may suomotu or on application nonsuit the plaintiff, but the parties' legal practitioners shall have the right to make submissions about the propriety or otherwise of making such order

ORDER 35

JUDGMENT, ENTRY OF JUDGMENT

1. The Judge shall at the pre-trial proceedings, if appropriate, or after trial deliver Judgment.
2. Where any judgment is pronounced by a Judge, the judgment shall be dated as of the day on which such judgment is pronounced and shall take effect from that date unless the Judge otherwise orders.
3. When any judgment is directed to be entered by an order made on application for judgment, the judgment shall, unless the Judge otherwise orders, be dated as of the day on which the order is made and take effect from that date:

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

4. The Judge at the time of making any judgment or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, reckoned from the date of the judgment or order, or from some other point of time, as the Judge deems fit and may order interest at a rate not less than 10% per annum to be paid upon any judgment.
5. In any cause or matter where the defendant has appeared by Legal Practitioner, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his Legal Practitioner.
6. Where the defendant has no Legal Practitioner, such order shall not be made, unless the defendant gives his consent in person.

ORDER 36

DRAWING UP OF ORDERS.

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

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

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

◆◆◆◆◆◆◆◆ (b)◆ for the amendment of any writ or pleading;

◆◆◆◆◆◆◆◆ (c)◆ for the filing of any document; or

◆◆◆◆◆◆◆◆ (d) for any act to be done by any officer of the Court other than a legal practitioner;

it shall not be necessary to draw up such order unless the Judge otherwise directs; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act.

A direction that the costs of such order shall be costs in any cause or matter shall not be deemed to be a special direction within the meaning of this rule.

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

ORDER 37

TRANSFERS AND CONSOLIDATION

PART I - TRANSFERS

1. Where the Chief Judge has in exercise of any powers conferred on him by any relevant law, ordered the transfer of any action or matter from a lower court to the High Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the lower court and the latter shall forthwith transmit to the High Court the case file and all relevant documents and exhibits.◆

2. (I) On receipt by the High Court of the case file, the Registrar shall notify the party or his legal practitioner who applied for the transfer, or where the transfer was not made on the application of any party, the Registrar shall notify the plaintiff to attend at the Registry for the purpose of fixing a date for the first mention of the case in court. Thereafter the opposite party shall be notified of the date and Judge before whom the matter will be mentioned and heard.

◆◆ (2) Such notification shall be effected by serving a notice on the party concerned, or, where an address for service has been given by such party, at that address.

3. (I) The Registrar shall on receipt of the case file enter the case in the cause book and assign a High Court suit number to same and if the order of transfer does not specify the particular Judge the case is assigned to, assign the case to a Judge for hearing.

4. (I) If the plaintiff fails to attend in compliance with a notice given under sub-rule 1 of Rule 2 of this Order, the Registrar shall suo motu fix a date and cause notice of the date and the Judge to whom the case is assigned to be served on the parties and their legal practitioners.

◆◆◆ (2) Upon the transferred suit coming up before the Judge, the Judge shall make an Order directing the time within which parties shall file their respective pleadings, the documentary evidence intended to be relied upon, list of witnesses and statement of oath of the witnesses and shall make all such order or further directions as may be necessary for hearing or determination of the suit.

5. In this Order, the references to the plaintiff and the defendant shall, in relation to proceedings commenced otherwise than by writ, be construed as references to the applicant and the respondent.

6.◆ (1) The Chief Judge may by order under his hand and the seal of the Court of any time or at any stage of the proceedings before final judgment and either with or without application from any of the parties thereto transfer any cause or matter before a Judge to any other Judge.

◆◆◆◆ (2) A Judge may by Order under his hand and the seal of the Court at any time or at any stage of the proceeding before final judgment, and either with or without application from any of the parties thereto, transfer any cause or matter before him to a Magistrate's Court or to a Judge in the same or any other Judicial Division. Such an Order may apply either to any particular cause or matter entirely or in respect of any part thereof or proceeding required to be taken thereon.

(3) A party seeking a transfer under sub-rule (1) & (2) of this rule shall either make an oral application in the presence of the opposing party or their legal practitioners or file a written application at the registry of the court where the suit is pending as in Form 29A.

(4) The Registrar shall transmit the application to the Chief Judge or the appropriate Judge, and shall inform the applicant if the application is refused, or both parties, if the application is granted.

(5) The transfer of a cause or matter may be expressed to be from one court to another court, or from a named Judge to another named Judge.

Provided that where the transfer is to a named Judge and such Judge, for any reason fails to conclude the proceedings, his successor can take over the case de novo without further order of transfer.

(6)◆ (a) For avoidance of doubt, the transfer of a cause or matter under the proceeding rules, is an administrative act whether or not the authority to effect the transfer be derived from a statutory provision.

◆◆◆◆◆ (b) No proceedings shall be rendered void or voidable by reason of non-compliance with the order of transfer made as aforesaid.◆

II.◆◆◆ CONSOLIDATION

7. (1) The Judge may, on application, consolidate two or more actions pending before him where it appears that the issues are substantially the same in the actions; and can therefore be conveniently tried and determined at the same time.

◆◆◆◆ (2) An order to consolidate may be made where two or more actions are pending between the same plaintiff and the same defendant or between the same plaintiff and different defendants or between different plaintiffs and the same defendant or between different plaintiffs and different defendants.

◆◆◆ (3) Causes or matters consolidated for trial may subsequently, by order of a Judge, be de-consolidated at any stage before judgement, whether or not the court be differently constituted at the subsequent stage.

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

◆◆ (4) Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

ORDER 38

INTERLOCUTORY ORDERS, ETC.

1.◆ Without prejudice to Order 3 of these rules, in any action or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of or from the commission of any injury relating to the same property or right or arising out of the same contract and the Judge may grant the injunction either upon or without terms as may be just.

2. Whenever an application shall be made before trial for an injunction or other order and on the opening of such application, or at any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the Judge to make an order for such trial accordingly and in the meantime to make such order as the justice of the case may require.

3. The Judge may upon the application of any party make any order for the sale by any person or persons named in such order and in such manner and on such terms as the Judge may deem desirable, of any goods, wares, or merchandise which may be of a perishable nature, or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to sell at once.

4. (I) A Judge may upon the application of any party to an action or matter and upon such terms as may be just, make any order for the detention, preservation or inspection of any property or thing, being the subject of such action or matter or as to which any question may arise therein, and for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid authorise any samples to

be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

◆◆ (2) Where an order for the inspection of any property or thing is made on an application under this rule (including an application made before any pleadings have been delivered in the action or matter) and it appears that inspection was requested in writing by the applicant and was not given, then, unless the Judge is satisfied that the respondent did not unreasonably fail or refuse to permit the inspection, the Judge shall order the costs to be paid by the respondent in any event and except where the respondent is a "Poor Person", i.e. in forma pauperis, shall order the costs to be paid forthwith.

◆◆ (3) the Judge by whom any action or matter may be heard or tried, may inspect any property or thing concerning which any question may arise therein.

5. (1) Where any property is in possession of the Court either before or after judgment and it has remained so for a period of 12 months, a Judge may on application of a party or suo motu make an order for the sale of that property and the proceeds thereof to be paid into an interest yielding account in a commercial bank directed by the Judge for the benefit of the person that succeeds at the trial or on appeal.

◆ (2) The money paid after disposal of any goods or chattel shall be withdrawn from the bank by the successful party who shall present to the Chief Registrar a certified true copy of the enrolment of the judgment.

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

7. Where any real or personal estate or property forms the subject of any proceedings and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may at any time after the commencement of the proceedings, allow the parties interested therein or anyone or more of them, the whole or part of the annual income of the real estate or, apart of the personal estate or property or the whole or part of the income thereof, up to such time as the Judge shall direct.

8. (1) When by any contract a prima facie case of liability is established and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation or may order that the amount in dispute be brought into Court and paid into an interest yielding account in a commercial bank, or otherwise secured.

◆◆ (2) An application for an order under Rule 1 sub-rule, 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings.

9. In every case in which an application is made for the appointment of a receiver, the Judge in determining whether it is just or convenient for such appointment to be made, shall have regard:

(i) to the amount of the debt claimed by the applicant;

(ii) to the amount which may probably be obtained by the receiver; and

(iii) to the probable costs of his appointment; and may if the Judge shall deem fit, direct any inquiries on these or other matters before making the appointment.

10. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be approved by the Judge, duly to account for what he shall receive as such receiver, and to pay the same as the Judge shall direct; and the person so to be appointed shall, unless otherwise ordered be allowed a proper salary or allowance. The security to be given shall be by guarantee or by an undertaking in Forms 30 and 31 with such variations as circumstances may require. The undertaking shall be filed in the Registry and form part of the record of proceedings until it has been duly vacated.

11. Where any judgment or order is pronounced or made in court appointing a person therein named to be receiver the Court may adjourn the proceedings then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up.

12. When a receiver is appointed with a direction that he shall pass accounts, the Judge shall fix the days upon which he shall (quarterly or at shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part of them as shall be certified as proper to be paid by him.

13. With respect to any such receiver as neglects to leave and pass his accounts and pay the balances at the times fixed for the purpose as aforesaid, the Judge may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary claimed by such receiver and may also charge him with interest at a rate not exceeding twenty-five per cent per annum upon the balances so neglected to be paid by him during the time the same appears to have remained in his hands.

14. Receivers' accounts shall be in Form 32 with such variations as circumstances may require.

15. Every receiver shall deliver to the Registrar his account, together with an affidavit verifying the same in Form 33 with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the action for the purpose of passing such account.

16. Where any receiver fails to leave any account or affidavit or to pass such account or to make any payment or otherwise, the receiver or the parties or any of them, may be required to show cause why such account passed or such payment was made or any other proper proceedings, taken and thereupon such directions as shall be proper may be given, including the discharge of any receiver and appointment of another and payment of costs.

17. The accounts of guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

ORDER 39

MOTIONS AND OTHER APPLICATIONS

1. (1) Except as otherwise provided by these rules where any application is authorized to be made to a Judge, such application shall be made by motion which may be supported by affidavit and shall state under what rule of Court or Law the application is brought.

◆◆ (2) Every such application shall be accompanied by a written address in argument of the application.

◆◆ (3) Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address in opposition to the motion and may accompany it with a counter affidavit if it is being opposed on grounds of facts which are not already part of the proceedings.

◆◆ (4) The applicant may on being served with the written address of the opposing party file and serve an address in reply on points of law and fact raised by the opposing party within 7 days of being served. Where a counter affidavit is served on the applicant he may file further affidavit with his reply.

2.◆ The Judge may in appropriate cases allow oral applications to be made provided that the other party is present in Court.

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

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

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

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

4.◆◆ (1) Every motion on notice to set aside, remit or enforce an arbitral award shall state in general terms the grounds of the application and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

◆◆◆ (2) The party relying on an award or applying for its enforcement shall supply:

(a) the duly authenticated original award or a duly certified copy thereof:

◆◆ (b)◆ the original arbitration agreement or a duly certified copy thereof;

5. Unless a Judge grants special leave to the contrary, there must be at least 2 clear days between the service of all processes in respect of a motion and the day named in the notice for hearing the motion.

6. If on the hearing of a motion or other application, the Judge is of opinion that any person to whom notice has not been given ought to have had such notice, the Judge may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given upon such terms, if any, as the Judge may deem it fit to impose.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any as the Judge shall deem fit:

Provided that application for adjournment at the request of a party shall not be entertained more than two times.

8. A plaintiff may file any application along with an originating process and may serve both on any defendant simultaneously.

ORDER 40

APPLICATION FOR JUDICIAL REVIEW

1. (1) Subject to the provisions of the Administrative Law of Enugu State (Cap 6) 2004, an application for:

(a) an order of mandamus, prohibition or certiorari; or

(b) an injunction restraining a person from acting in any office in which he is not entitled to act;

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

◆◆ (2) An application for a declaration or an injunction (not being an injunction in rule (1) (b) of this Rule) may be made by way of an application for judicial review and the Court may grant the declaration or injunction if it deems it just and convenient to grant it by way of judicial review, having regard to:

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order;

(c) all the circumstances of the case.

2. On an application for judicial review any relief mentioned in Rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of, relates to or is connected with the same matter.

3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

◆◆◆◆ (2) An application for leave shall be made ex-parte to the Judge and shall be supported by:

◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆◆ (a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds upon which they are sought;

◆ (b)◆ an affidavit verifying the facts relied upon and

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

◆ (3) The Judge hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise on such terms, if any, as he deems fit.

◆ (4) The Judge shall not grant leave unless he considers that the applicant has a sufficient interest in the matter to which the application relates.

◆◆ (5) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed, any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired (6) Where leave to apply for judicial review is granted, then:

(a) if the relief sought is an order of prohibition or certiorari and the Judge so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Judge otherwise orders;

(b) if any other relief is sought, the Judge may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ;

(c) the Judge may impose such terms as to costs and as to giving security as he deems fit.

4.◆ An application for judicial review shall be brought within 3 months of the date of occurrence of the subject of the application.

5. (1) When leave has been granted the application shall be made by motion or by originating summons.

◆◆ (2) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings before a Judge and the object of the application is either to compel the Judge or an officer of the court to do any act in relation to the proceedings, or to quash them or any order made therein, the notice or summons shall also be served on the Clerk or Registrar of the Court and where any objection to the conduct of the Judge is to be made, on the Judge.

◆◆ (3) Unless the Judge granting leave has otherwise directed, there shall be at least 7 days between the service of the notice of motion or summons and the day named therein for the hearing.

◆◆ (4)◆ A motion shall be entered for hearing within 14 days after the grant of leave.

◆◆ (5)◆ An affidavit giving the names and addresses of and the places and dates of service on all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it and the affidavit shall be before the Judge on the hearing of the motion or summons.

◆◆ (6)◆ If on the hearing of the motion or summons the Judge is of opinion that any person who ought, whether under this rule or otherwise to have been served has not been served, the judge may adjourn the hearing on such terms if any, as he may direct in order that the notice or summons may be served on that person.

6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and subject to sub-rule 2, no grounds shall be relied upon or any reliefs sought at the hearing except the grounds and reliefs set out in the statement.

◆◆ (2) The Judge may, on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he deems fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

◆◆ (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

◆◆ (4) Each party to the application shall supply to every other party a copy of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

7.◆◆ On an application for judicial review the Judge may, subject to rule 2, award damages to the applicant if:

◆◆◆◆ (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

◆◆◆◆ (b) the Judge is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

8. Any interlocutory application in proceedings on an application for judicial review may be made to the Judge.

9. (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard on the motion or summons, and appears to the Judge to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice of the motion or the summons.

◆(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he

has filed a copy thereof verified by affidavit or account for his failure to do so to the satisfaction of the Judge hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as is referred to in sub-rule 2 of this rule, the order shall, subject to sub-rule 4, direct that the proceedings shall be quashed forthwith on their removal into Court.

(4) Where the relief sought is an order of certiorari and the Judge is satisfied that there are grounds for quashing the decision to which the application relates, the Judge may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Judge.

(5) Where the relief sought is a declaration, an injunction or damages and the Judge considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Judge may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

10. No action or proceeding shall be brought or prosecuted against any person in respect of any thing done in obedience to an order of mandamus.

11. Where there is more than one application pending against several persons in respect of the same matter and on the same grounds, the Judge may order the applications to be consolidated.

ORDER 41

JURISDICTION OF CHIEF REGISTRAR

I. ADJUDICATORY FUNCTIONS OF CHIEF REGISTRAR

1. In this Order, any reference to the Chief Registrar means the Chief Registrar of the High Court and includes a Deputy Chief Registrar. For the purposes of the adjudicatory functions, the Chief Registrar will be referred to as Master of the High Court.

2. (1) Subject to any directives of the Chief Judge, the Chief Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge in respect of the following matters;

(a) applications for the taxation and delivery of bills of costs and applications for the delivery by any Legal Practitioner of deeds, documents and papers as may be referred to the Chief Registrar by the Chief Judge or the Administrative Judge;

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

(c) the taxation of bills of costs in accordance with the scale of fees in force under any written law or rules of Court, subject to the review of such taxation by the Court;

(d) applications leading to the issue of the grant of probate of Wills or Letters of Administration of the estates of deceased persons in non-contentious or common form probate business;

(2) Application for the taxation of bills of costs made in Judicial Division where the subject matter arose shall be heard by a Judge of the Judicial Division who may refer same to the Assistant Chief Registrar in-charge of that Judicial Division to dispose of the matter.

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

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

4. (1) Any person affected by an order or decision of the Chief Registrar in the exercise of the jurisdiction conferred upon him by this Order may appeal therefrom to a Judge. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons within 5 days after the decision complained of or such further time as may be allowed by the Judge. Unless otherwise ordered there shall be at least 2 clear days between service of the notice of appeal and the day of hearing.

(2) An appeal from the decision of the Chief Registrar shall not operate as a stay of proceedings unless so ordered by the Judge.

5. Lists of matters to be heard by the Chief Registrar shall be made out and published by being posted on the Court's notice boards. The Chief Registrar may be posted by the Chief Judge to any Judicial Division or Magisterial District as a Master of the High Court or to act as a Chief Magistrate.

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

II- ADMINISTRATIVE FUNCTION

7. The Chief Registrar shall perform such administrative duties as may from time to time be assigned to him by the Chief Judge and any special orders of the Chief Judge for the general administration of the State Judiciary.

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

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

10. (1) In case of accounts and inquiries the certificate of the Chief Registrar shall be in Form 34 with such variations as the circumstances may require.

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

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

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

13. The posting of all Magistrates and other staff dispositions shall be effected by an order of the Chief Judge under his hand.

ORDER 42

HABEAS CORPUS, ATTACHMENT FOR CONTEMPT

PART 1 - HABEAS CORPUS

1. An Application for an Order of Habeas Corpus Ad Subjiciendum Shall be made to the Court, except that:

(a) in vacation or at anytime when no Judge is sitting in Court it may be made to a Judge sitting otherwise than in Court;

(b) in cases where the application is made on behalf of a child, it shall be made in the first instance to a Judge sitting otherwise than in Court.

2. (1) The application may be made ex-parte and shall be accompanied by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(2) Where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person which shall state that the person restrained is unable to make the affidavit himself.

3. (1) A Judge to whom the application is made may make the order forthwith.

(2) Where the application is made to a Judge sitting otherwise than in court, he may direct the Order to issue or that an application therefor be made by notice of motion to the Judge or to a Judge.

(3) A Judge to whom the application is made may adjourn it so that notice thereof may be given to the jailer.

(4) Where the person detained is produced before a Judge, he may discharge him immediately with or without conditions.

4. (1) The summons or notice of motion aforesaid shall be served on the person against whom the order is sought and on such other persons as the Judge may direct.

(2) Unless the Judge otherwise directs, there shall be at least 2 clear days between the service of the notice and the date named for the hearing of the application.

5. Every party to the application shall supply to the other party or parties copies of the affidavits which he proposes to use at the hearing of the application.

6. (1) The order or notice of motion may be served personally or by courier on a jailer where the person is confined or restrained or on any other public official and copies of the order or motion may be served in like manner on each person connected with or having authority over the place of confinement or restraint.

(2) The order shall contain the date on which the person restrained is to be brought before a Judge and that in default of obedience, proceedings for committal of the party disobeying will be taken.

7. Upon service of the order or notice of motion on the jailer, he shall within 2 days file a statement stating the reasons for the detention, the period of the detention and any other matter that may be directed by the Judge. The statement shall be verified by an affidavit deposed to by the jailer.

8. (1) Where the prisoner is brought up in accordance with the order, his Legal Practitioner shall be heard first, then the Legal Practitioner for the State and then the Legal Practitioner for the prisoner in reply.

◆ (2) Where the prisoner is not brought in accordance with the order, a Judge may upon the application of his legal practitioner, order that he be discharged or make any other order.

PART II - COMMITTAL FOR CONTEMPT

9. (1) The procedure in applications for attachment for contempt of court in cases to which this rule applies shall be the same as for applications for an order for judicial review under Order 40 so far as may be applicable.

(2) The notice of motion shall be personally served unless the Judge dispenses with such service.

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

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

(b) in connection with criminal proceedings;

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

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

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

10. When an order enforceable by committal has been made against a judgment debtor, and if the order is for delivery of goods without the option of paying their value or is in the nature of an injunction, the Registrar shall when the order is drawn up immediately endorse it as follows:

Notice of Consequence of Disobedience to Court Order

To

Of

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

Dated this .day of 20.

Registrar

11. Upon service of the application for committal issued in a case to which rule 9 of this Order applies, the Respondent shall before the return date stated in the application file a statement stating the reasons why an order for committal should not be issued. The statement shall be verified by an affidavit deposited to by the respondent.

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

ORDER 43

INTERPLEADER

1. Relief by way of Interpleader may be granted where the person seeking relief ("the applicant") is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be sued by two or more parties ("the claimants") making adverse claims thereto:

Provided that where the applicant is a Sheriff or other officer charged with the execution of process by or under the authority of the High Court, the provisions of Section 34 of the Sheriffs and Civil Process Act and the rules made under it shall apply.

2. The applicant must satisfy the Judge by affidavit or otherwise that he;

(a) claims no interest in the subject matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants; and

(c) is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

◆4. Where the applicant is a defendant, application for relief may be made at any time after service of the originating process.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

6. If the application is made by a defendant in an action, the Judge may stay all further proceedings in the action.

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

8. Where the question is a question of law and the facts are not in dispute, the Judge may either decide the questions without directing the trial of an issue or order that a special case be stated for the opinion of the Judge. If a special case is stated, Order 28 shall as far as applicable apply thereto.

9. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or having appeared, neglects or refuses to comply with any order made after his appearance, the Judge may make an order declaring him and all persons claiming under him, forever barred against the applicant and persons claiming under him but the order shall not affect the rights of the claimants as between themselves.

10 The judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just.

ORDER 44

COMPUTATION OF TIME

1. Where by any law or order made by a Judge a time is appointed or limited for the doing of any act, the period shall be reckoned:

(a) as excluding the day on which the order is made or on which the event occurs;◆

(b) where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday;

(c) where the act is required to be done within a period which does not exceed 6 days, holidays shall be left out of account in computing the period.

2. In this order ◆holiday◆ means a day which is a Saturday or a Sunday or a public holiday, or a work free day.

3. No pleadings, summons, motions, orders, originating process, documents and other processes shall be served before 6.00a.m. or after 6.00p.m. Service effected after 6.00p.m shall be deemed to have been effected the following day,

Provided that service effected after 6.00 p. m. on Saturday shall be deemed to have been effected on the next working day.

4. The Judge may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend or adjourn the time for doing any act or taking any proceedings:◆

Provided that any party who defaults in performing an act within the time authorized by the Judge or under these rules, shall pay to the Court an additional fee of not less than N200.00 (two hundred naira) for each day of such default.

ORDER 45

MISCELLANEOUS PROVISIONS

PART 1 - COURT SITTING AND VACATION

1. Subject to the provision of the High Court Law, the Judge may, in his discretion, appoint any day or days and any place or places from time to time for the hearing of causes as circumstances require.
2. The sittings of the Judge for the hearing of causes shall ordinarily be public, but subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Judge may for special reasons, hear any particular cause or matter in the presence only of the parties, with their Legal Practitioners if any, and the officers of Court.
3. The several offices of the Court shall be open at such times as the Chief Judge shall direct.
4. Subject to the directions of the Chief Judge, sittings of the High Court for the dispatch of civil matters will be held on every week day except:
 - (a) on any public holidays;
 - (b) during the week beginning with Easter Monday;
 - (c) during the period beginning on Christmas eve and ending on the 2nd January next following;
 - (d) during the long vacation. i.e., the period beginning 1st of August and ending on a date not more than 6 weeks later as the Chief Judge may by public notice appoint.
5. Notwithstanding the provisions of Rule 4, any cause or matter may be heard by a Judge during any of the periods mentioned in paragraphs (b), (c) or (d) of Rule 4 (except on a Saturday, Sunday or public holiday) where such cause or matter is urgent or a Judge, at the request of all the parties concerned, agrees to hear a cause or matter or as the Chief Judge in his discretion shall direct.
6. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Judge.

PART II - GENERAL

7. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.
8. When the publication of any notice is required the same may be made by advertisement in the Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Judge.

9. A document shall not be filed unless it has indorsed on it the name and number of the cause, the date of filing and whether filed by plaintiff or defendant; or their Legal Practitioner and on being filed such endorsement shall be initialed by the Registrar and recorded in the Process Register.

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

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

Provided however that when any person is ordered to pay the costs of the State or of any Government Department in any case, whether criminal or civil, all fees which would have been payable but for the provisions of this rule shall be taken as paid and shall be recoverable from such person.

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

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

ORDER 46

ARREST OF ABSCONDING DEFENDANT

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

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

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

3. If the defendant fails to show cause, the Judge shall order him to give recognizance for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed against him in the suit or to give recognizance for the satisfaction of such judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

4. (1) where a defendant offers to deposit a sum of money in lieu of recognizance for his appearance, sufficient to answer the claim against him, with costs of the suit, the Judge may accept such deposit and direct that the deposit be paid into an interest yielding account in a bank.

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

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

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

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

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

ORDER 47

PROCEEDINGS IN FORMA PAUPERIS

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER 48

LEGAL PRACTITIONER

1.◆ Every Legal Practitioner engaged to conduct a case before the court shall be deemed to be an officer of the court, for purposes of such case.

2. Every legal practitioner who shall be engaged in any cause or matter shall be bound to conduct the same on behalf of the party for whom he shall have been so engaged.

(a) For the above mentioned purpose every practicing legal practitioner shall keep a counterfoil receipt book with folios consecutively numbered and shall specify both on the receipt to be given as aforesaid and on the counterfoil of such receipt the name of the person or persons from whom the said money or property is obtained, the consideration therefore, the amount thereof and the date of receipt;

(b) A legal practitioner shall produce such receipt book to the court when called upon to do so by the court.

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

(1) A party to any cause or matter who sues or defends by a Counsel, may change his legal practitioner without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served on every other party to the cause or matter and on the former legal practitioner, the former legal representative shall be considered the legal practitioner of the party until the final conclusion of the cause or matter.

(2) A copy of the notice endorsed with an affidavit stating that the notice has been duly filed in the registry shall also be filed.

(3) The party giving the notice may perform the duties prescribed by this order in person or by his new legal representative.

(1) Where a legal representative who has acted for a party in a cause or matter ceases so to act and the party has not given notice of change in accordance with sub-rule (1) of rule 4 of this order, the legal practitioner may apply to the court for an order declaring that the legal practitioner has ceased to be one acting for the party in the cause or matter and the Court may make an order accordingly.

(2) An order under sub-rule (1) of this rule shall not be made until legal practitioner serves on every party to the cause or matter a copy of the notice otherwise he shall be considered the legal practitioner of the party till the final conclusion of the cause or matter.

(3) An application for an order under this rule shall be made by originating motion supported by an affidavit stating the grounds of application.

(4) An order made under this rule shall not affect the rights of the legal representative and the party for whom he acted for as between themselves.

6. After an order is made under rule 4 or 5 of this Order, the address of the party shall be his last known address or where the party is a body corporate, its registered or principal office for the purpose of the service on him of any document not required to be served personally.

7. Where the relationship of Legal Practitioner and client exists or has existed, a summons may be issued by the client or his representative for the delivery of a cash account or the payment of moneys or the delivery of securities, and a Judge may from time to time order the respondent to deliver to the

applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant or to bring into court the whole or any part of the same, within such time as the Judge may order. In the event of the respondent alleging that he has a claim for costs, the Judge may make such provision for the taxation and the payment or security thereof or the protection of the respondent's lien (if any) as he may deem fit.

8. If during the taxation of any bill of costs or the taking of any account between Legal Practitioner and client, it shall appear to the taxing officer that there must, in any event be moneys due from the Legal Practitioner to the clients, the taxing officer may from time to time make an interim certificate as to the amount so payable by the Legal Practitioner. Upon the filing of such certificate, a Judge may order the moneys so certified to be forthwith paid to the client or brought into Court.

ORDER 49

COSTS

1. (1) In fixing the amount of costs, at the determination of the action, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in the proceedings, as well as compensated for his time and effort in coming to court. The Judge may take into account all the circumstances of the case.

(2) When costs are ordered to be paid, the amount of such costs shall, if practicable be summarily determined by the Judge at the time of delivering the judgment or making the order, provided that such costs shall be in accordance with the scale of costs determined by the Chief Judge from time to time.

(3) When the Judge deems it impracticable to determine summarily the amount of any costs which he has adjudged or ordered to be paid, all questions relating thereto shall be referred by the Judge to a taxing officer for taxation.

2. In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such times and in such manner and form as the Judge shall direct.

3. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the Jurisdiction.

4. In action brought by person resident out of the jurisdiction, when the plaintiff's claim is founded on a judgment or order or on a bill of exchange or other negotiable instrument, the power to require the plaintiff to give security for costs shall be exercised at the Judge's discretion.

5. Where a bond is to be given as security for costs, it shall, unless the Judge otherwise directs, be given to the party or person requiring the security and not to an officer of the Court.

6. Subject to the provisions of any applicable law and these Rules, the costs of and incidental to all proceedings in the High Court, including the administration of estates and trusts, shall be at the discretion of the Judge, and the Judge shall have all power to determine by whom and to what extent the costs are to be paid.

7. The Judge may order any costs to be paid out of any fund or property to which a suit or proceeding relates.

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

9. (1) Costs may be dealt with by the Judge at any stage of proceedings.

(2) Costs when ordered becomes payable forthwith and shall be paid within 2 days of the order, otherwise the defaulting party or his Legal Practitioner may be denied further audience in the proceedings.

10. In addition to any penalty payable for default under these rules, the costs of and occasioned by any application to extend the time fixed by the rules or any direction or order thereunder, for delivering or filing any document or doing any other act, including the costs of any Order made on application, shall be borne by the party making the application unless the Judge otherwise orders.

11. The Judge in exercising his discretion as to costs shall take into account any offer or contribution made by any of the parties and any payment into Court and the amount of such payment.

12. (1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Judge may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of sub-rule 1 of this rule, the Judge, shall for the purpose of that sub-rule have regard in particular to the following matters, that is to say:

(a) the omission to do anything the doing of which would have been calculated to save costs;

(b) the doing of anything calculated to occasion or in a manner or at a time calculated to occasion unnecessary costs;

(c) any unnecessary delay in the proceedings.

(3) The Judge may instead of giving a direction under sub-rule 1 of this rule in relation to anything done or any omission made, direct the taxing officer to inquire into it and if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

13. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Judge may make against any Legal Practitioner whom he considers to be responsible, whether personally or through a servant or agent, an order:

◆◆◆◆◆ (a) directing the Legal Practitioner to pay to his client costs which the client has been ordered to pay to other parties to the proceedings:

◆◆◆◆◆ (b) or directing the Legal Practitioner personally to indemnify such other parties against costs payable by them.

◆◆ (2) The provisions of Rule 13 sub-rule 1 shall apply where proceedings in court cannot conveniently proceed or fails or are adjourned without useful progress being made :

◆◆ (b) because of the failure of the Legal Practitioner to attend in person or by a proper representative; or

◆◆ (c) because of the failure of the Legal Practitioner to deliver any document for the use of the court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

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

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

◆◆ (5) If on the taxation of costs to be paid out of a fund one-sixth or more of the amount of the bills for those costs is taxed off, the Legal Practitioner whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

14. Every bill of costs (other than a bill delivered by a Legal Practitioner to his client which falls to be taxed under the Legal Practitioner Act) shall be referred to the registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

15. The party applying for taxation shall file the bill and give notice to any other parties entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

16. A taxing officer shall have power to tax any costs the taxation of which is required by any law or directed by order of a Judge.

17. A taxing officer may in the discharge of his function with respect to the taxation of costs:

◆◆ (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Judge so directs;

◆◆ (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;

◆◆ (c) examine any witness in those proceedings;

◆◆ (d) direct the production of any document which may be relevant in connection with those proceedings.

18. (1) A taxing officer may;

◆◆◆◆◆ (a) extend the period within which a party is required by or under these rules to begin proceedings for taxation or to do anything in or in connection with proceedings before that officer;

◆◆◆◆◆ (b) where no period is specified by or under these rules or by the Judge for the doing of anything in or in connection with such proceedings,

specify the period within which the thing is to be done.

◆◆ (2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer, then unless the Judge otherwise directs, the taxing officer may from time to time extend the period so specified on such terms as he deems fit.

◆◆◆ (3) A taxing officer may extend any such period as is referred to in the foregoing provisions of this Rule although the application for extension is not made until after the expiration of that period.

19. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may;

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

20. (1) A party entitled to require any costs to be taxed shall begin proceedings for the taxation of those costs by filing in the registry a bill of costs and obtain a day and time for the taxation thereof. Such party shall give at least 7 days notice to every other party of the day and time appointed for taxation proceedings and at the same time serve a copy of his bill of costs to the other party if he has not already done so.

◆◆ (2) A notice under-sub-rule 1 of this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

21. (1) In any bill of costs, the professional charge and the disbursements shall be entered in separate columns and every column shall be cost before the bill is left for taxation.

◆◆ (2) Before a bill of costs is left for taxation it shall be indorsed with:

(a) the name or firm and business address of the Legal Practitioner whose bill it is; and

(b)◆ if the Legal Practitioner is, the agent of another, with the name or firm and business address of that other Legal Practitioner.

22. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

◆◆ (2) The taxing officer by whom any taxation proceedings are being conducted may, if he deems it necessary, adjourn those proceedings from time to time.

23. (1) The Chief Judge shall have power to determine from time to time the scale of costs applicable to the Court.

◆◆ (2) Subject to Rule 20, and the following provision of this rule, the scale of costs shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.

(3) Where the amount of a Legal Practitioner's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated, in the absence of agreement to the contrary, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the said appendix of these rules.

◆◆ (4) The Chief Judge shall from time to time make rules relating to allowances to witnesses in proceedings before the court.

24. Upon the completion of the taxation of any bill of costs, the taxing officer shall certify the result of his taxation including the costs thereof.

25. The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

26. Any party to any taxation proceedings, who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer or with the amount allowed by a taxing officer in respect of any item, may apply to a Judge for an order to review the taxation as to that item.

27. (l) An application under the preceding rule shall be made by summons at any time within 14 days after the taxing officer's certificate.

◆◆ (2) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on taxation but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

◆◆ (3) On an application under this rule, the Judge may make such order as the circumstances require and in particular may order the taxing officer's decision to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

ORDER 50

BUSINESS CHAMBERS

1. Subject to the provision of the constitution;

◆◆◆ (a) In any proceeding before a Judge in Chambers, any party may, if he so desires be represented by a Legal Practitioner.

◆◆◆◆ (b)◆ Unless the opposite party or his counsel objects the Judge may on application conduct any proceeding in Chambers, and may also on application, adjourn any such proceeding from Court to Chambers or vice versa.

2. Notes shall be kept of all proceeding in the Judges◆ Chambers with proper dates, so that all such proceedings in such cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

3. Orders made in Chambers shall, unless the Judge otherwise directs, be drawn up by the Registrar and signed by the Judge. Such orders shall be entered in the same manner as orders made in Court.

4. Subject to the provisions of the Law and of these Rules the costs of, and incident to all proceeding in Chambers shall be at the discretion of the Judge.

5. Upon application for the appointment of guardians of persons under legal disability and/or allowance for their maintenance the evidence shall show:

(a) the nature of the disability;

(b) the ages of the person in disability;

(c) the nature and amount of his◆ fortunes and incomes; and

(d) what relations the person has.

6. At any time during the proceedings under any judgment or order, the Judge may, if he deems fit, require a guardian to be appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such judgment or order.

ORDER 51

FORECLOSURE AND REDEMPTION

1. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out an originating summons, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is:

◆◆ (a)◆ payment of money secured by the mortgage or charge;

(b)◆ sale of the mortgaged property;

(c)◆ foreclosure;

(d) ♦ delivery of possession, whether before or after foreclosure, to the mortgage or person entitled to the charge by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;

(e) ♦ redemption;

(f) ♦ reconveyance;

(g) ♦ delivery of possession by the mortgagee.

2. Orders for payment and for possession shall be in Forms 35, 36 and 37 of these Rules with such variations as the circumstances of the case may require and the like forms shall be used under corresponding circumstances in actions for the like relief commenced by writ.

3. The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter as he deems fit.

ORDER 52

SUMMONS TO PROCEED

1. Every judgment or order directing accounts or inquiries to be taken or made shall be brought to a Judge by the party entitled to prosecute the same within 10 days after such judgment or order shall have been entered or filed, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

2. Upon a copy of the judgment or order being produced, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to:

(i) the manner in which each of the accounts and inquiries is to be prosecuted;

(ii) the evidence to be adduced in support thereof;

(iii) the parties who are to attend on the several accounts and inquiries; and

(iv) the time, within which each proceeding is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

3. Where by a judgment or order a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons, the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections within 8 days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of 8 days.

4. Where, upon the hearing of the summons to proceed, if it appears to the Judge that by reason of absence, or for any other notice of sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall deem fit, order any substituted service or notice by advertisement or otherwise in lieu of such service.

5. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers.

Adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining service of notice on all necessary parties and until directions shall have been given as to the parties who are to attend the proceedings.

6. Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties;

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the Judge shall otherwise direct.

7. At the time any summons to proceed is obtained, an entry thereof shall be made in the Summons Book, stating the date on which the summons issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

ORDER 53

PART 1

APPEALS IN CIVIL PROCEEDINGS

1. Subject to any legislation or rules to the contrary, this Order shall apply to all civil appeals from the decision of any courts, tribunals, bodies or authorities whose decisions are appealable to the court.
2. (1) Except for interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal.
 - ◆◆ (2) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision and the grounds of appeal.
 - ◆◆ (3) Where the appellant complains only of a part of the decision, the notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.
 - ◆◆ (4) The notice of appeal shall give an address within Enugu State to which notices may be sent to the appellant.
 - ◆◆◆ (5) The notice of appeal shall be in Form 38, and may be varied to suit the circumstances of the case but such that no variation of substance shall be made.
3. (1) The Registrar of the lower Court shall within 14 days of the filing of the Notice of Appeal require the appellant to deposit such sum of money as is likely to cover the cost of preparation and compilation of the Record of Appeal.
 - ◆ (2) The Registrar of the lower Court shall within 90 days of the satisfaction of the Conditions of Appeal by the appellant compile, certify and forward the record of appeal to the Court. The Record of Appeal shall be made up of the proceedings, processes and documentary exhibits in the proceedings.
 - ◆ (3) The registrar of the lower court shall forward along with the record of appeal the following;
 - (a) Bulky or unwieldy exhibits,
 - (b) Documentary exhibits which cannot be conveniently reproduced; and
 - (c) Non-documentary exhibits.
 - ◆◆ (4) The Registrar of the lower court shall produce sufficient copies of the Record of Appeal for service on the parties and for the use of the Court.
4. When notifying a party of the day fixed for the hearing of an appeal, a Registrar of Court shall send to the party a copy of the proceedings, if the party shall not have received one as at then.
- 5.◆ An application for extension of time to appeal or for leave to appeal shall be made to the court.
6. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court may strike out, or enlarge the time for sufficient reason shown.
7. All appeals shall be heard by a Judge of the court.

8. The appeal shall come up for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

9. Unless the court gives leave to the contrary-

◆◆ (a)◆ all appeals shall be heard and determined on briefs of argument filed and exchanged between the parties;

◆◆ (b)◆ the Appellant shall file an Appellant's brief within 60 days of the receipt of the record of appeal from the court below;

◆◆◆ (c)◆ the Respondent shall file and serve a Respondents brief within 45 days of service on him of the Appellant's brief;

(d)◆ within 21 days of the receipt of the Respondents brief, the Appellant may file a reply brief which shall deal with any new issues raised in the respondent's brief;

◆◆ (e)◆ every brief shall identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal.

◆ (f)◆ any issue which is not covered by any ground of appeal shall not be considered by the court in its judgment.

10. A Court may direct a departure from these rules in respect of compilation of records from the lower court upon the application of any party to an appeal.

11. (1) Where on the day of hearing or at an appointed day of the case, the appellant does not appear, the appeal shall be struck out and the decision shall be affirmed, unless the Court thinks fit, for sufficient cause to order otherwise.

◆◆ (2) The court may, where brief of arguments have been filed by all parties to the appeal, instead of striking out the appeal in the absence of the appellant, treat the appeal as having been duly argued on the written briefs and determine the appeal.

12. Where on the day of hearing and at any appointed day of the case, the appellant appears, the court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal and shall give judgment◆ according to the merits of the case without regard to any imperfection or defect of form; but if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal, the court may strike out the appeal.

13. (1) At the hearing, an appellant shall not argue any grounds of appeal other than those stated in the notice of appeal;

Provided that an appellant may with leave of the court file and argue additional grounds of appeal.

◆◆ (2) A notice of appeal may with leave of Court be amended.

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

◆◆ (2) The notice shall contain those reasons on which the respondent intends to ask the Court to confirm the judgment of the lower court.

◆◆◆ (3) Such notice shall be filed in Court within 14 days of service on the respondent of the notice of appeal, and shall be served on the appellant or his legal practitioner.

15. (1) A respondent may cross appeal by filing a notice of appeal against any part of the judgment of the lower court.

◆ (2) Such respondent's cross appeal shall be filed within 14 days of service on him of the appellant's notice of appeal and shall be served on the appellant or his legal practitioner before the hearing.

16. (1) No objection on account of any defect in the form of stating any ground of appeal shall be allowed, unless the Court is of the opinion that the ground of appeal is so incorrectly stated as not to be sufficient to enable the respondent prepare for the hearing.

◆◆ (2) Where a Court is of the opinion that an objection to any ground of appeal is sustainable, the Court may, if it thinks fit, cause the grounds of appeal to be amended upon such terms and conditions, if any, as the Court may think just.

17. (1) No objection as to form not raised at the lower court shall be allowed on appeal.

◆◆◆ (2) Where any or defect, in form in the lower court appears to the Court at the hearing of any appeal to have occasioned a miscarriage of justice, the Court shall either refer the case back to the lower court with directions to re-hear and determine it or may reverse the decision appealed from, or make such other Order for disposing of the case as justice may require.

18. No objection as to form shall be allowed with respect to a notice of appeal which is in writing or any recognizance entered into under this Order. But where the error or defect appears to the court to have misled the respondent the court shall amend it unless the objection relation to a defect likely to occasion a miscarriage of Justice.

19. The Court may, where it considers necessary that evidence should be adduced, either-

◆◆◆ (a) order such evidence to be adduced before the Court on some day to be fixed; or

(b) refer the case back to the lower court to take fresh evidence, and may in such case either direct the lower court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct the lower court to report specific findings of fact for the information of the Court, and on any such reference, the case shall, so far as may be practicable and necessary, be dealt with, as if it were being heard in the first instance:

20. (1) Where additional evidence is to be taken by a lower court and specific findings of fact reported, it shall certify the record of such additional evidence and send same to the Court which shall then proceed to dispose of the appeal.

◆(2) The Respondent or his legal practitioner shall be notified of the day the additional evidence is taken.

(3) Evidence taken in pursuance of rule 19 of this Order shall be taken as if it were evidence taken at the trial before the lower court.

(4) When forwarding to the Court any additional evidence taken by a lower court in pursuance of Rule 20, the lower court may express its opinion on the demeanour of the witnesses and of the value of their evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

21. The fees shall be chargeable in civil appeals save where they would have to be paid by a Government officer acting in his official capacity or where the lower court or the court waives or remits the fees on the grounds of the poverty of the person chargeable therewith.

22. ◆ Allowances may be made to witnesses in accordance with the provisions of these rules.

23. ◆ (1) On an application made for stay of execution pending appeal to the court, the Court may impose one or more of the following conditions.

◆(a)◆ that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgment appeal from, or give security to the satisfaction of the Court for the said sum;

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

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

(d)◆ that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security, including a deposit or security for expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in court pending determination of the appeal.

(2) An Order made on an application for stay of execution shall limit the time (not being more than 30 days) for the performance of the conditions imposed, and direct that in default of the performance within the time so limited execution may issue or proceed.

(3) An application for stay of execution under this Order shall may be made at any time after lodgment of the notice of appeal and shall in the first instance be made to the lower court.

(4) The application for stay of execution shall be on notice to the opposite party and shall be brought within 15 days of the refusal by the lower court.

(5) Where an appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed.

(6) A party dissatisfied with the conditions imposed by the lower court for stay of execution may apply to the High Court by motion on notice for a review of the order.

(7) An appeal shall not operate as a stay of execution of the decision or judgment appealed from except as the lower court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court may direct.

24. The Court may make such Order as to the payment of costs by or to the appellant as it may consider just.

25. (1) The Court may, in special circumstances, on an application on notice order the appellant to deposit such sum or give such security as may seem fit to meet respondent's costs on the appeal.

(2) The order shall limit the time (not exceeding 30 days) within which the deposit or security shall be made, and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal stands dismissed under sub-rule 3 of this rule, the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order or may be assessed at any time on application of the respondent.

(4) Where an appeal stands dismissed under sub-rule 3 of this rule the appellant shall take no further step or proceeding except by leave of the Court for the reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice, filed given within 30 days of such dismissal.

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

27. Any Order given or made by the Court may be enforced by the Court or by the lower courts as may be most expedient.

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

PART II - APPEALS IN CRIMINAL PROCEEDINGS

29. An appeal shall be commenced by the appellant giving to the Registrar of the lower court notice of appeal either verbally or in writing, within the prescribed period for appeals.

30. If notice of appeal is given verbally, it shall be reduced to writing by the Registrar and signed by the appellant.

31. Notice of appeal may be given verbally at the time of the pronouncement of the decision before the opposite party or his solicitor has left the court and shall be recorded by the court with a note of the presence of the respondent or the legal practitioner representing him and written notice shall not be necessary thereafter.

32. The notice of appeal whether verbal or written shall be given before the expiration of the thirtieth day after the day on which the lower court made the decision appealed against.

33. (1) Every appellant shall within thirty days of the date of the decision appealed against, file with the Registrar of the lower court a notice, setting forth the grounds of his appeal.

◆◆ (2) The grounds of appeal may be filed at the time the notice of appeal is given or at any other time within the time hereinbefore mentioned and may be either included in the notice of appeal or be in a separate document.

◆◆ (3) The Notice of Appeal may be in Criminal Form 1 or 2 as the case may be and may be varied to suit the circumstances of the case.

34. Every written notice of appeal shall contain the grounds of appeal and shall be signed by the appellant or the legal practitioner representing him.

35. If the appellant is in prison he may present his notice the grounds of appeal to the officer in charge of the prison who shall thereupon forward such notice and memorandum to the Registrar of the lower court.

36. An appellant shall file the original and as many copies of his notice and grounds of appeal, and when notice of appeal is a written notice the original and as many copies of that notice as there are parties to be served.

37. The grounds of appeal may include all or any of the following grounds, that is to say -

(a) that the lower court had no jurisdiction in the case; or

(b) that the lower court has exceeded its jurisdiction in the case; or

(c) that the presiding officer(s) of the lower court was personally interested in the case; or

(d) that the presiding officer(s) of the lower court has acted corruptly or maliciously in the case; or

(e) that the decision has been obtained by fraud; or

(f) that the case has already been heard or tried and decided by or forms the subject of a hearing or trial pending before a competent court;

◆◆◆ Provided that it shall not be competent for the court to entertain as a ground of appeal the special plea of autrefois acquit or autrefois convict unless such special plea was pleaded in the lower court; or

(g) that admissible evidence has been rejected, or inadmissible evidence has been admitted, by the lower court and that in the latter case there is not sufficient admissible evidence to sustain the decision after rejecting such inadmissible evidence; or

(h) that the decision is altogether unwarranted, unreasonable and cannot be supported having regard to the evidence; or

(i) that the decision is erroneous on point of law; or

(j) that some other specific illegality, not herein before mentioned and substantially affecting the merits of the case has been committed in the course of the proceedings in the case; or

(k) that the sentence passed on conviction is excessive, unless the sentence is one fixed by law.

38. The appellant shall set forth in his grounds of appeal the particulars on which he relies or of which he complains.

39. (1) Within thirty days of the decision appealed against, the appellant shall deposit such sum as the lower court may estimate to be necessary for the cost of the number of certified copies of the proceedings for the use of the court, the respondent or respondents and the appellant.

◆ (2) Where the lower court is satisfied that owing to poverty the appellant is unable to deposit the full or any of the amount required for the necessary copies of the proceedings, it may direct the acceptance of a specified lesser sum or that the necessary copies of the proceedings be supplied to the appellant free of charge, as the case may be.

◆ (3) Where the lower court directs that the necessary documents be supplied free of charge, the date upon which such direction is given shall, for the purposes of sub-rule (1) be deemed to be the date of deposit of the sum referred to therein.

40. (1) Within thirty days of the decision appealed against, the appellant shall, unless he remains in custody under the provisions of rule 51 enter into a recognizance in the prescribed form, with or without a surety as the lower court may require in such sum as the lower court may specify or, in lieu of furnishing a surety or sureties, as the case may be, deposit with the lower court the sum required.

◆◆ (2) The condition of the recognizance shall be for the due prosecution of the appeal and for abiding the result thereof, including all costs of the appeal or otherwise.

◆◆ (3) In estimating the sum aforesaid, the lower court shall take into consideration the amount of any fine imposed and the sum, if any, awarded to the respondent and the cost of the trial in the lower court or, if the appellant has been sentenced to imprisonment without the option of fine, the period of his sentence of imprisonment and in each case a sum not exceeding fifty naira to cover the cost of the appeal in the court.

◆◆ (4) If there shall be any breach of the recognizance, the deposit, if any, shall be forfeited and shall be applied to discharging the condition of the recognizance.

◆ (5) If the appellant is in custody he shall be released from such custody on bail, on complying with this rule as to security for prosecuting the appeal and abiding the results thereof.

◆ (6) If the appellant who is in custody is not within the area of the lower court from whose decision the appeal is made, any presiding officer of the court in the area in which such appellant is residing shall have the powers and functions given and assigned to the lower court by this rule.



41. (1) The Registrar of the lower Court shall within 14 days of the filing of the Notice of Appeal require the appellant to deposit such sum of money as is likely to cover the cost of preparation and compilation of the Record of Appeal.

◆◆ (2) The Registrar of the lower Court shall within 3 (three) months of the satisfaction of the Conditions of Appeal by the appellant compile, certify and forward the record of appeal to the Court. The Record of Appeal shall be made up of the proceedings, processes and documentary exhibits in the proceedings.



◆◆ (3) The registrar of the lower court shall forward along with the record of appeal the following;



◆◆◆◆ (a) Bulky or unwieldy exhibits,

◆◆◆◆ (b) Documentary exhibits which cannot be conveniently reproduced; and

◆◆◆◆ (c) Non-documentary exhibits.

◆◆ (4) The Registrar of the lower court shall produce sufficient copies of the Record of Appeal for service on the parties and for the use of the Court.

42. When notifying a party of the day fixed for the hearing of an appeal, a Registrar of Court shall send to the party a copy of the proceedings, if the party shall not have received one as at then.

43. An application for extension of time to appeal or for leave to appeal shall be made to the court.

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

45. All appeals shall be heard by a Judge of the Court.

46. The appeal shall come up for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

47. Unless the court gives leave to the contrary -

◆◆◆◆◆ (c) all appeals shall be heard and determined on briefs of argument filed and exchanged between the parties;

◆◆◆◆◆ (d) the Appellant shall file an Appellant's brief within 60 days of the receipt of the record of appeal from the court below;

◆◆◆◆◆ (e) the Respondent shall file and serve a Respondent's brief within 45 days of service on him of the Appellant's brief;

◆◆◆◆◆ (f) within 21 days of the receipt of the Respondent's brief, the Appellant may file a reply brief which shall deal with any new issues raised in the respondent's brief:

◆◆◆◆◆ (g) every brief shall identify the issues distilled from the grounds of appeal on the basis of which parties desire the court to determine the appeal.

◆◆◆◆◆ (h) any issue which is not covered by any ground of appeal shall not be considered by the court in its judgment.

48. A Court may direct a departure from these rules in respect of compilation of records from the lower court upon the application of any party to an appeal.

49. Where on the day of hearing or at an appointed day of the case, the appellant does not appear, the appeal shall be considered on its merit, unless the Court thinks fit, for sufficient cause to order otherwise.

50. (1) If the appellant makes default in duly prosecuting his appeal, the lower court shall thereupon either treat the recognizance as forfeited and deal with the same in accordance with the provisions of

the Criminal Procedure Law, relating to forfeited recognizances or make such Order as may be just with respect to the amount lodged by the appellant, as the case may be.

◆◆◆◆◆ (2) If the appellant making such default has been released from custody under the provisions of rule 40 (5) of this Order and if he remains or becomes liable to be kept in custody; the lower court shall forthwith issue a warrant for his apprehension, in order that he may be committed to prison accordingly.◆

51. (1) A person sentenced to imprisonment without the option of a fine who gives notice of appeal and is unable to find the necessary surety or sureties, if any, or to deposit money in lieu of a surety or sureties, may nevertheless prosecute his appeal by entering into a recognizance without a surety conditioned for payment of the costs of the appeal provided that he remains in custody pending the hearing of the appeal, and in such case the presiding officer of the lower court shall, by warrant under his hand, direct the appellant to be detained in custody accordingly and shall, in such warrant, intimate to the officer in charge of the prison that notice of appeal has been given.

◆◆ (2) The appellant shall in such case be detained in custody pending the determination of his appeal and may be taken without any fresh order or warrant in custody of a police officer to the appeal court to attend the hearing of the appeal.◆

◆◆ (3) Notwithstanding anything contained in this rule, an appellant may, at any time before his appeal is heard, enter into a recognizance in the form and subject to the conditions set forth, in rule 40 and thereupon he shall be released unless he is in custody in respect of any other charge or matter.

◆◆ (4) Where a conviction is confirmed on appeal and appellant has been in custody pending the hearing of the appeal, the court may direct that all of such period of custody shall count as imprisonment towards the term to which the appellant has been sentenced.

52. On the appellant complying with rules 39, 40, 50 and 51 as the case may be, the Registrar of the lower court shall transmit to the Registrar of the court;

◆◆◆◆◆ (a) the notice and grounds of appeal;

◆◆◆◆◆ (b) a certified copy of the proceedings in respect of which the appeal is made;

◆◆◆◆◆ (c) the recognizance, where the appellant has entered into the same under rule 42 or a certified copy of the warrant of commitment where the appellant has been committed to prison; and

◆◆◆◆◆ (d) the exhibits received in evidence in the proceedings except unwieldy, perishable or putrid exhibits together with a copy of documentary exhibits;

◆◆◆◆◆ Provided that where any document exhibited is of unusual length and the copying of it would cause undue delay in effecting such transmission, it shall not be necessary to transmit a copy of the same, and where any document contains matter which is partly material and partly immaterial to the charge it shall not be necessary to copy that part which is immaterial.

53. (l) An Appellant may serve written notice upon the Registrar of the lower court that he has abandoned his appeal.

◆◆◆◆◆ (2) The Registrar of the lower court shall give notice to the Registrar of the court and to the respondent of the abandonment of the appeal, and thereupon the court shall strike out the appeal.

54. Every criminal appeal other than an appeal from an Order to pay a penalty shall finally abate on the death of the appellant.

55. The court, unless the appeal abates or is abandoned, shall cause notice to be given to the appellant and to the respondent and to their respective legal practitioners if any, of the time and place at which such appeal will be heard.

56. In every appeal to which this Order relates the appellant shall be entitled to be present in court throughout the hearing of his appeal and shall be entitled to present his appeal to the court in person or by a legal practitioner;

◆◆◆◆◆ Provided that where an appellant misconducts himself in such a way as to render the continuance of his presence impracticable the court may order him to be removed and kept in custody and may continue the hearing of the appeal in his absence.

57. (1) If upon the day appointed for the hearing of an appeal or any day to which such hearing has been adjourned, the appellant shall not appear in person or by a Legal Practitioner the appeal shall be struck out unless the Court orders otherwise.

◆◆◆◆◆ (2) If upon any such day the appellant appears, the court may proceed with hearing and determination of the appeal.

58. On the hearing of an appeal, it shall not be competent for the appellant to raise or put in issue any other grounds for appeal than those specified in his notice and grounds of appeal;

◆◆◆◆◆ Provided that where, in the opinion of the Court, any ground of appeal other than those contained in the notice of appeal might properly have been given, or where the notice of appeal appears to be defective, the court may, in its discretion, allow the amendment of the notice of appeal subject to such terms and conditions as regards the service of the notice of appeal so amended upon the respondent.◆

59. Where, upon the hearing of an appeal the court considers that it is necessary or expedient in the interest of justice that further evidence be adduced for the due and proper determination of the appeal, it may order that such evidence be adduced before the court upon a day to be fixed in that behalf and take all such steps as may be necessary for the purpose of securing the attendance of those witnesses whose attendance is required by the court.

60. Allowance may be paid to witnesses.

61. The court may make such order as to the payment of costs by or to the appellant as it may deem just, and an order may be made also in any case where an appeal has been abandoned or withdrawn.

62. Fees as may be prescribed shall be chargeable in criminal appeals save where the same would have to be paid by a public officer acting in his official capacity, or where the lower court or the court waives or remits the same on ground of poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.◆

63. Forms as may be prescribed for criminal appeals, may in accordance with any printed instructions contained in the said forms, and with such variations as the circumstances of any particular case may require, be used in the cases to which they apply and, when so used, shall be good and sufficient in Law.

64. (1) When a case is decided on appeal the Registrar shall certify the judgment or Order to the lower court by which the decision appealed against was pronounced.

◆◆◆◆◆ (2) The lower court shall thereupon make such Orders as are necessary to conform with the judgment or Order of the court, and the records shall be amended accordingly.

65. (1) In this order the expression 'lower court' includes customary courts, magistrate's courts or tribunals or mobile courts whose decisions are appealable to the court.

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◆ (2) ◆ 'Registrar' shall include any officer in charge of the records of the lower court.

ORDER 54

STAY OF EXECUTION OR OF PROCEEDINGS PENDING APPEAL

1. Where any application is made to a Judge for a stay of execution or of proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

2. An applicant for stay of execution of a judgment shall satisfy all the conditions of appeal within 30 days from the date of filing a notice of appeal and where he fails to do so, the respondent may apply to strike out the application or discharge the order if already granted. ◆◆◆◆◆◆◆◆◆◆◆◆

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3. (1) Application for stay of execution shall be regarded as an urgent matter and may be granted or refused. ◆

◆◆ (2) Where a Judge has struck out an application for stay, no further application for stay of execution shall be made before the court.

4. Any decision or order by a Judge on an application made under this Order shall be drawn up.

ORDER 55

PROBATE AND ADMINISTRATION

1. GRANT OF PROBATE OR ADMINISTRATION IN GENERAL

1. (1) Subject to the provisions of Rules 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any Letters of Administration of the estate of the deceased person, with or without a Will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar of the Court.

(2) The Chief Judge shall request a Judge of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or presentation of the Will of the deceased or for any other purposes connected with the duties of the Judge under this Order, and every Judge shall carry out any such request as far as practicable and report to the Chief Judge.

(3) No grant of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration, without the Will annexed, shall issue within 14 days of such death.

2. The Judge shall, when the circumstances of the case appear so to require, forthwith on the death of a person, or as soon after as may be, appoint and authorize an officer of the court or some other fit person, to take possession of his property within its jurisdiction, or put it under seal and so keep it until it can be dealt with according to law.

3. If any person other than the named executor or administrator, or an officer of the Court, or person authorized by the Judge, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to a fine of not less than N50,000.00 (fifty thousand naira) as the Judge, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may deem fit to impose.

4. Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so within 3 months after having had knowledge of the death of the deceased, he may be liable to a fine of N5, 000.00 (five thousand naira) as the Judge having regard to the condition of such person in default and other circumstances of the case deem fit to impose.

5. Where it appears that any paper of the deceased, being or purporting to be testamentary is in the possession of, or under the control of any person, a Judge may upon an ex parte application, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

6. Where it appears that there are reasonable grounds for believing that any person had knowledge of any paper being or purporting to be testamentary, although it is not shown that the paper is in his possession or under his control, a Judge may upon an ex parte application, whether a suit or proceedings in respect of probate or administration is pending or not, order that he be examined in respect of the same in Court, or on interrogatories, and that he attend for that purpose, and after examination that he produce that paper and bring it into Court.

7. The Judge may on the application of any person claiming an interest under a Will, give notice to the executors therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall within 21 days after notice, come in and prove or renounce accordingly.

8. If any named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within 3 months after the death, or after the termination of any suit for or dispute in respect of probate or administration, he may, independent of any other liability be deemed to be in contempt of court, and shall be liable to such fine of not less than N5,000.00 (five thousand naira), as the Judge deems fit to impose.

9. The Judge shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Judge necessary or desirable, in regard to the identity of the deceased or of the applicant, or in regard to the relationship of the applicant to the deceased, or in regard to any person or persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant or in respect of any other matter which may be considered by the Judge relevant to the question whether the applicant is the proper person to whom the grant should be made:

◆◆◆◆◆ Provided that the Judge may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Judge.

10. Where it appears to the Judge that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Judge may refuse the grant until due notice of the application has been given to such other or persons and an opportunity given for such person or persons to be heard in respect of the application.

◆◆◆◆◆ Provided that the Judge may in his discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

11. Every applicant for a grant of Letters of Administration shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

◆◆◆◆◆ Provided that for the purpose of the fees payable on Letters of Administration, the value of the property in respect of which the grant is made shall be deemed not to include:

◆◆◆◆◆ (a) any gratuity payable by the Government of the Federation of Nigeria, or of a State, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;

◆◆◆◆◆ (b) any sum of money payable to an estate from a Provident Fund established under the provisions of any applicable law.

12. All inquiries, a Judge sees fit to institute, shall be answered to his satisfaction before the issuance of Letters of Administration. The Judge shall afford as great a facility for the obtaining of Letters of Administration as is consistent with due regard to the prevention of error and fraud.

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

14. Any person may deposit his Will for safe custody in the Probate Registry, sealed under his own seal and the seal of the Court.

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

16. No original Will shall be given out for any purpose without the direction in writing of a Judge. A certified transcript under the seal of the Court of the probate or administration with the Will annexed may be obtained from the Court.

17. (1) On receiving an applicant for administration with Will annexed, a Judge shall inspect the Will, and see whether it appears to be signed by the testator or by some other person in his presence, and by his direction, and subscribed by two witnesses according to the applicable law, and shall not proceed further if the Will does not appear to be so signed and subscribed.

◆◆ (2) If the Will appears to be so signed and subscribed, the Judge shall refer to the attestation clause and consider whether the wording thereof states, the will to have been in fact executed in accordance with those enactments.

18. (1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is some doubt about the due execution of the Will, he shall before admitting it in proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

◆◆◆ (2) If no affidavit can be obtained in accordance with the foregoing paragraph, the Judge may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the Will.

◆◆ (3) If the Judge, after considering the evidence is satisfied that the Will was not duly executed, he shall refuse probate and mark the Will accordingly.

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

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

◆◆◆◆ Provided that this sub-rule shall not apply to any alteration which appears to the Judge to be of no practical importance.

◆◆ (2) Where from any mark on the Will it appears to the Judge that some other documents has been attached to the Will or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Judge may require the document to be produced and may call for such evidence in respect of the attachment or incorporation of the document as he may deem fit.

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

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

22. The Judge may require an affidavit from any person he may deem fit for the purpose of satisfying himself as to any of the matters referred to in Rules 18, 20 and 21. In any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

23. Where it appears to the Judge that there is prima facie evidence that a Will is one to which Section 9 of the Wills Act 1837 or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof if the Judge is satisfied that it was made by the testator in accordance with the provisions of that section or enactment as the case may be.

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

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

◆◆◆◆◆ (a)◆ the executor;

◆◆◆◆◆ (b)◆ any residuary legatee or devisee holding in trust for any other person;

◆◆◆◆◆ (c)◆ any residuary legatee or devisee for life;

◆◆◆◆◆ (d)◆ the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person:

Provided that:

i. unless the Judge otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in◆ interest shall be preferred to one entitled on the happening of a contingency; and

ii. where the residue is not in terms wholly disposed of, the Judge may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made subject to Rule 68 of this Order to any

legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(e) any specific legatee or devisee or any creditor or, subject to sub-rule 3 of Rule 59, the personal representative of any such person or where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion to it;

(f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the Will who would have been entitled to a grant if the deceased had died wholly intestate.

26. (1) An application to join with a person entitled to a grant of administration, a person entitled in a lower degree shall, in default of renunciation by all persons entitled in priority to the latter, may be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require;

(2) An application to join with a person entitled to a grant of administration, a person having no right to it, shall be made to the Judge and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Judge may require;

Provided that there any, without any such application be joined with a person entitled to administration;

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

(b) unless the Judge otherwise directs, any person whom the guardian of a minor may nominate for the purpose;

(c) a trust corporation.

27. Where the testator was blind or illiterate, the Judge shall not grant administration with the Will annexed, unless the Judge is first satisfied, that the Will was read over to the deceased before its execution or that he had at that time knowledge of its contents.

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

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

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

◆◆ (4) Where no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.